

OFFICIAL - SENSITIVE - COMMERCIAL

HMRC Standard Goods and Services Model Contract
TERMS AND CONDITIONS

DATED

13/01/20◆

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

and

(2) Gleeds Building Surveying Ltd

AGREEMENT

relating to

**PPD Project Consultancy, Design and
Management**

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THIS AGREEMENT is made on

20◆

BETWEEN:

- (1) **THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS** of 100 Parliament Street, Westminster, London SW1A 2BQ (the "Authority"); and
- (2) **Gleeds Building Surveying Ltd** a company registered in England and Wales under company number 03658772 whose registered office is at 95 New Cavendish Street London W1W 6XF (the "Supplier"),

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

INTRODUCTION

The Authority is delivering unprecedented change for Government. The Building Our Future (BOF) Programme will see the Authorities estate rationalise and transform from 227 buildings to 13 new Regional Centres and a handful of transitional and specialist sites. Almost all of the current offices will be vacated and staff moved to new or refurbished office accommodation throughout the UK by 2023.

To achieve this aim, the Authority requires a PDM Model and access to accredited project management professionals to ensure delivery of complex, intermediate and minor works while developing the knowledge and skills of the Authority through informal knowledge transfer and formal continuous improvement and support as we transition from a PFI to a directly managed estate and the additional responsibilities this brings. It is important to note the Supplier will be required to demonstrate ownership, flexibility and scalability to meet the Authorities needs and support (but not limited to) office clearance, reinstatements, renovation, major refurbishment and closures. The Supplier will also be required to undertake robust assurance of the PDM Model to test the approach during maturity and incorporate new requirements as the BOF Programme progresses. The Supplier will predominantly collaborate with the Authorities internal Project Management function;

Estates Projects Planning and Delivery (PPD). PPD are responsible for Estates and Infrastructure projects ranging from minor works, (light refurbishment and associated IT infrastructure) to major transformational work (fit out of new acquisitions). PPD will provide an intelligent client function and support the Supplier in identifying and managing stakeholders. The Authority will require the Supplier to employ accredited resource, effective planning and engagement to ensure swift familiarisation and understanding of their estate, stakeholder dependencies and objectives. The Supplier will quickly grasp the Authorities specialist, security and technical needs to undertake in depth analysis of specific elements of the project or works to inform decision making, advise on delivery options and ensure statutory compliance. All Suppliers would be required to meet the Authorities security clearance standards relevant to the commission raised.

The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

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IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time including any implementing or successor legislation;
 - (e) the words “including”, “other”, “in particular”, “for example” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
 - (f) references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (h) unless otherwise provided and save for references in Schedule 10 (*Guarantee*):
 - (i) references to Clauses and Schedules are references to the clauses and schedules of this Agreement;
 - (ii) references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (i) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and

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the Parties shall update this Agreement with a reference to the replacement hyperlink.

- 1.4 If there is any conflict or inconsistency between the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;
 - (c) Schedule 2.8 (*Data Processing and List of Sub-processors*), if such Schedule is used;
 - (d) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes);
 - (e) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any); and
 - (f) any other document referred to in this Agreement or any other document attached to this Agreement.

1.5 The Schedules and their Annexes form part of this Agreement.

1.6 In entering into this Agreement the Authority is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that:

- (a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;
- (b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
- (c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to the processes and requirements of the Authority;
- (d) it has entered into this Agreement in reliance on its own due diligence.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Agreement on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Authority System;
- (b) any misinterpretation of the Authority Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

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3 **WARRANTIES**

3.1 The Supplier represents and warrants that:

- (a) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (b) this Agreement is executed by its duly authorised representative;
- (c) it has all necessary consents and regulatory approvals to enter into this Agreement and perform its obligations under this agreement;
- (d) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;
- (e) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the SQ and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- (f) in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;
- (g) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation, enquiry or investigation in which it or its Subcontractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;
- (h) it has all necessary rights in and to the IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority;
- (i) any Cost, Supplier Profit or Supplier Profit Margin in the Cost Model is a true and accurate reflection of such Cost, Supplier Profit or Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Models;
- (j) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) no profit warnings, proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver,

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administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and

- (l) that neither the Supplier nor any of its officers, employees or Sub-contractors:
 - (i) has been convicted of any offence involving slavery and human trafficking; and
 - (ii) having made reasonable enquiries and to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

3.2 If at any time the Supplier becomes aware that a representation or warranty given by it under Clause 3.1 has been breached, is untrue, or is misleading, it shall immediately notify the Authority of the relevant occurrence in sufficient detail to enable the Authority to make an accurate assessment of the situation.

SECTION B - THE SERVICES

4 TERM

4.1 This Agreement shall:

- (a) come into force on the Effective Date; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (Termination Rights), terminate at the end of the Initial Term or any Extension Period (as applicable).

Extension of the Initial Term

4.2 The Authority shall have the right, at its sole discretion, to extend the Initial Term for periods of not more than twelve (12) months (each an "Extension Period"), for a maximum of two (2) years in the aggregate, by giving to the Supplier not less than three (3) months' written notice before the end of the Initial Term (or any Extension Period which has already been notified to the Supplier by the Authority, as appropriate).

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

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5 SERVICES**Standard of Services**

5.1 The Supplier shall provide:

- (a) any Mobilisation from (and including) the Mobilisation Commencement Date; and
- (b) the Operational Services, in each case, from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that:

- (a) the Services:
 - (i) comply in all respects with the Services Description; and
 - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Agreement,

and, without prejudice to Clause 1.4 (*order of precedence*), for the avoidance of doubt, where the Supplier Solution imposes obligations or requirements on the Supplier that are in excess of, or more onerous, than the Services Description, the Supplier shall perform those obligations and comply with those requirements in addition to the obligations and requirements set out in the Services Description.

5.3 The Supplier shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Quality Standards;
 - (iv) the Baseline Security Requirements;
 - (v) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(iv);
- (b) where applicable, maintain accreditation with the relevant Quality Standards authorisation body; and
- (c) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(iv), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

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Supplier Covenants

5.5 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;
- (b) save to the extent that the Authority is expressly required to obtain and maintain the same under this Agreement and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Agreement and/or the receipt of the Services by the Authority; and
 - (ii) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements;
- (d) minimise any disruption to the Services, the IT Environment and/or the Authority's or any Other Suppliers' operations when carrying out its obligations under this Agreement;
- (e) ensure that any Documentation and training provided by the Supplier to the Authority and Other Suppliers are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with any Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to provide services to the Authority and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;
- (g) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (h) gather, collate and provide such information and co-operation as the Authority or Other Supplier may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;
- (i) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (j) notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any

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court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and

- (k) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- (a) remedy any breach of its obligations in Clauses 5.5(b) and Clause 5.5(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - (b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(f) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - (c) meet all the costs of, and incidental to, the performance of such remedial work,
- and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Software

- 5.8 The Supplier shall ensure that the Software (if any) complies with Good Industry Practice in all respects including in respect of availability, change, incident, knowledge, problem, release and deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management.
- 5.9 The Supplier shall comply with and feed into the Authority's incident and problem management processes and procedures in respect of any Software.

Continuing obligation to provide the Services

- 5.10 The Supplier shall continue to perform all of its obligations under this Agreement, and shall not suspend the supply of the Services, notwithstanding:
 - (a) any withholding of the Service Charges due to deduction of any Deductions;
 - (b) the existence of an unresolved Dispute; and/or
 - (c) any failure by the Authority to pay any Charges,

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unless the Supplier is entitled to terminate this Agreement under Clause 33.6(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

- 5.11 The Authority may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.
- 5.12 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Contract Change will have on the relevant Optional Services.
- 5.13 Following receipt of the Authority's notice pursuant to Clause 5.11:
- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - (b) the Supplier shall mobilise and, if applicable, test the relevant Optional Services in accordance with a mobilisation plan which the Parties shall agree in respect of such Optional Services ("**Optional Services Mobilisation Plan**");
 - (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Part B of Schedule 7.1 (*Charges and Invoicing*); and
 - (d) the Supplier shall, from the date agreed in the Optional Services Mobilisation Plan for the Optional Services (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all KPIs applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

Scope

- 5.14 The Supplier acknowledges and agrees that:
- (a) its relationship with the Authority is not exclusive; and
 - (b) the Authority may at any time during the Term contract with any third party to perform services which are the same as or similar to the Services.

Conflicts of Interest

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

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- 5.16 Where, in the reasonable opinion of the Authority, there is or may be a material actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the Authority under the provisions of the Agreement, the Authority reserves the right to treat this as a material breach of this Agreement and, accordingly, a Supplier Termination Event.

6 MOBILISATION AND PROJECTS**Mobilisation Plan and Delays**

- 6.1 The Parties shall comply with the Mobilisation Plan and provisions of Schedule 6.1 (*Mobilisation*) in relation to the agreement and maintenance of the Mobilisation Plan.
- 6.2 The Supplier shall ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.3 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall apply in respect of the steps to be taken by the Parties.

Testing and Achievement of Milestones

- 6.4 In respect of any Milestone Payments:
- (a) the Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone has been Achieved; and
 - (b) no Milestone Payment shall be made by the Authority until after the Milestone Achievement Certificate has been issued.

Orders

- 6.5 The Authority may order Goods and/or Services in accordance with Schedule 6.3 (*Projects and Ordering*), if such Schedule is used.

Quality Plans

- 6.6 The Supplier shall provide Quality Plans in accordance with Schedule 2.3 (*Standards*), if such Schedule is used.

7 PERFORMANCE INDICATORS

- 7.1 The Parties shall comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to KPIs and performance monitoring.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Authority of the Services and the way it provides them, with a view to reducing the Authority's costs (including the Charges) and/or improving the quality and efficiency of the Services. The Parties

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shall provide each other with any information reasonably required to meet this objective.

- 8.2 The Supplier shall, throughout the Term, identify new or potential improvements to the provision of the Services with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 8.3 The Parties shall comply with the provisions of Part A of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to the Supplier's ongoing obligation of continuous improvement.

9 ASSETS, EQUIPMENT, ACCOMMODATION AND SUPPLY OF GOODS.

Assets

- 9.1 The Supplier shall record all of the Assets that will be used at the Authority's premises as at the Commencement Date in Schedule 4.5 (*Assets*), if such Schedule is used, and shall maintain a Register of all of the Assets in accordance with Schedule 8.5 (*Exit Management*).

Supplier Equipment

- 9.2 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading; removal, safe disposal or storage (as appropriate) of all packaging; and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, loading, carriage, associated decommissioning and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe and secure removal of data and recycling requirements. For the avoidance of doubt, the Supplier shall ensure that all Supplier Equipment is (as applicable) collected, delivered, treated, recovered and disposed of in accordance with the Waste Electrical and Electronic Equipment Regulations ("WEEE") and that all Supplier Equipment shall be supplied inclusive of any costs or charges for compliance with the collection, delivery, treatment, recovery and environmentally sound disposal of such Supplier Equipment as required by WEEE.
- 9.3 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier.
- 9.4 Subject to any express provision of any BCDC Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Agreement, including the Target Performance Levels.

Supply of Goods

- 9.5 Where, as part of the Services, the Supplier is to sell Goods to the Authority:
- (a) the relevant Goods and their prices shall be as set out in Schedule 7.1 (*Charges and Invoicing*);
 - (b) the Supplier shall supply and, where relevant, install the Goods in accordance

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with the relevant specification;

- (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
- (d) if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
- (e) without prejudice to any other rights or remedies of the Authority the risk and title in the Goods shall pass to the Authority at the time of delivery or such earlier time as required at the Authority's sole discretion.

Accommodation

- 9.6 Where, in the course of providing the Services, any Supplier Personnel are to be based at Authority Premises, the Parties shall comply with the provisions of Schedule 2.6 (*Accommodation*), if such Schedule is used.

SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**10 FINANCIAL AND TAXATION MATTERS****Charges and Invoicing**

- 10.1 Subject to Clause 10.2 and Clause 10.3, in consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Without prejudice to the generality of the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*), the Supplier shall:
- (a) comply with UK GAAP or the International Financial Reporting Standard; and
 - (b) procure discrete purchase order numbers from the Authority for each Service and/ or Order prior to the commencement of any Services and the Supplier acknowledges and agrees that should it commence Services without a purchase order number:
 - (i) the Supplier does so at its own risk; and
 - (ii) the Authority shall not be obliged to pay the Charges without a valid purchase order number having been provided to the Supplier.
- 10.3 To facilitate payment, the Supplier shall use an electronic transaction system chosen by the Authority and shall:
- (a) register for the electronic transaction system in accordance with the instructions of the Authority;

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- (b) allow the electronic transmission of purchase orders and submitting of electronic invoices via the electronic transaction system;
 - (c) designate a Supplier representative as the first point of contact with the Authority for system issues; and
 - (d) provide such data to the Authority as the Authority reasonably deems necessary for the operation of the system including, but not limited to, electronic catalogue information.
- 10.4 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.8 (Testing and Achievement of Milestones), 12 (Records, Reports, Audits and Open Book Data), 22 (Transparency and Freedom of Information), 23 (Protection of Personal Data) and Clause 30 (Step In Rights).
- 10.5 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

Set-off and Withholding

- 10.6 The Authority may:
- (a) set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Agreement or under any other agreement between the Supplier and the Authority; and/or
 - (b) exercise any right it may have pursuant to Schedule 2.2 (*Performance Levels*) to withhold payment of a proportion of the Service Charges as Compensation for Unacceptable KPI Failure,
- on giving notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Value For Money

- 10.7 The Parties shall comply with the provisions of Schedule 7.3 (*Value for Money*), if such Schedule is used, in relation to savings initiatives in relation to the provision of the Services.

Financial Distress

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

Promoting Tax Compliance

- 10.9 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.

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- 10.10 The Supplier shall at all times comply with all other Laws and regulations relating to Tax.
- 10.11 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or Sub-contractor. Upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or sub-contractor or Sub-contractor.
- 10.12 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Authority from the amount of any sum due to the Supplier under this Agreement.
- 10.13 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Supplier shall:
- (a) notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and
 - (b) promptly provide to the Authority:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.
- 10.14 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.14 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.
- 10.15 The Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.
- 10.16 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 10.10 to 10.15 (inclusive) then this shall constitute a Supplier Termination Event.
- 10.17 The Authority may internally share any information which it receives under Clauses 10.11 to 10.13 (inclusive) and 10.15.

Use of Off-shore Tax Structures

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

Competitive Terms

- 10.22 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may:
- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or
 - (b) enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

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- 10.23 If the Authority exercises either of its options pursuant to Clause 10.22, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 10.24 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Payment of Sub-contractors

- 10.25 The Supplier shall pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- 10.26 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
- 10.27 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 shall constitute a Supplier Termination Event.

The Models

- 10.28 The Supplier shall:
- (a) complete each iteration of the Models using reasonable skill and care;
 - (b) prepare each iteration of the Models using the same methodology, software package, layout and format as that used for the initial iteration of the Models and ensure it does not have any parts which are hidden, protected, locked or made otherwise inaccessible or obscured to review or alteration;
 - (c) ensure that each iteration of the Models a true and fair reflection of the contents therein, is accurate and not misleading; and
 - (d) not have any other internal financial model in relation to the Services inconsistent with the Models.
- 10.29 All changes to the Models shall be auditable and implemented and documented under formal version control in accordance with the Change Control Procedure.

SECTION D - CONTRACT GOVERNANCE

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11 GOVERNANCE

- 11.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.
- 11.2 Each Party shall appoint a representative in accordance with this Clause 11 for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement and the management of the Services.
- 11.3 The initial Supplier Representative shall be the person named as contract manager for the Supplier in Schedule 8.1 (*Governance*). Any change to the Supplier Representative shall be agreed in accordance with Schedule 9.2 (*Key Personnel*), if such Schedule is used, or Schedule 8.1 (*Governance*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA**Audit Rights**

- 12.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:
- (a) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - (b) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - (c) to verify any certificate of costs required to be provided pursuant to Schedule 7.1 (Charges and Invoicing) and, if Schedule 7.5 (*Financial Reports and Audit Rights*) is used, any Open Book Data and the integrity and content of any Rolling Financial Statement (as such terms are defined in Schedule 7.5);
 - (d) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - (e) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (f) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;

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- (g) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- (i) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (j) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (k) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (l) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (m) to inspect the service delivery environment (or any part of it);
- (n) to review any information relating to any testing required pursuant to Schedule 6.2 (*Testing Procedures*);
- (o) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures) and the Supplier's compliance with the Quality Standards;
- (p) to inspect the Authority Assets for the purposes of ensuring that the Authority Assets are secure and that any register of assets (including the Registers) is accurate, complete and up to date; and/or
- (q) to review the integrity, confidentiality and security of the Authority Data.

12.2 Except where:

- (a) an audit is imposed on the Authority by a regulatory body;
- (b) where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement; or
- (c) an audit is required to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security

the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.

12.3 Nothing in Clause 12.2 shall prevent or restrict the Authority's right to require that

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the Supplier provide financial Management Information at such frequency as determined by the Authority and on a free of charge basis.

- 12.4 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

Conduct of Audits

- 12.5 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 12.6 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 12.7 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable KPIs at a level of detail sufficient to verify compliance with the KPIs.
- 12.8 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an audit.
- 12.9 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under Clauses 12.1 to 12.12, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

Use of Supplier's Internal Audit Team

- 12.10 As an alternative to the Authority's right pursuant to Clause 12.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Clause 12.1.
- 12.11 Following the receipt of a request from the Authority under Clause 12.10 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and

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- (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

Response to Audits

12.12 If an audit undertaken pursuant to Clause 12.1 or Clause 12.10 identifies that:

- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- (b) there is an error in a Model, the Supplier shall promptly rectify the error;
- (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit, the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

Reports, Records and Open Book Data

12.13 The Supplier shall comply with the provisions of:

- (a) Schedule 8.2 (*Reports and Records*) in relation to the production of reports and the maintenance and retention of Records; and
- (b) Schedule 7.5 (*Financial Reports and Audit Rights*), if such Schedule is used, in relation to open book accounting and the provision of financial information and reports.

13 CHANGE

Change Control Procedure

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

Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement nor be entitled to an increase in the Charges as the result of a Change in Law.

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- 13.3 Without prejudice to Clause 13.2, each Party shall monitor and shall keep the other Party informed in writing of any change in Law which may impact the Services and/or Deliverables. The Supplier shall provide the Authority with timely details of measures and changes it proposes to make to comply with any such changes wherever necessary, designed to eliminate (where possible) any potential operational disruption.

SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

- (a) provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice, BPSS and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*);
 - (iii) comply with all relevant policies and reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*); and
 - (iv) meet the training and awareness requirements set out in Paragraph 1.2(e) of Schedule 2.8 (*Data Processing and List of Sub-Processors*);

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- (c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
 - (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;
 - (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
 - (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
 - (g) bear the familiarisation and other costs associated with any replacement of any Supplier Personnel;
 - (h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement; and
 - (i) pay the Supplier Personnel the Mandatory Wage as required by Law.
- 14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- (a) refuse admission to the relevant person(s) to the Authority Premises; and/or
 - (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

14.3 The terms of Schedule 9.2 (*Key Personnel*) shall apply, if such Schedule is used.

Employment Indemnity

14.4 The Parties agree that:

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

Income Tax and National Insurance Contributions

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

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- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;
- (b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and
- (c) provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.5(a) or why Clause 14.5(a) does not apply to the Supplier (including such specific information as the Authority may request),

and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 14.5 then this shall constitute a Supplier Termination Event.

- 14.6 The Authority may internally share any information which it receives under Clause 14.5(c).

Staff Transfer

- 14.7 The Parties agree that:

- (d) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 9.1 (*Staff Transfer*) shall apply; and
 - (iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;
- (e) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and
- (f) Part D of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

- 15.1 The Parties shall comply with the provisions of Schedule 4.3 (*Notified and Key Sub-*

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contractors) in relation to the appointment of Sub-contractors and the terms of Sub-contracts.

Exclusion of Sub-contractors

- 15.2 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:
- (a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
 - (b) if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Exclusion of Key Sub-contractors

- 15.3 The Authority, at its sole discretion, may require the Supplier to terminate a Sub-contract where:
- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 33.1(b) (*Termination by the Authority*);
 - (b) the relevant Sub-contractor or any of its Affiliates have embarrassed or are likely to embarrass the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law;
 - (d) the relevant Sub-contractor has failed to comply with the terms of its Sub-contract equivalent to those set out at Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*); and/or
 - (e) the relevant Sub-Contractor has failed to comply with the terms of its Sub-Contract equivalent to those set out at Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
 - (f) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.2 (*Exclusion of Sub-contractors*); and or
 - (g) there is a change of Control of the relevant Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on

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which the Authority was given notice of the change of Control.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Agreement:

- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors: and
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors.

Project Specific IPR

16.2 The Supplier hereby assigns to the Authority, with full title guarantee, title to and all rights and interest in the Project Specific IPRs.

16.3 The assignment under Clause 16.2 shall either take effect on the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs as appropriate.

16.4 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Authority under this Agreement.

16.5 If requested to do so by the Authority, the Supplier shall without charge to the Authority execute all documents and do all such further acts as the Authority may require to effect the assignment under Clause 16.2.

16.6 The Authority shall grant to the Supplier a non-exclusive royalty-free licence of the Project Specific IPRs to enable the Supplier to provide the Services during the Term.

17 LICENCES GRANTED BY THE SUPPLIER

17.1 The Supplier hereby grants to the Authority and the Government Controlled Company a perpetual, royalty free and non-exclusive licence allowing them to use, load, execute, store, transmit, display and copy:

- (a) the Supplier Background IPR; and
- (b) the Third Party IPR.

17.2 The Supplier shall extend the rights granted to the Authority and the Government Controlled Company under Clause 17.1 (including as to indemnification against IPRs Claims) to their respective contractors and sub-contractors for the duration of the Term solely for the purpose of providing services to the Authority or the Government Controlled Company.

17.3 The licences in Clause 17.1:

- (a) are granted for any purpose relating to the Services (or substantially equivalent services); or

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- (b) are granted for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;
 - (c) includes the right to create an archival copy and a back-up copy;
 - (d) includes the right to sub-license the rights granted to it to a third party (including for the avoidance of doubt any Replacement Supplier) on no less favourable terms than granted to the Authority and the Government Controlled Company (including as to indemnification against IPRs Claims) for the benefit of the Authority and or the Government Controlled Company provided such third party is under a contractual obligation to the Authority to comply with confidentiality obligations that are broadly equivalent to those of the Authority pursuant to Clause 21 (Confidentiality);
 - (e) includes the right for the Authority to:
 - (i) assign, novate or otherwise dispose of its rights and obligations to any other body (including any other Central Government Body and or any private sector body) which substantially performs any of the functions that previously had been performed by the Authority; or
 - (ii) transfer the licences to other machines or users within the Authority.
- 17.5 For the avoidance of doubt any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.1 and the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.1 (including as to indemnification against IPRs Claims).
- 17.6 The Supplier hereby grants to the Authority a non-exclusive licence to copy the Documentation for any purpose connected with the receipt of the Services or that is incidental to the exercise of the rights granted to the Authority under this Agreement.
- 17.13 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

18 LICENCES GRANTED BY THE AUTHORITY

- 18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use:
- (a) the Authority Background IPR;
 - (b) the Authority's documentation, processes and procedures;
 - (c) the Authority's Know-How; and
 - (d) the Authority Data.

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- 18.2 The licence granted in Clause 18.1:
- (a) includes the right to grant sub-licences to Sub-contractors provided that any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
 - (b) is granted solely to the extent necessary for performing the Services in accordance with this Agreement. The Supplier shall not, and shall procure that the Sub-contractors do not, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 18.3 In the event of the termination or expiry of this Agreement, the licence referred to in Clause 18.1 and any sub-licence granted in accordance with Clause 18.2(a) shall terminate automatically and the Supplier and all Sub-contractors shall deliver to the Authority all material licensed to the Supplier pursuant to Clause 18.1 or Clause 18.2(a) in the Supplier's possession or control.

19 IPRs INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
 - (iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.
- 19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:
- (a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and

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- (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

19A OPEN SOURCE PUBLICATION

19A.1 The Supplier agrees that the Authority may publish, at its sole discretion, as Open Source software all or part of the Project Specific IPRs that are in the nature of software.

19A.2 The Supplier hereby warrants that any Project Specific IPRs that are in the nature of software:

- (a) are suitable for release as Open Source and that any release shall not allow a third party to use the Open Source software in any way to compromise the operation, running and security of the Project Specific IPRs or the Authority System;
- (b) have been developed using reasonable endeavours to ensure that their publication by the Authority shall not cause any harm or damage to any party using them and that they have been tested using the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor;
- (c) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
- (d) can be published by the Authority as Open Source without breaching the rights of any third party; and
- (e) will be supplied in a format suitable for publication as Open Source no later than the date notified by the Authority to the Supplier.

19A.3 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Project Specific IPRs that are in the nature of software as Open Source under Clause 19A.1.

20 AUTHORITY DATA AND SECURITY REQUIREMENTS

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

20.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

20.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2.1 (*Services Description*).

20.4 The Supplier shall preserve the integrity, confidentiality and accessibility of Authority Data and prevent the unauthorised access, interception, corruption or loss

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of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

- 20.5 The Supplier shall perform and maintain secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with any BCDC Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at no additional cost to the Authority, and that the data contained in the back-ups are available at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the security requirements in this Agreement.
- 20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Capability*) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
 - (b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Business Continuity and Disaster Capability*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 20.9 The Supplier shall and shall procure that its Sub-contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).

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

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

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(without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

- 20.11 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in clause 20.10 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.
- 20.12 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a declaration, in a form acceptable to the Authority, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

21 CONFIDENTIALITY

- 21.1 For the purposes of this Clause 21, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
 - (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;

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- (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 21.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

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

- 21.6 The Authority may disclose the Confidential Information of the Supplier:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 30 (*Step-In Rights*) and Exit Management rights; or

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- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

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

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

22 TRANSPARENCY AND FREEDOM OF INFORMATION

- 22.1 The Parties acknowledge that:

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

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

- 22.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 22.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Schedule 8.2 (*Reports and Records*).
- 22.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 22.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is

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being performed, having regard to the context of the wider commercial relationship with the Supplier.

- 22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.6(c)) and, if required to be provided under Schedule 7.5 (*Financial Reports and Audit Rights*, any Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 22.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Re-use of Public Sector Information Regulations 2015 and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 22.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

23 PROTECTION OF PERSONAL DATA

- 23.1 The Parties shall comply with Schedule 2.8 (*Data Processing and List of Sub-processors*) in relation to the processing of Personal Data, if such Schedule is used.

24 PUBLICITY AND BRANDING

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24.1 The Supplier shall not:

- (a) make any press announcements or publicise this Agreement or its contents in any way; or
- (b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority.

24.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services, the Supplier System and the Authority System) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

25.1 Nothing in this Agreement shall exclude or limit:

- (a) either Party's liability for:
 - (i) death or personal injury caused by its negligence, or that of its employees, officers, agents or Sub-contractors (as applicable);
 - (ii) fraud or fraudulent misrepresentation by it or its employees;
 - (iii) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (iv) any liability to the extent it cannot be limited or excluded by Law;
- (b) the Supplier's liability in respect of the indemnities in Clause 10.14(VAT), Clause 14.4 (*Employment Indemnity*), Clause 14.5 (*Income Tax and National Insurance Contributions*), Clause 19 (*IPRs Indemnity*), Clause 19A.3 (Open Source Publication), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*);
- (c) the Supplier's liability for any regulatory losses, fines and/or expenses incurred by the Authority and any further costs incurred by the Authority in order to meet any additional requirements imposed by a relevant regulatory body as a result of the relevant breach; or
- (d) the Authority's liability in respect of the indemnities in Clause 14.4 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*).

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Financial and other limits

25.2 Subject to Clause 25.1 (*Unlimited Liability*) and Clauses 25.5 and 25.6 (*Consequential losses*):

- (a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the greater of £1,000,000 and one hundred per cent (100%) of the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the greater of £1,000,000 and one hundred per cent (100%) of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the greater of £1,000,000 and one hundred per cent (100%) of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.
- (b) the Supplier's aggregate liability in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Unacceptable KPI Failure;incurred in any [rolling period of twelve (12) months] shall be subject to the Service Credit Cap; and]
- (c) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed an amount equal to [one hundred and fifty per cent (150%)] of the Charges paid or due to be paid or payable during the Contract Year in which the Default occurred,
- (d) provided that where any Losses referred to in this Clause have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement (whether in whole or in part), or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement, or wilful repudiatory breach of this Agreement, the references in such Clause to [one hundred and fifty per cent (150%)] shall be deemed to be references to [two hundred per cent (200%)].

25.3 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clauses 25.2(a) and 25.2(c).

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- 25.4 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.5 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
- (a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.6(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:
 - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*); and
 - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and
 - (b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority shall in no event exceed an amount equal to one hundred per cent (100%) of the total Charges paid, due to be paid or payable in the Contract Year in which the Default occurred.

Consequential Losses

- 25.5 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.6, neither Party shall be liable to the other Party for:
- (a) any indirect, special or consequential Loss; or
 - (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 25.6 Notwithstanding Clause 25.5 but subject to Clause 25.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier which are deemed to be a non-exhaustive list of direct and recoverable Losses:
- (a) [the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Authority had the Default not occurred;]
 - (b) notwithstanding clauses 25.6(c) and 25.6(h), any operational and/or administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default;
 - (c) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - (d) any wasted expenditure or charges;

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- (e) 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 such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;
- (f) any compensation or interest paid to a third party by the Authority;
- (g) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;
- (h) without prejudice to Clause 20 (*Authority Data and Security Requirements*), any losses associated with corruption, loss or degradation to Authority Data; and
- (i) any anticipated savings identified in Schedule 7.6 (*Anticipated Savings*).

Conduct of indemnity claims

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

Mitigation

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

26 INSURANCE

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

SECTION H - REMEDIES AND RELIEF**27 RECTIFICATION PLAN PROCESS**

27.1 Without limitation to this Clause 27 and without prejudice to the Authority's rights under this Agreement, if there is a KPI Failure or if the Supplier otherwise fails to perform its obligations under this Agreement, the Supplier will:

- (a) investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;
- (b) advise the Authority, as and to the extent reasonably requested by the Authority, of the status of remedial effort being undertaken with respect to such problem;

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- (c) minimise the impact of and correct the problem and thereafter recommence performance in accordance with and so as to meet or exceed the Target Performance Level of all the KPIs as soon as possible; and
- (d) take appropriate preventative measures so that the problem does not reoccur.

27.2 In the event that:

- (a) there is, or is reasonably likely to be, a Delay;
- (b) in any Service Period there has been a KPI Failure;
- (c) the Supplier 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); and/or
- (d) following any audit conducted by the Authority in accordance with this Agreement, there is, or is reasonably likely to be, a Default;

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within 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 Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Agreement in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process. Any notice provided pursuant to this Clause 27.2 must detail the actual or anticipated effect of the Notifiable Default.

Notification

27.3 If:

- (a) the Supplier notifies the Authority pursuant to Clause 27.2 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),
- (c) then unless the Notifiable Default also constitutes :
 - (i) a Supplier Termination Event or a Rectification Plan Failure and the Authority serves a Termination Notice;
 - (ii) an Escalation Process Trigger Event and the Authority serves an Escalation Notice; or
 - (iii) a Step-In Trigger Event and the Authority serves a Step-In Notice,

the Supplier shall comply with the Rectification Plan Process. If the Notifiable Default is a Delay, Paragraph 9 (*Delays*) of Schedule 6.1 (*Mobilisation*) shall also apply and if the Notifiable Delay is a KPI Failure, Paragraph 3 (*KPI Failure*) of Part A of Schedule 2.2 (*Performance Levels*) shall also apply.

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27.4 The “Rectification Plan Process” shall be as set out in Clauses 27.5 (*Submission of the draft Rectification Plan*) to 27.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

27.5 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.3(*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.6 The draft Rectification Plan shall set out:

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

27.7 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier’s root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 5 of Schedule 8.4 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

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

27.9 If the Authority consents to the Rectification Plan the Supplier shall immediately start work on the actions set out in the Rectification Plan.

28 DELAY PAYMENTS, SERVICE CREDITS AND COMPENSATION FOR UNACCEPTABLE KPI FAILURE

28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, Delay Payments may be payable in accordance with Part C of Schedule 7.1 (*Charges and Invoicing*).

28.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits may be deductible from the Service Charges; and/or

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- (b) an Unacceptable KPI Failure occurs, Compensation for Unacceptable KPI Failure may be deductible from the Service Charges,

in either case, in accordance with Schedule 2.2 (*Performance Levels*) and Schedule 7.1 (*Charges and Invoicing*).

29 ESCALATION PROCESS

- 29.1 Where an Escalation Process Trigger Event occurs, without prejudice to any other rights or remedies under this Agreement, the Authority may give not less than five (5) Working Days' notice ("**Escalation Notice**") to the Supplier requiring a meeting(s) between the Supplier Executive and the Authority ("**Escalation Meeting(s)**").
- 29.2 The Supplier shall ensure that the Supplier Executive is available to commit their full time capability to the Escalation Meeting(s).
- 29.3 The Parties agree and acknowledge that the Escalation Meeting(s) shall take place on Authority Premises and at times and durations as the Authority may determine.
- 29.4 Subject to Clause 29.5, the Escalation Meeting(s) shall continue until such time as the Escalation Process Trigger Event has been resolved to the reasonable satisfaction of the Authority.
- 29.5 Where the Escalation Meeting(s) have continued for more than five (5) Working Days, either of the Parties may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 29.6 If the Supplier is in Default of any of its obligations under Clause 29 (Escalation Process), the Authority shall be entitled to terminate this Agreement pursuant to Clause 33.1(b) (Termination by the Authority).

30 STEP-IN RIGHTS

- 30.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a "**Step-In Notice**") that it will be taking action under this Clause 30 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:
- (a) the action the Authority 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 Authority believes that the Required Action is due to the Supplier's Default;
 - (c) the date on which it wishes to commence the Required Action;
 - (d) the time period which it believes will be necessary for the Required Action;
 - (e) whether the Authority will require access to the Supplier's premises and/or the Sites; and

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- (f) to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

30.2 Following service of a Step-In Notice, the Authority 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 about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and
- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 30.

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

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
- (b) without prejudice to any Deductions which may have accrued in respect of the period prior to the commencement of the Required Action, no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
- (c) the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action provided that if the Authority's costs are greater than the Charges then, save for when the step-in action is taken by the Authority under:
 - (i) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (ii) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default)

the Supplier shall pay the difference on demand to the Authority.

30.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:

- (a) the degradation of any Services not subject to the Required Action; or
- (b) the non-Achievement of a Milestone,

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

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- 30.5 Before ceasing to exercise its step-in rights under this Clause 30 the Authority shall deliver a written notice to the Supplier (a “**Step-Out Notice**”), specifying:
- (a) the Required Action it has actually taken; and
 - (b) the date on which the Authority plans to end the Required Action (the “**Step-Out Date**”) subject to the Authority being satisfied with the Supplier’s ability to resume the provision of the Services and the Supplier’s plan developed in accordance with Clause 30.6.
- 30.6 The Supplier 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 Authority’s approval a draft plan (a “**Step-Out Plan**”) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 30.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall within five (5) Working Days revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority’s approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 30.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 30, provided that the Authority shall reimburse the Supplier’s reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (b) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier’s Default).

31 AUTHORITY CAUSE

- 31.1 Notwithstanding any other provision of this Agreement, if the Supplier
- (a) has failed to:
 - (i) Achieve a Milestone by its Milestone Date;
 - (ii) provide the Operational Services in accordance with the Target Performance Levels; and/or
 - (iii) comply with its obligations under this Agreement,(each a “**Supplier Non-Performance**”), and
- can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause then, subject to Clauses 31.2 and 31.4 the Supplier shall not be treated as being in breach of this Agreement, but only to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause.

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- 31.2 In order to claim the relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a “Relief Notice”) setting out details of:
- (a) the Supplier Non-Performance;
 - (b) the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Agreement;
 - (c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and
 - (d) the relief and/or compensation claimed by the Supplier.
- 31.3 Following the receipt of a Relief Notice, the Authority shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Authority Cause and whether it agrees with the Supplier’s assessment set out in the Relief Notice as to the effect of the relevant Authority Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.
- 31.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.
- 31.5 Without prejudice to Clause 5.10 (*Continuing obligation to provide the Services*), if a Dispute arises as to:
- (a) whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or
 - (b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

32 **FORCE MAJEURE**

- 32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (*Business Continuity and Disaster Capability*)), a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

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- 32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services including any BCDC Services, but the Supplier has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.
- 32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 32.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 33.1(c) (*Termination by the Authority*) or Clause 33.6(b) (*Termination by the Supplier*); and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Supplier fails to perform its obligations in accordance with this Agreement:
 - (i) the Authority shall not be entitled during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Step-in Rights*) as a result of such failure;
 - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

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

SECTION I - TERMINATION AND EXIT MANAGEMENT

33 TERMINATION RIGHTS

Termination by the Authority

- 33.1 The Authority may terminate this Agreement (in whole or in part) by issuing a Termination Notice to the Supplier:
- (a) for convenience at any time, including where the Agreement should not have been entered into 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;
 - (b) if a Supplier Termination Event occurs;
 - (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
 - (d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,
- and this Agreement shall terminate on the date specified in the Termination Notice.
- 33.2 Where the Authority:
- (a) is terminating this Agreement under Clause 33.1(b) due to the occurrence of either limb (c) and/or (j) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
 - (b) has the right to terminate this Agreement under Clause 33.1(b) or Clause 33.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the Partial Termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

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Termination for Persistent Breach

- 33.3 If a Default by the Supplier has occurred on more than one occasion then without prejudice to any other right of the Authority to terminate this Agreement, the Authority may serve a notice ("**Termination Warning Notice**") on the Supplier:
- (a) specifying that it is a formal Termination Warning Notice;
 - (b) giving reasonable details of the Default; and
 - (c) stating that if such Default recurs or continues, it may result in termination of this Agreement for Persistent Breach.
- 33.4 If the Default specified in the Termination Warning Notice recurs after the date of service of the relevant Termination Warning Notice then the Authority may serve a further notice on the Supplier ("**Final Termination Warning Notice**"):
- (a) specifying that it is a Final Termination Warning Notice;
 - (b) stating that the specified Default has been the subject of a Termination Warning Notice served within the twelve (12) month period prior to the date of the Final Termination Warning Notice; and
 - (c) stating that if such Default continues or recurs on one or more occasion within the six (6) month period following the date of the Final Termination Warning Notice the Authority may serve written notice on the Supplier to terminate this Agreement for Persistent Breach (termination to take effect from the date set out in the notice).
- 33.5 Termination for Persistent Breach shall be treated in the same way as a termination following a Supplier Termination Event.

Termination by the Supplier

- 33.6 The Supplier may, by issuing a Termination Notice to the Authority, terminate:
- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds £1,000 and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
 - (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 33.6(b) would result in a Partial Termination, the provisions of Clause 33.7 (*Partial Termination*) shall apply.

Partial Termination

- 33.7 If the Supplier notifies the Authority pursuant to Clause 33.6(b) (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render

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the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 33.7, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

- 33.8 The Parties shall agree the effect of any Contract Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Supplier 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;
 - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Models and must be reasonable; and
 - (c) the Supplier shall not be entitled to reject the Change.

34 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 34.1 The provisions of Clauses 10.9 and 10.17 (*Promoting Tax Compliance*), 10.6 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.4 (*Employment Indemnity*), 14.5 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17 (*Licences Granted by the Supplier*), 19 (*IPRs Indemnity*), 19A.3 (*IPR Indemnity for Open Source Software*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 34 (*Consequences of Expiry or Termination*), 40 (*Severance*), 42 (*Entire Agreement*), 43 (*Third Party Rights*), 46 (*Disputes*) and 47 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.2 (*Reports and Records*), 8.4 (*Dispute Resolution Procedure*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

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

Payments by the Authority

- 34.3 If this Agreement is terminated by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 33.6(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).

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- 34.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to Clauses 33.1(b), 33.1(c) and/or 33.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
 - (b) payments in respect of unpaid Charges for Services received up until the Termination Date.
- 34.5 The costs of termination incurred by the Parties shall lie where they fall if:
- (a) either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Authority*) or 33.6(b) (*Termination by the Supplier*); or
 - (b) the Authority terminates this Agreement under Clause 33.1(d).

Payments by the Supplier

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

SECTION J - MISCELLANEOUS AND GOVERNING LAW

35 COMPLIANCE

Health and Safety

- 35.1 The Supplier shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the Authority Premises.
- 35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

- 35.3 The Supplier shall:
- (a) perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender

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reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

- (ii) the Authority's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act

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

Modern Slavery Act

35.5 In performing its obligations under the Agreement, the Supplier shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations from time to time in force including the Modern Slavery Act 2015;
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015; and
- (c) notify the Authority as soon as it becomes aware, and in any event within five (5) working days, of any actual or suspected breach of its obligations under Clause 35.5(a) and/ or (b) including details of the breach and the mitigation action it has taken or intends to take in order to:
 - (i) remedy the breach; and
 - (ii) ensure future compliance with Clause 35.5(a) and (b).

35.6 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clause 35.5 then this shall constitute a Supplier Termination Event.

36 ASSIGNMENT AND NOVATION

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

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

- (a) any Central Government Body; or
- (b) to a body other than a Central Government Body (including any private sector

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body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 36.2.

- 36.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 36.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.
- 36.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "Successor Body"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (i) of the definition of Supplier Termination Event (as if references in that limb (i) to the Supplier and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

37 WAIVER AND CUMULATIVE REMEDIES

- 37.1 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.
- 37.2 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.

38 RELATIONSHIP OF THE PARTIES

- 38.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
- 38.2 Save as otherwise expressly provided, the obligations of the Authority under the Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in the Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any

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liability under the Agreement (howsoever arising) on the part of the Authority to the Supplier.

39 PREVENTION OF FRAUD AND BRIBERY

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

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

39.2 The Supplier shall not during the term of this Agreement:

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

39.3 The Supplier shall during the term of this Agreement:

- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
- (b) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Authority on request.

39.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

39.5 If the Supplier makes a notification to the Authority pursuant to Clause 39.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other

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relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).

- 39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Authority may by notice:
- (a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 39.7 Any notice served by the Authority under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

40 **SEVERANCE**

- 40.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 40.2 In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 40.3.

41 **FURTHER ASSURANCES**

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

42 **ENTIRE AGREEMENT**

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

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

42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43 THIRD PARTY RIGHTS

43.1 The provisions of Clause 19 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 8.11 of Schedule 8.5 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

43.2 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

43.3 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

43.4 Subject to Clause 43.1 and, if such Schedule is used, Schedule 2.7 (*Service Recipients*) a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

44 NOTICES

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

44.2 Subject to Clause 44.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will	Properly addressed and delivered as evidenced by signature of a delivery receipt

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	occur at 9.00am on the next Working Day.	
Prepaid, Royal Mail Signed For™ 1 st 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

- 44.3 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:

	Supplier	Authority
Contact	Redacted	Redacted
Address		
Email		

- 44.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 44.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;
- (c) notices issued by the Supplier pursuant to Clause 33.6 (*Termination by the Supplier*);
- (d) Termination Notices; and
- (e) Dispute Notices.

- 44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 44.6 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.4 (*Dispute*

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Resolution Procedure)).

45 NON-SOLICITATION

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

46 DISPUTES

46.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

46.2 The Supplier shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

47 GOVERNING LAW AND JURISDICTION

47.1 Each Party irrevocably agree that 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 exclusively governed by and construed in accordance with the laws of England and Wales.

47.2 Subject to Clause 45 (*Disputes*) and Schedule 8.4 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties irrevocably 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.

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

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SIGNED for and on behalf of Gleeds Building
Surveying Ltd

Signature: Redacted

Name (block capitals):

Position:

Date:

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

Signature: Redacted

Name (block capitals):

Position:

Date:

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SCHEDULE 1

Definitions

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

“Achieve”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“Acquired Rights Directive”	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
“Affected Party”	the Party seeking to claim relief in respect of a Force Majeure Event;
“Affiliate”	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
“Agreement”	the clauses of this agreement together with the Schedules and annexes to it;
“Anticipated Contract Life Profit Margin”	[insert]%, which is the anticipated Supplier Profit Margin forecast by the Supplier over the Term;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Mobilisation Plan or a Project Plan;
“Audit”	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (<i>Records, Reports, Audit and Open Book Data</i>) and/or Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);

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- “Audit Agents”**
- (a) the Authority’s internal and external auditors;
 - (b) the Authority’s statutory or regulatory auditors;
 - (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
 - (d) HM Treasury or the Cabinet Office;
 - (e) any party formally appointed by the Authority to carry out audit or similar review functions; and
 - (f) successors or assigns of any of the above;
- “Audit Rights”**
- the audit and access rights referred to in Clause 12 (*Records, Reports, Audits & Open Book Data*);
- “Authority Assets”**
- the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
- “Authority Background IPRs”**
- (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority’s Know-How, documentation, processes and procedures;
 - (b) IPRs created by the Authority independently of this Agreement; and/or
 - (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement;
- “Authority Cause”**
- any material Default by the Authority except to the extent that such Default is:
- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
 - (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

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“Authority Data”

- (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 Supplier by or on behalf of the Authority; and/or
 - (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Controller, or any data derived from such Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified.

“Authority Materials”

the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:

- (a) are owned or used by or on behalf of the Authority; and
 - (b) are or may be used in connection with the provision or receipt of the Services,
- but excluding any Project Specific IPRs;

“Authority Premises”

any premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

“Authority Representative”

the representative appointed by the Authority pursuant to Clause 11.4;

“Authority Requirements”

the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.2 (*Performance Indicators*), 2.4 (*Security Management*), 2.5 (*Insurance Requirements*), 6.1 (*Mobilisation*), 8.2 (*Reports and Records*), 8.5 (*Exit Management*) and 8.6 (*Business Continuity and Disaster Capability*);

“Authority System”

the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement (if any) which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier

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	System or which is necessary for the Authority to receive the Services;
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Baseline Security Requirements”	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (<i>Security Management</i>) as updated from time to time by the Authority and notified to the Supplier;
“BCDC Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Business Continuity and Disaster Capability</i>), if such Schedule is used;
“BCDC Services”	any services set out in Schedule 8.6 (<i>Business Continuity and Disaster Capability</i>), if such Schedule is used;
“BPSS”	the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security Policy Division and Corporate Development Group;
“Breakage Costs Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Central Government Body”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none">(a) Government Department;(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);(c) Non-Ministerial Department; or(d) Executive Agency;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.3 (<i>Change Control Procedure</i>);
“Change Control Procedure”	the procedure for changing this Agreement set out in Schedule 8.3 (<i>Change Control Procedure</i>);

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“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.3 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>), including any Milestone Payment or Service Charge;
“Commercially Sensitive Information”	<p>the information listed in Schedule 4.2 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to;</p> <ul style="list-style-type: none">(a) the pricing of the Services;(b) the details of the Supplier's IPRs; and(c) the Supplier's business and investment plans; <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);

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“Confidential Information”

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:
 - (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Agreement;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and
- (d) Information derived from any of the above, but not including any Information which:
 - (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;
 - (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;
 - (iv) was independently developed without access to the Confidential Information; or

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- (v) relates to the Supplier's:
 - 1. performance under this Agreement;
or
 - 2. failure to pay any Sub-contractor as required pursuant to Clause 10.25 (*Supply Chain Protection*);

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

- “Contract Change”** any change to this Agreement, for the avoidance of doubt excluding any Operational Change;

- “Contract Year”**
 - (a) a period of twelve (12) months commencing on the Effective Date; or
 - (b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date;provided that the final Contract Year shall end on the expiry or termination of the Term;

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

- “Controller”** has the meaning given in the Relevant Data Protection Laws;

- “Costs”** has the meaning given in Schedule 7.1 (*Charges and Invoicing*);

- “Cost Model”** any model set out in Annex 4 (*Cost Model*) of Schedule 7.1 (*Charges and Invoicing*) as may be amended from time to time in accordance with this Agreement, which sets out the underlying principles which make up the Charges;

- “Counter Notice”** has the meaning given in Schedule 8.4 (*Dispute Resolution Procedure*);

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“Critical KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Credit Rating Threshold”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction, in each case which is paid or payable to the Authority under this Agreement;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <p>(a) in the case of the Authority, of its employees, servants, agents; or</p> <p>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</p> <p>in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;</p>
“Delay”	<p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or mobilisation of a Deliverable by the relevant date set out in the Mobilisation Plan or a Project Plan;</p>
“Delay Deduction Period”	the period of one hundred (100) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts (if any) payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Deliverable”	a part of the Services delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement, as identified in the Mobilisation Plan or Project Plan;
“Detailed Mobilisation Plan”	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);

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“Disclosing Party”	has the meaning given in Clause 21.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Documentation”	descriptions of the Services and KPIs, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), 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 Supplier to the Authority under this Agreement; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services; (c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;

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“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes or those who use them to tell HMRC of any notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992 and in Schedule 11A to the Value Added Tax Act 1994 (as amended by Schedule 1 to the Finance (no. 2) Act 2005;
“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
“Effective Date”	the date on which this Agreement is signed by both Parties;
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following: <ul style="list-style-type: none"><li data-bbox="751 1581 1437 1682">(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;<li data-bbox="751 1693 1437 1760">(b) unfair, wrongful or constructive dismissal compensation;<li data-bbox="751 1783 1437 1951">(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;<li data-bbox="751 1962 1437 2027">(d) compensation for less favourable treatment of part-time workers or fixed term employees;

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- (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;
- (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;

“Employment Regulations”

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

“Escalation Meeting”

has the meaning given in Clause 29.1

“Escalation Notice”

has the meaning given in Clause 29.1

“Escalation Process Trigger Event”

- (a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;
- (b) any event falling within limb (b) or (e) of the definition of Step-In Trigger Event;
- (c) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- (d) the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date; and/ or
- (e) Rectification Plan Failure.

“Estimated Year 1 Charges”

the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;

“Exit Management”

services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (*Exit Management*);

“Exit Plan”

the plan produced and updated by the Supplier during the Term in accordance with Paragraph 5 of Schedule 8.5 (*Exit Management*);

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“Expedited Dispute Timetable”	the reduced timetable for the resolution of Disputes set out in Paragraph 2 of Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Expert”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Expert Determination”	has the meaning given in Schedule 8.4 (<i>Dispute Resolution Procedure</i>);
“Extension Period”	has the meaning given in Clause 4.2;
“Final Termination Warning Notice”	has the meaning given in Clause 33.4;
“Financial Distress Event”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Distress Service Continuity Plan”	has the meaning given in Schedule 7.4 (<i>Financial Distress</i>);
“Financial Model”	means the model in which the Charges are set out, as set out in Annex 1 (<i>Financial Model</i>) of Schedule 7.1 (<i>Charges and Invoicing</i>) as may be amended from time to time in accordance with this Agreement;
“FOIA”	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
“Force Majeure Event”	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Majeure Notice”	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

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“Former Supplier”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“General Anti-Abuse Rule”	(a) the legislation in Part 5 of the Finance Act 2013; (b) the legislation in sections 10 and 11 of the National Insurance Contributions Act 2014; and (c) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid any Tax;
“Good Industry Practice”	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Goods”	any goods or equipment to be supplied by the Supplier as part of the Services;
“Government Controlled Company”	any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law and controlled by the Customer.
“Guarantee”	the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Agreement (which is in the form set out in Schedule 10 (<i>Guarantee</i>)), or any guarantee acceptable to the Authority that replaces it from time to time;
[“Guarantor”	[<i>insert name</i>], a company registered in [<i>insert country</i>] with company number [<i>insert company number</i>] and whose registered office is at [<i>insert registered address</i>];
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;

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“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 8.3 (<i>Change Control Procedure</i>);
“Incumbent Supplier”	any supplier to the Authority of services similar to the Services prior to the Mobilisation Commencement Date or Operational Service Commencement Date (as applicable);
“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	the period of three (3) years from and including the first Operational Service Commencement Date;
“Insolvency Event”	<ul style="list-style-type: none">(a) the other Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:<ul style="list-style-type: none">(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or(ii) (being a partnership) is deemed unable to pay its debts within the meaning of Section 222 of the Insolvency Act 1986;(b) the other Party commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies

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

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to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

“Intellectual Property Rights” or “IPRs”

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

“IPRs Claim”

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

“IT”

information and communications technology;

“IT Environment”

the Authority System and the Supplier System;

“Key Milestone”

the Milestones identified in the Mobilisation Plan or any Project Plan as key milestones (if any) and in respect of which Delay Payments may be payable in accordance with Part C of Schedule 7.1 (*Charges and Invoicing*) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;

“Key Personnel”

those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Schedule 9.2 (*Key Personnel*), if such Schedule is used;

“Key Roles”

any roles described as a Key Role in Schedule 9.2 (*Key Personnel*) and any additional

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	roles added from time to time in accordance with that Schedule;
“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: <ul style="list-style-type: none">(a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or(b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Agreement;
“KPI”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Law”	any applicable Act of Parliament, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
“Mandatory Wage”	the statutory minimum hourly rate of pay including the National Living Wage and National Minimum Wage as set by the Crown;
“Management Information”	any management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and</i>

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	<i>Invoicing</i>), Schedule 7.5 (<i>Financial Reports and Audit Rights</i>) and/or Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Authority;
“Measurement Period”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Milestone”	an event or task described in the Mobilisation Plan, a Project Plan or an Exit Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (<i>Testing Procedures</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Mobilisation Plan or a Project Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Schedule 7.1 (<i>Charges and Invoicing</i>) to be made following the issue of a Milestone Achievement Certificate;
“Mobilisation”	the activities to be performed in accordance with Schedule 6.1 (<i>Mobilisation</i>) in order that the Supplier is able to commence the provision of the Operational Services in accordance with the terms of this Agreement;
“Mobilisation Plan”	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
“Mobilisation Commencement Date”	has the meaning given in Schedule 6.1 (<i>Mobilisation</i>);
“Models”	the Financial Model and the Cost Model and “Model” shall be interpreted accordingly;
“Month”	a calendar month and “monthly” shall be interpreted accordingly;
“Non-Party IPRs”	any Intellectual Property Right owned or claimed to be owned by any third party which is found, or alleged to be found, in the Project Specific IPRs;
“Notifiable Default”	has the meaning given in Clause 27.2 (<i>Rectification Plan Process</i>);
“Occasion of Tax Non-Compliance”	(a) any Tax return of the Supplier and/or its Subcontractor and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its Subcontractor to the

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Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

- (i) a Relevant Tax Authority successfully challenging the Supplier or relevant Sub-contractor under the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR or under any Tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti Abuse Rule or the Halifax Abuse Principle or TAAR;
 - (ii) the failure of an avoidance scheme which the Supplier or relevant Sub-contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) the Tax affairs of the Supplier or any of its Sub-contractors have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the Effective Date or to a civil penalty for fraud or evasion within the last three (3) years;
- (c) For these purposes :
- (i) a return is "submitted" when it is first submitted to the Relevant Tax Authority and any subsequent amendments or re-submissions are to be ignored; and
 - (ii) a Relevant Tax Authority will not be deemed to have "successfully challenged" the Supplier or a Sub-contractor until an appeal against such challenge is no longer possible.

“Open Book Data”

has the meaning given in Part A of Schedule 7.5 (*Financial Reports and Audit Rights*), if such Schedule is used;

“Open Source”

software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;

“Operational Change”

any change in the Supplier's operational procedures which in all respects, when implemented:

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	<ul style="list-style-type: none">(a) will not affect the Charges and will not result in any other costs to the Authority;(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;(c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and(d) will not require a change to this Agreement;
“Operational Service Commencement Date”	in relation to an Operational Service, the later of: <ul style="list-style-type: none">(a) the date identified in the Mobilisation Plan or a Project Plan for the Operational Services upon which the Operational Service is to commence; and(b) where the Mobilisation Plan or a Project Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;
“Operational Services”	the operational services described as such in the Services Description;
“Optional Services”	the services described as such in Schedule 2.1 (<i>Services Description</i>), if any, which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (<i>Optional Services</i>);
“Order”	any Goods or Services which have been ordered by the Authority in accordance with the procedures set out in Schedule 6.3 (<i>Projects and Ordering</i>) if such Schedule is used;
“Other Supplier”	any other third party which supplies services to the Authority but excluding the Incumbent Suppliers;
“Partial Termination”	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 33.2(b) (<i>Termination by the Authority</i>) or 33.6(b) (<i>Termination by the Supplier</i>);
“Parties” and “Party”	have the meanings respectively given on page 1 of this Agreement;
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance</i>

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Levels);

“Persistent Breach”

means a Default which continued or recurred on more than one occasion within a six (6) month period following the date of a Final Termination Warning Notice;

“Personal Data”

personal data (as defined in the Relevant Data Protection Laws) which is Processed by the Supplier or any Sub-contractor pursuant to or in connection with this Agreement;

“Process”

has the meaning given to it under the Relevant Data Protection Laws and **“Processed”** and **“Processing”** shall be construed accordingly;

“Prohibited Act”

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

“Prohibited Transaction”

has the meaning given in Clause 10.18 (*Use of Off-shore Tax Structures*);

“Project Plan”

the agreed project plan for an Order set out in, attached to or included by reference in the relevant Order;

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“Project Specific IPRs”

- (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement;

but shall not include the Supplier Background IPRs;

“Quality Plans”

has the meaning given in Schedule 2.3 (*Standards*) if such Schedule is used;

“Quality Standards”

the quality standards published by BSI British Standards (the National Standards Body of the United Kingdom), the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with including BS EN ISO 27001 or any equivalent standard which is generally recognised as having replaced it (as applicable), as may be further detailed in the Services Description;

“Quarter”

the first three Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement) and “quarterly” shall be interpreted accordingly;

“Rectification Plan”

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

“Rectification Plan Failure”

- (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.5 (*Submission of the draft Rectification Plan*) or 27.8 (*Agreement of the Rectification Plan*);
- (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.8 (*Agreement of the Rectification Plan*);
- (c) the Supplier failing to rectify a material Default within the later of:

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- (i) thirty (30) Working Days of a notification made pursuant to Clause 27.3 (*Notification*); and
- (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) where a Rectification Plan has been implemented a KPI Failure re-occurring in respect of the same KPI and for the same (or substantially the same) root cause (in relation to which a Rectification Plan was implemented) on two or more occasions in the period ending on the date falling 6 months (or, where the relevant KPI has a Measurement Period longer than 6 months, at the end of the next complete Measurement Period) following the date set for the completion of the Rectification Plan (or, if later, the date that the Supplier indicates that the Rectification Plan is complete);
- (e) the Supplier not Achieving any Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification 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;

“Rectification Plan Process”

the process set out in Clauses 27.5(*Submission of the draft Rectification Plan*) to Clause 27.9 (*Agreement of the Rectification Plan*);

“Registers”

has the meaning given in Schedule 8.5 (*Exit Management*), if such definition is used;

“Reimbursable Expenses”

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

“Relevant Data Protection Laws”

- (a) the Data Protection Act 2018;
- (b) the GDPR, the Law Enforcement Directive (Directive EU 2016/680) and any applicable national implementing Laws as amended from time to time;

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- (c) any other applicable Laws relating to the processing of personal data and privacy; and
- (d) all applicable guidance, standard terms, codes of practice and codes of conduct issued by the Information Commissioner and other relevant regulatory, supervisory and legislative bodies in relation to such Laws;

“Relevant IPRs”	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Agreement but excluding any IPRs in the Authority Background IPRs;
“Relevant Requirements”	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established, resident or liable to any Tax;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relief Notice”	has the meaning given in Clause 31.2 (<i>Authority Cause</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
“Request For Information”	a Request for Information under the FOIA or the EIRs;
“Required Action”	has the meaning given in Clause 30.1(a) (<i>Step-In Rights</i>);
“Security Management Plan”	the Supplier’s response to the Authority’s security questionnaire as attached as Annex 2 of

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	Schedule 2.4 (<i>Security Management</i>) and as may be subsequently developed and revised pursuant to Schedule 2.4 (<i>Security Management</i>);
“Service Charges”	the periodic payments made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;
“Service Credit Cap”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Service Credits”	the credits (if any) payable by the Supplier due to the occurrence of one (1) or more KPI Failures in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>);
“Service Period”	a calendar month, save that: (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) the final service 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”	in relation to a KPI Failure, the points that are set out against the relevant KPI in the fifth column of the table in Annex 1 of Schedule 2.2 (<i>Performance Levels</i>), if such Annex is used;
“Service Recipient”	if such Schedule is used, those third parties listed in Paragraph 2 of Schedule 2.7 (<i>Service Recipients</i>) (as such Schedule is amended from time to time by the Authority), being Other Government Departments and any other third party other than the Authority to which the Supplier shall provide all or part of the Services;
“Services”	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (<i>Services Description</i>) and including the provision of any Goods;
“Services Description”	the services description set out in Schedule 2.1 (<i>Services Description</i>);
“Service Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);

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“Sites”	<p>any premises (including the Authority Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <ul style="list-style-type: none">(i) the Services are (or are to be) provided; or(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or <p>(b) where:</p> <ul style="list-style-type: none">(i) any part of the Supplier System is situated; or(ii) any physical interface with the Authority System takes place;
“Software”	<p>any software which is proprietary to the Supplier or to a third party (or an Affiliate of the Supplier) or any open source software which, in any case, is or will be used by the Supplier for the purposes of providing the Services and any Project Specific IPRs which are software;</p>
“Staffing Information”	<p>has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);</p>
“Step-In Notice”	<p>has the meaning given in Clause 30.1 (<i>Step-In Rights</i>);</p>
“Step-In Trigger Event”	<ul style="list-style-type: none">(a) any event falling within the definition of a Supplier Termination Event;(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;(c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;(d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 30 (Step-In Rights) is necessary;(e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or(f) a need by the Authority to take action to discharge a statutory duty;

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“Step-Out Date”	has the meaning given in Clause 30.5(b) (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 30.5 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 30.6 (<i>Step-In Rights</i>);
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Sub-contractor”	any third party with whom: (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;
“Successor Body”	has the meaning given in Clause 36.4 (<i>Assignment and Novation</i>);
“Supplier Background IPRs”	(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services;
“Supplier Equipment”	the equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
“Supplier Executive”	means the Supplier Personnel listed as level 3 escalation point in Schedule 8.1 (<i>Governance</i>);

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“Supplier Non-Performance”	has the meaning given in Clause 31 (<i>Authority Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Agreement;
“Supplier Profit”	in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal terms but excluding any Deductions) and total Costs (in nominal terms) for the relevant period or in relation to the relevant Milestone;
“Supplier Profit Margin”	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 11.3;
“Supplier Solution”	the Supplier’s solution for the Services set out in Schedule 4.1 (<i>Supplier Solution</i>) including any Annexes of that Schedule;
“Supplier System”	any information and communications technology system used by the Supplier in implementing and performing the Services including the Software and the Supplier Equipment (but excluding the Authority System);
“Supplier Termination Event”	<ul style="list-style-type: none"> (a) the Supplier’s level of performance constituting an Unacceptable KPI Failure or a Critical KPI Failure; (b) the Supplier’s level of performance constitutes a Persistent Breach; (c) the Supplier committing a material Default which is irremediable; (d) as a result of the Supplier’s Default, the Authority incurring Losses in any Contract Year which exceed eighty per cent (80)% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 25.4(a) (<i>Financial Limits</i>); (e) a Rectification Plan Failure;

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- (f) where a right of termination is expressly reserved in this Agreement, including pursuant to:
 - (i) Clause 10.16 (*Tax Compliance*);
 - (ii) Clause 10.21 (*Use of Off-shore Tax Structures*);
 - (iii) Clause 14.5 (*Income Tax and National Insurance Contributions*);
 - (iv) Clause 19 (*IPRs Indemnity*);
 - (v) Clause 29 (*Escalation Process*);
 - (vi) Clause 35.5 (*Modern Slavery Act*);
 - (vii) Clause 39.6(b) (*Prevention of Fraud and Bribery*);
 - (viii) Paragraph 5.8 of Part C (*Benchmarking*) of Schedule 7.3 (*Value for Money*), if such Part is used; or
 - (ix) Paragraph 3 of Schedule 7.4 (*Financial Distress*); and/or
- (g) the representation and warranty given by the Supplier pursuant to Clause 3.1(f) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default or failing to provide details of steps being taken and mitigating factors pursuant to Clauses 10.10 to 10.17 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following:
 - (i) Clause 5.5(f) (*Services*);
 - (ii) Clauses 10.10 to 10.17 (inclusive) (*Promoting Tax Compliance*);
 - (iii) Clauses 10.18 and 10.21 (*Use of Off-shore Tax Structures*);
 - (iv) Clause 23 (*Protection of Personal Data*);
 - (v) Clause 22 (*Transparency and Freedom of Information*);
 - (vi) Clause 21 (*Confidentiality*);
 - (vii) Clause 35 (*Compliance*);
 - (vi) in respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or

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- the Baseline Security Requirements;
and/or
- (iii) in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);
 - (j) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
 - (k) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
 - (l) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the change of Control;
 - (m) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Schedule 4.3 (*Notified and Key Sub-contractors*);
 - (n) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (*Staff Transfer*);
 - (o) the Authority has become aware that the Supplier 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 Agreement;
 - (p) the Supplier:
 - (i) commits an irremediable breach of the Admission Agreement; or
 - (ii) commits a breach of the Admission Agreement which, where capable of remedy,

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	it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it; or
	(q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.
“TAAR” or “Targeted Anti-Avoidance Rule”	provision(s) in any legislation which seeks to prevent avoidance of any Tax;
“Target Performance Level”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Tax”	(a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above, in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;
“Tax Revenue”	any Tax, levy or duty due to be collected by the Authority and/or any reimbursement of Tax, levy or duty, correctly paid to the Authority, as a result of a Default by the Supplier;
“Term”	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
“Termination Assistance Notice”	has the meaning given in Schedule 8.5 (Exit Management);
“Termination Assistance Period”	has the meaning given in Schedule 8.5 (Exit Management);
“Termination Date”	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;

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“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement on a specified date and setting out the grounds for termination;
“Termination Payment”	has the meaning given to it in Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Warning Notice”	has the meaning given to it in Clause 33.3;
“Third Party Contract”	a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services;
“Third Party IPRs”	Intellectual Property Rights owned by a third party which are or will be used (or otherwise made available) by the Supplier before or during the Term for designing, testing implementing or providing the Services;
“Third Party Provisions”	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
“Transferring Authority Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“UK”	the United Kingdom;
“UK GAAP”	the Generally Accepted Accounting Practice in the UK which is the body of accounting standards and other guidance published from time to time by the UK’s Financial Reporting Council;
“Unacceptable KPI Failure”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.

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SCHEDULE 2.1

SERVICES DESCRIPTION

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Services Description**1 DEFINITIONS**

In this Schedule, the following definitions shall apply:

2 INTRODUCTION

The Authority is delivering unprecedented change for Government. The Building Our Future (BOF) Programme will see the Authority's estate rationalise and transform from 227 buildings to 13 new Regional Centres and a handful of transitional and specialist sites. Almost all of the current offices will be vacated and staff moved to new or refurbished office accommodation throughout the UK by 2023.

To achieve this aim, the Authority requires a PDM Model and access to accredited project management professionals to ensure delivery of complex, intermediate and minor works while developing the knowledge and skills of the Authority through informal knowledge transfer and formal continuous improvement and support as we transition from a PFI to a directly managed estate and the additional responsibilities this brings. It is important to note the Supplier will be required to demonstrate ownership, flexibility and scalability to meet the Authority's needs and support (but not limited to) office clearance, reinstatements, renovation, major refurbishment and closures. The Supplier will also be required to undertake robust assurance of the PDM Model to test the approach during maturity and incorporate new requirements as the BOF Programme progresses. The Supplier will predominantly collaborate with the Authority's internal Project Management function; Estates Projects Planning and Delivery (PPD). PPD are responsible for Estates and Infrastructure projects ranging from minor works, (light refurbishment and associated IT infrastructure) to major transformational work (fit out of new acquisitions). PPD will provide an intelligent client function and support the Supplier in identifying and managing stakeholders. The Authority will require the Supplier to employ accredited resource, effective planning and engagement to ensure swift familiarisation and understanding of their estate, stakeholder dependencies and objectives. The Supplier will quickly grasp the Authority's specialist, security and technical needs to undertake in depth analysis of specific elements of the project or works to inform decision making, advise on delivery options and ensure statutory compliance. All Suppliers would be required to meet the Authority's security clearance standards relevant to the commission raised.

The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

2.1 This Schedule sets out the scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

3 SERVICES DESCRIPTION**(i) 3.1 Headline Scope of Requirements**

3.1.1 There are three strands to the Authority's Requirements:

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3.1.2 Phase 1 - Collaborate with PPD (and other parts of the Authority) to review the existing project commissioning, scoping and management procedures. To design, test and implement a sustainable model which reflects industry recognised procedures, techniques and IT platforms. The model will be comprehensive and take into consideration the Authority's immediate and future business needs.

3.1.3 Phase 2 - Manage the delivery of specific projects or feasibility studies at the request of the Authority; following the processes and procedures contained within the newly designed Project model and existing Authority guidance. The Authority will support the Supplier and act as intelligent client.

3.1.4 Phase 3 - The Supplier will support the Authority's continuous improvement by delivering periodic and timely updates and support which ensures the Authority remains compliant with changes to legislation and at pace with industry good practice.

3.1.5 The Supplier will collaborate with the Authority to review, revise and assure project commissioning, scoping and management processes to reflect the strategic and operational needs of the Authority. Therefore the Supplier is required to adopt an agile and flexible approach to support delivery of the Authority's business objectives.

3.1.6 For the avoidance of doubt, the Authority reserves the right to request the Supplier to provide PDM Services during Phase 1. In this instance, the Supplier will provide a bespoke Service Delivery Plan to be approved with the Authority which is specific to the project.

3.1.7 The Authority will provide appropriate accommodation for the Supplier on a project by project basis

4. Service Delivery Timescales

4.1 The contract will run for a period of three (3) years with the possibility of further +1 +1 extensions. Critical dates within this timeframe are (but not exclusive to):

- Mobilisation plan - 10 days from contract commencement
- Service Delivery Plan - 30 days from contract commencement
- Communication Plan - 30 days from contract commencement
- PDM model complete (Phase 1) - Target date to be confirmed
- Proof of concept and Authority approval (Phase 2) - January 2020
- Continuous Improvement regime commences (Phase 3) - February 2020
- Withdraw from PFI commences (Phase 2) - April 2020

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4.2 Due to the changing shape of the Authority's Estate and evolving or emerging strategies, the Authority will identify operational priorities to the Supplier. Updates and amendments will be delivered through agreed communication streams and monthly contract meetings.

5 Service Requirement

5.1 Phase 1: Project Delivery Management Process Review

5.1.1 The Supplier will produce a Service Delivery Plan (SDP) for Phase 1 to define the approach and seek the agreement of the Authority within 30 days of contract commencement. The services within Phase 1 will include but not limited to:

- To undertake a lifecycle review of the current PPD operational procedures and project delivery processes to map the 'As Is' position and develop the 'To Be' process.
- To review all PPD project documentation, including but not limited to commissioning, customer requirements, specifications, change control, project closure and handover, budget controls and client liabilities.
- To facilitate discovery workshops and undertake visits to stakeholders and locations as required to develop an understanding of current and future project management processes.
- To develop a library of documents and guidance specific to the needs of HMRC and its stakeholders that can be employed to deliver multiple project scenarios - from minor refurbishment works through to large scale renovation and external works. The Supplier should consider the thresholds for categorisation of works and where requested advise the Authority on possible routes to market that are in proportion to the works.
- Work with the Authority's Commercial Directorate to identify suitable supply chains and frameworks and develop a 'decision tree' to determine optimum procurement route for works categories based on the client's requirements.
- The Supplier shall provide mechanisms which allows separable financial analysis on proposed works to achieve value for money within PDM activities. The Supplier will ensure the PDM Model has focus on continuous improvement processes to drive operational and financial efficiencies across PDM dependencies. For example, align to the Authority's Strategic Asset Management Plan to ensure the Authority can optimise assets effectively following PDM delivery.
- To develop and deliver 4 workshops to promote the new way of working to PPD staff and stakeholders identified and agreed with the Authority. This will include introduction to the new suite of documentation, processes and how to engage resources through the new contract. The Authority will provide accommodation for the workshop events.

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6 Deliverables - Phase 1

6.1 The Supplier will produce a Delivery Plan detailing the products to be developed and implemented in alignment with timeframes specified by the Authority.

6.2 The Supplier will produce a PDM model providing a suite of documentation and processes to support the Authority's immediate and future objectives

6.3 The Supplier will review, assure and update systems developed within Phase 1 during the contract duration taking into account changes within the operating environment.

7 Phase 2- Project design and delivery

7.1 The Supplier will directly provide PDM Services in line with the PDM Model developed in Phase 1 and lead delivery on behalf of the Authority. These services could include (but not limited to):

- 7.1.1 Provision of bespoke PDM Services and Service Delivery Plans at the request of the Authority during development of Phase 1
- 7.1.2 To conduct feasibility studies to provide a scope, design and cost analysis, identify risks and issues to standards agreed with the Authority that will inform decision making
- 7.1.3 Lead separable elements of the Authority's PPD/PDM Model including (but not limited to) scope, feasibility, assessment, delivery and handover.
- 7.1.4 To act as principal designer, upon instruction by the client, carrying out duties including, but not limited to:
 - Advising the client on their duties under the CDM 2015 Regulations
 - Obtaining appointment in writing as principal designer under these conditions
 - Advising the designers of their duties under the CDM 2015 Regulations
 - Advising the client of their duties under the Control of Asbestos Regulations 2012
 - Notification of the project to the HSE
 - Attendance of design team meetings as required
 - Collecting and collating pre-construction information
 - Supporting PPD in the selection of a principal contractor
 - Co-operating with the appointed principal contractor in producing a supplier milestone plan
- 7.1.5 The Supplier will carry out project and cost management services, including but not limited to:

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- Development of project briefs which are defined scopes of construction work for contractor's to price.
 - Undertake the project management and cost management of the delivery to the agreed delivery plan, including acting as contract administrator to administer the contract, which will also including review of contractor pricing schedules, valuing the works and certifying interim and final payments, coordinate change requests, review contractor's reports, convene, chair and minute all appropriate meetings with the team members to ensure delivery of the project on time, within budget and to the required quality standards.
 - Review the leases to ensure that works comply with legal requirements.
 - Receive from the contractor their supplier milestone plan, review it, secure any amendments necessary and then approve it as suitable to commence the works.
 - Undertake site inspections as necessary (but not less than weekly) and issue a report to inform the Authority of relevant matters such as quality, programme, risks, health & safety, disruption to staff in occupied areas, information requirements and the like
 - Prepare a detailed completion / handover strategy to ensure that all parties that have an interest are represented and satisfied that what is delivered is compliant with the contractual obligations and that the work areas are suitable for occupation by the Authority's staff. The plan will include, but not be limited to, consideration of the following
 - Fire risk assessments and plans
 - Water quality checks
 - Security validation
 - All testing, commissioning and witnessing requirements
 - Receipt of signed contracts and warranties
 - Compliance with all statutory regulations such as Planning and building control
- 7.1.6 The Supplier will provide the Authority with intelligence and advice on request to all aspects and functionalities of PDM Model within Phase 1 and 2
 - 7.1.7 The Supplier will advise on the best route to market for each project and support the Authority in the procurement of Sub- Contractor Services in alignment with the Authority's Commercial standards and governance utilising government frameworks where feasible. See **Contract Schedule 4.3 - Notified and Key Sub Contractors**
 - 7.1.8 The Supplier will actively manage all aspects of Sub-Contract involvement to ensure that all Services received reflect that required under the Call-Off Contract

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- 7.1.9 Works could be undertaken on the Authority's estate, anywhere on the Government estate or on sites identified as potential acquisitions by the Authority.
- 7.1.10 For the avoidance of doubt, feasibility studies within Phase 1 and delivered through Phase 2 could include (but not limited to):
 - 7.1.10.1 Identifying options
 - 7.1.10.2 Carrying out desk top investigation of options
 - 7.1.10.3 Supporting initial customer consultation
 - 7.1.10.4 Preparing initial time and costs estimates for options
 - 7.1.10.5 Providing feasibility study report - including options for further examination at assessment study stage

7.2 For the avoidance of doubt, assessment studies within Phase 1 and delivered through Phase 2 could include (but not limited to):

- Based on client brief and feasibility study (Supplier will prepare the brief) 7.1.11.2 Carry out on-site investigation of options
- Support customer consultation
- Prepare outline design, time and costs estimates to support options and recommendations
- Provide assessment study report - including recommendations and information to populate business case

7.3 For the avoidance of doubt, project planning within Phase 1 and delivered through Phase 2 could include (but not limited to):

- Based on client brief and feasibility study / assessment study ○ 2 Support customer consultation
- Prepare outline design and time and costs estimates for selected option(s)
- Provide recommended design, schedule and cost estimates including lifecycle costs
- Carry out value engineering and effective cost management- in consultation with HMRC / project consultant

7.13 For the avoidance of doubt, managing project delivery within Phase 1 and delivered through Phase 2 could include (but not limited to):

- Ensuring the delivery of projects in accordance with the Authority's PPD project process e.g. Royal Institute of Chartered Surveyors.
- Supporting PPD in selection of contractors and manage the delivery of projects in accordance with the Authority's Commercial's standards and governance

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- Managing project interfaces including customer consultation
- Supervising delivery of contract including CDM, health & safety, fire safety, security, environmental aspects, statutory compliance and building regulations, working within the requirements of the relevant HMRC plans/policy etc.
- Managing project delivery contractor to time, cost and quality - contractor to be selected and engaged by the Authority's PPD - to include full commissioning/validation programme as required
- Managing project handover - to include agreed O&M's, commissioning data, health & safety file, building regulations approval, CPFIG reviews etc.
- Closing out project and acceptance into live service
- Managing defects and defect liability claims
- Leading on lessons learned workshops with stakeholders to support future projects

8 Deliverables - Phase 2

8.1 For each item within Phase 2, the Supplier will provide:

- A choice of fully costed options to enable the Authority to make a fully informed decision
- Feasibility study within maximum 10 working days
- Assessment study within 15 working days
- Delivery Plan
- Time, cost and quality targets on all aspects of project delivery
- Indicative timescales
- Procurement recommendations in alignment with agreed HMRC Commercial's standards and governance
- Project plans within 10 working days from approval
- Ad hoc and emergency requests

9 - Phase 3 - Continuous Improvement

9.1 The Authority recognises that it needs to continuously improve the capability of its internal teams to deliver this function. The Supplier will support Authority staff by identifying changes to legislation and industry good practice and providing regular updates. This information will support the Authority in identifying future training requirements and/or changes to process.

9.2 Deliverables - Phase 3

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• 9.2.1 The Supplier will provide updates to the Authority at least quarterly detailing any changes to legislation that may impact project delivery and opportunities to improve service delivery based on industry best practice.

9.2.2 All revisions to Phase 1 as a result of continuous improvement to be disseminated to the Authority

10 Contract Mobilisation

10.1 The Supplier will meet with the Authority within 10 days of contract award and provide a Mobilisation plan see **Contract Schedule 6.1 Mobilisation**. The Mobilisation plan will specify the approach and timeframes to deliver the following. For the avoidance of doubt, the Authority will require the supplier to provide a Service Delivery Plan for each Phase within 30 days of contract award:

- A Service delivery plan for implementation of Phase 1 ○
- A Service delivery plan for implementation of Phase 2 ○ A
- Service delivery plan for implementation of Phase 3

10.2 The Mobilisation plan will reflect the following (but not limited to):

- Contract Schedule 6.1 Mobilisation Annex 2
- Responsiveness and understanding of the requirement detailing milestones, critical events, resource requirements, ability to respond to geographical and emerging demands showing appreciation of the unprecedented change that HMRC are undertaking.
- A robust system for Sub Contractor management which aligns to HMRC Commercial standards. See **Contract Schedule 4.3** - Notified and Key Sub Contractors 10.5 4 Protocols to align with all Government and Statutory requirements including but not limited to, health and safety, fire, BIM, data security, environmental, sustainability and social value
- Procedures for self-performance monitoring system
- Implementation and management of Quality Plans and Change Control procedures see **Schedules 2.3 and 8.3**
- **Contract Governance structure see schedule 8.1 Governance.**
- **Development and delivery of a business continuity and disaster recovery plan see Contract Schedule 8.6 Business Continuity and disaster recovery**
- Security ○ **Management Plan see Contract Schedule 2.4 Security Management**
 - A contract demobilisation and exit strategy which reflects IPR and digital transfer of all information generated on behalf of the Authority

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11 Contract Management

11.1 The Authority and Supplier will develop and agree a formal Governance structure process within 30 days of contract commencement to support delivery of the contract. The Governance structure will include the organisational hierarchy of both parties and identify a dedicated Contract Manager from the Authority and the Supplier.

11.2 As a minimum, a Contract Manager appointed by the Supplier must:

- Be a qualified PDM professional and align to the criteria identified within section 8 of this Requirement document
- Possess demonstrable experience of contract management delivery
 - Demonstrate good communications skills, both written and oral

11.3 The full scope of requirements is identified in Contract **Schedule 8.1 - Governance**

12 Reporting

12.1 The Supplier shall ensure that:

- The format, standard and frequency of reporting is developed and agreed with the Authority. For the avoidance of doubt and unless otherwise specified by the Authority, reporting and all supporting data shall be produced in a consistent format and structure. Data will be available in digital formats.
- The Supplier maintains and makes available full and accurate records and accounts on PDM activities undertaken on behalf of the Authority.
- The Supplier will have the capability to aggregate, manipulate and interpret data for all or a select number of PDM activities.
- The Supplier provides accurate key performance indicator reporting presented for the Authority in accordance with agreed timescales.
- The Supplier will allow the Authority or an appointed auditor total access to contract accounts and records relating to services provided to the Authority. The Supplier must provide information and reasonable co-operation at their request.

12.2 The full scope of requirements is identified in Contract **Schedule 2.2 Performance Levels and 8.2 Reports and Records**

13 Competency and Accreditations

13.1 For all professional and technical delivery aspects of the works the Supplier shall ensure that the people utilised to undertake the work are technically and professionally qualified and experienced to meet the requirements of the relevant industry and professional bodies. For the avoidance of doubt this does not include

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administrative functions. The minimum requirements the Supplier will demonstrate are:

- Project management qualification (PRINCE2 or APM) or equivalent
- Educated to degree level or equivalent
- Have a minimum of 3 years' experience within project management

13.2 The Supplier will provide a list of all competent persons to the Authority and advise on levels of competency along with **their qualifications for agreement outlined in Contract Schedule 9.2 Key Personnel**

13.3 The Supplier is responsible for alignment with government policy and assuring all individuals working on the contract have Baseline Personnel Security Standard (BPSS).

13.4 On a site specific basis or at request from the Authority, Counter Terrorist Check (CTC) or Security Check (SC) clearance may be required. Therefore the Supplier must have access to a pool of staff with CTC and SC clearance to ensure service levels remain unaffected for the Authority.

14 Stakeholder Engagement

14.1 The Supplier shall agree with the Authority, during the Mobilisation period, a programme for regular and ongoing communications with stakeholders. This shall be reviewed no less frequently than annually, or by request from the Authority. The supplier is required to produce a Communications Plan to be agreed with the Authority within 30 days of contract commencement which defines engagement to delivery of Work Package A, B and C. The Communications Plan will define engagement with key interactions identified below (but not limited to):

- HMRC Customers
- Building users
- Local staff/ managers
- Senior managers
- BRM
- Regional implementation groups

14.2 Incumbent HMRC Suppliers

14.3 HMRC Estates

- PPD project managers
- Estates senior stakeholders
- Estates account managers
- Workforce management
- Facilities Management
- Transformation
- Landlords
- Estates service delivery
- Estates finance
- 9.01.3.10 Professional services team
- Future Services Team

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14.4 CDIO

14.5 External government and statutory bodies

14.6 HMRC Commercial directorate

15 Customer Satisfaction

15.1 The Authority requires the Supplier to deliver excellent customer service and achieve high satisfaction rates from the commencement of the Contract, whilst at all times striving to increase customer satisfaction through innovative and proactive thinking. Customer satisfaction assessments in relation to services shall be undertaken regularly with formats and frequencies agreed with the Authority during the Mobilisation period. The results will be scrutinised, and presented to the Authority with outcomes (subject to the Authority's agreement) incorporated into the project modelling solution.

16.0 Social Value

16.01 The Supplier will be expected to assist the Authority in support of their commitment to the wider government agenda including social, ethical and environmental initiatives by working to achieve social benefits for the community in line with the aims of the Public Services (Social Value) Act 2012.

16.02 HMRC Estates are committed to being the best estates function in government and recognise that this can only be achieved through innovation and challenge. To this end the Supplier will:

- Engage with the Authority and other relevant partners at a strategic level to engender innovation and enable the delivery of high quality, consistent and best in class service across the Authority's wider property portfolio;
- Deliver a consistent, high quality and best in class project management service at each Authority premises which is flexible and understands and reflects the wider needs of the Authority as well as those of individual Authority premises building users; ○ Establish, continuously develop and improve upon a PDM Model for service delivery and customer service excellence built around relevant and auditable industry best practice standards and, where appropriate, accreditations.
- Deliver meaningful, accurate and insightful management information to enable effective strategic decision making by the Authority across the wider property portfolio and at a local level;
- Deliver excellent financial management and increased cost certainty whilst achieving and demonstrating value for money;
- Make a demonstrable contribution to corporate social responsibility ○ Promote environmental sustainability and efficient use of resources

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SCHEDULE 2.2

PERFORMANCE LEVELS

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Performance Levels - Short Form

DEFINITIONS

In this Schedule, the following definitions apply:

"KPI Failure"	the Supplier fails to provide any part of the Services in accordance with and so as to at least meet the relevant Target Performance Levels;
"Measurement Period"	in relation to a KPI, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually), as is specified for each KPI in the table set out at Annex 1;
"Service Credit Cap"	6% of the annual Service Charges;
"Service Period"	in relation to a KPI, the period over which the Supplier's performance is measured, which shall be a calendar month, save that: (a) the first service period shall begin on the Commencement Date and shall expire at the end of the calendar month in which the Commencement Date falls; and (b) the final service 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;
"Target Performance Level"	the minimum level of performance for a KPI which is required by the Authority, as set out in the table in Annex 1;
"Unacceptable KPI Failure"	the Supplier committing a KPI Failure in respect of 75% or more of the KPIs that are measured in a Service Period.

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PART A: KPI'S AND SERVICE CREDITS

1 SERVICE LEVEL FAILURE

- 1.1 The Supplier shall at all times provide the Services to meet or exceed the Target Performance Level for each KPI.
- 1.2 The Target Performance Level is the minimum standard of performance which is required by the Authority.
- 1.3 If in any Service Period, a KPI Failure occurs:
 - (a) the Supplier shall comply with the Rectification Plan Process; and
 - (b) without prejudice to the Authority's other rights and remedies, the Authority shall be entitled to terminate the Agreement under Clause 33.1(b) (Termination by the Authority) if the KPI Failure is an Unacceptable KPI Failure or Critical KPI Failure.
- 1.4 Subject to Clause 5.13(d) (*Optional Services*), each KPI which relates to a Service shall apply and be measured from the relevant Operational Service Date of the relevant Service(s) to which that KPI relates (unless otherwise stated in Annex 1).
- 1.5 If the Supplier fails to measure or report on a KPI in accordance with Part B of this Schedule, the Supplier shall be deemed to have failed to meet the Target Performance Level for the relevant KPI in the relevant Measurement Period, unless the Authority otherwise agrees in writing.
- 1.6 Each Target Performance Level and/or Critical KPI Failure Performance Threshold may only be changed as a result of the application of:
 - (a) the Change Control Procedure;
 - (b) the continuous improvement requirements set out in Schedule 7.3 (*Value for Money*) of this Agreement which will be addressed through the Change Control Procedure; or
 - (c) the agreed results of a benchmarking exercise which is carried out pursuant to the provisions of Schedule 7.3 (*Value for Money*) which will be addressed through the Change Control Procedure.

2 REPEAT KPI FAILURES

- 2.1 If a KPI Failure occurs in respect of the same KPI in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a "Repeat KPI Failure".

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- 2.2 In each Performance Monitoring Report, the Supplier shall track and report on the current number of sequential Repeat KPI Failures for each KPI (the “**Repeat Failure Count**”). For example, if a KPI Failure has occurred in three (3) sequential Measurement Periods, the Repeat Failure Count will be two (2).
- 2.3 When, in a Measurement Period, a KPI with a Repeat Failure Count above zero (0) meets its Target Performance Level, the Repeat Failure Count shall be reset to zero (0).

3 COMPENSATION FOR UNACCEPTABLE KPI FAILURE

- 3.1 On the occurrence of an Unacceptable KPI Failure, the Authority shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period (“**Compensation for Unacceptable KPI Failure**”), provided that the operation of this Paragraph 3.1 shall be without prejudice to the right of the Authority to terminate this Agreement and/or to claim damages from the Supplier for material Default.
- 3.2 If the level of performance of the Supplier is likely to cause or causes an Unacceptable KPI Failure to occur, the Supplier shall immediately notify the Authority in writing and the Authority, in its absolute discretion and without limiting any other of its rights, may:
- (a) require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Authority and to rectify or prevent an Unacceptable KPI Failure from taking place or recurring;
 - (b) exercise any right that it has pursuant to Paragraph 3.1 above.
- 3.3 The Supplier agrees that the application of Paragraph **Error! Reference source not found.** is commercially justifiable where an Unacceptable KPI Failure occurs.

4 FORCE MAJEURE EVENT

- 4.1 The Authority shall not be entitled to withhold and retain any of the Service Charges as Compensation for Unacceptable KPI Failure to the extent that a KPI Failure has been caused by the Force Majeure Event.

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PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide a report to the Authority Representative which summarises the performance by the Supplier against each of the applicable Target Performance Levels as more particularly described in Paragraph 1.2 of this Part B (the “**Performance Monitoring Report**”).

1.2 The Performance Monitoring Report shall be in such format as requested by the Authority from time to time, but shall contain, as a minimum, the following information:

Information in respect of the Service Period just ended

- (a) for each KPI the actual performance achieved over the Service Period and the relevant Measurement Period which has just ended, and that achieved over the previous three (3) relevant Measurement Periods;
- (b) a summary of all KPI Failures that occurred during or which have occurred by the end of the Service Period;
- (c) which KPI Failures remain outstanding and progress in resolving them;
- (d) the status of any outstanding Rectification Plan processes, including:
- (e) whether or not a Rectification Plan has been agreed; and
- (f) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
- (g) for any Repeat KPI Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the amount of Compensation for Unacceptable KPI Failure to be applied, indicating the KPI Failure(s) to which the Compensation for Unacceptable KPI Failure relates;
- (i) relevant particulars of any aspects of the Supplier’s performance which fail to meet the requirements of this Agreement;
- (j) such other details as the Authority may reasonably require from time to time;

Information in respect of previous Service Periods

- (k) a rolling total of the number of KPI Failures that have occurred over or by the end of the past six Service Periods, including any Repeat Failure Counts; and
- (l) the amount of Compensation for Unacceptable KPI Failure that has been incurred by the Supplier over or by the end of the past six Service Periods.

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Performance Disputes

- 1.3 The Performance Monitoring Report shall be reviewed by the Authority including at the next Performance Review Meeting held in accordance with Paragraph 1.4. The Supplier acknowledges and agrees that the Authority may, whilst it considers the Performance Monitoring Report, provide, acting reasonably and in good faith, its own assessment of the Supplier's actual level of performance against a particular KPI. In the event of any dispute or difference between the Supplier's assessment and the Authority's assessment in respect of a KPI the Authority's assessment shall, for the purposes of the calculation of the Supplier's level of actual performance in relation to the relevant Measurement Period (and any associated remedies) prevail. However, without prejudice to the foregoing, the Supplier shall be entitled to subsequently escalate any such dispute or difference in accordance with the Dispute Resolution Procedure.
- 1.4 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. These meetings ("**Performance Review Meetings**") shall (unless otherwise agreed):
- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
 - (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
 - (c) be attended by the Supplier Representative and the Authority Representative.
- 1.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure.
- 1.6 In addition to the requirements above and elsewhere in this Agreement to maintain and provide appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably request from time to time in order to verify the level of the performance of the Supplier.

2 PERFORMANCE VERIFICATION

- 2.1 The Authority reserves the right to verify any aspect of the Services and the Supplier's performance under this Agreement against the Target Performance Levels, including by sending test transactions through the IT Environment or otherwise.

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ANNEX 1: KPI'S

PART I: KPI'S TABLE

The KPIs that shall apply to the Services are set out below:

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SCHEDULE 2.3

STANDARDS

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Standards

1. QUALITY PLANS

1.1 The Supplier shall:

- (a) no later than ten (10) Working Days after the Effective Date, submit to the Authority for approval a quality plan for the Mobilisation activities specified in the Mobilisation Plan;
- (b) within thirty (30) Working Days of the Effective Date, submit to the Authority for approval a quality plan for the Services (*Services Description*),

the purpose of which are to ensure that all aspects of the Mobilisation and Services are the subject of quality management systems and are consistent with the Quality Standards (“Quality Plans”).

1.2 The Supplier shall obtain the Authority Representative’s written approval of the Quality Plans before implementing them. If the Authority does not approve a Quality Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then within ten (10) Working Days revise the Quality Plan taking those reasons into account and shall re submit the revised plan to the Authority for the Authority’s approval. The Authority shall not unreasonably withhold or delay its approval of the Quality Plan.

1.3 The Supplier acknowledges and accepts that the Authority’s approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Agreement.

1.4 Following the approval by the Authority of the Quality Plans:

- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
- (b) any changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

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SCHEDULE 2.4

SECURITY MANAGEMENT

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Security Management

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Breach of Security”	the occurrence of:
”	(a) any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or
	(b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement; and/or
	(c) a failure to comply with the personnel security requirements, as set out in the Security Management Plan,
	in each case as may be more particularly set out in the security requirements in Schedule 2.1 (Services Description) and the Baseline Security Requirements;
“CESG”	the UK Government's national technical authority for information assurance;
“CPA”	the CESG Commercial Product Assurance scheme;
[“Off-Shore Personnel”	insert details of any personnel]
[“Off-Shore Personnel Security Checks”	insert details of any checks]

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“Security Policy Framework”

the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Supplier;

2 SECURITY REQUIREMENTS

- 2.1 The Supplier shall comply with the Baseline Security Requirements and the Security Management Plan and the Supplier shall ensure that its Security Management Plan fully complies with the Baseline Security Requirements and the Security Policy Framework.
- 2.2 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 2.3 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 2.4 Until and/or unless a change to the Charges is agreed by the Authority pursuant to the Change Control Procedure the Supplier shall continue to perform the Services in accordance with its existing obligations.

3 PRINCIPLES OF SECURITY

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:
 - (a) is in accordance with the Law and this Agreement;
 - (b) as a minimum demonstrates Good Industry Practice;
 - (c) meets any specific security threats of immediate relevance to the Services and/or the Authority Data; and
 - (d) complies with the Baseline Security Requirements and the Authority’s specific security requirements as described in the Services Description as appropriate.
- 3.3 In the event of any inconsistency in the provisions of the standards, guidance and requirements listed in Paragraph 3.2 above, the Supplier should notify the Authority’s Representative of such inconsistency immediately upon becoming aware of the same, and the Authority’s Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

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3 MALICIOUS SOFTWARE

- 3.1 The Supplier shall, as an enduring obligation throughout the Term and at no cost to the Authority, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties). The Supplier may be required to provide details of the version of anti-virus software being used in certain circumstances, e.g. in response to a specific threat.
- 3.2 Notwithstanding Paragraph 3.1, 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 Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.
- 3.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 3.2 shall be borne by the Parties as follows:
- (a) by the Supplier where the Malicious Software originates from the Software (except where the Authority has waived the obligation set out in Paragraph 3.1) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and
 - (b) otherwise by the Authority.

4 SECURITY MANAGEMENT PLAN

- 4.1 Within twenty (20) Working Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Paragraph 4.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.
- 4.2 The Security Management Plan shall:
- (a) be based on the Supplier's final response to the Authority's Security Questionnaire, a copy of which is set out in Annex 2;
 - (b) [i]dentify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
 - (c) detail the process for vetting staff at the appropriate security level with reference to the level of access staff will have to Authority Data, managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;

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- (d) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - (e) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule;
 - (f) set out the plans for transiting all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in Schedule 2.1 (*Services Description*) and this Schedule;
 - (g) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.]
- 4.3 If the Security Management Plan submitted to the Authority Representative pursuant to Paragraph 4.1 is approved by the Authority Representative, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority Representative, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority Representative for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority Representative. If the Authority Representative does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority Representative pursuant to this Paragraph 4.3 may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.4 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.
- 5 AMENDMENT AND REVISION OF THE SECURITY MANAGEMENT PLAN**
- 5.1 The Security Management Plan shall be fully reviewed and updated by the Supplier within ten (10) Working Days of any Breach of Security and further at least annually to reflect:

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- (a) emerging changes in Good Industry Practice;
 - (b) any change or proposed change to the Services and/or associated processes;
 - (c) any new perceived or changed security threats; and
 - (d) any reasonable change in requirements requested by the Authority.
- 5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
- (a) suggested improvements to the effectiveness of the Security Management Plan;
 - (b) updates to the risk assessments;
 - (c) suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, an Authority request, a change to Schedule 2.1 (*Services Description*) or otherwise) shall be subject to the Change Control Procedure.
- 5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment.

6 BREACH OF SECURITY

- 6.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or attempted Breach of Security.
- 6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 6.1, the Supplier shall:
- (a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
 - (i) minimise the extent of actual or potential harm caused by any Breach of Security;
 - (ii) remedy such Breach of Security to the extent possible and protect the integrity of the IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - (iii) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and

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- (iv) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government (“GovCertUK”) on the Authority’s request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise);
 - (b) as soon as reasonably practicable provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority; and
 - (c) maintain auditable records of such Breach of Security in accordance with Schedule 8.2 (Reports and Records).
- 6.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Authority.

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ANNEX 1: BASELINE SECURITY REQUIREMENTS**1 Higher Classifications**

- 1.1 The Supplier shall not handle Authority information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Authority

2 End User Devices

- 2.1 When Authority data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the CESG to at least Foundation Grade, for example, under CPA.
- 2.2 Devices used to access or manage Authority data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance (<https://www.gov.uk/government/collections/end-user-devices-security-guidance-2>). As a minimum, the security standards must include Assurance Framework, Ten Critical Steps and Requirements. Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

3 Data Processing, Storage, Management and Destruction

- 3.1 The Supplier and Authority recognise the need for the Authority's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. The Authority's agreement to any such change shall be entirely at the Authority's discretion and, in so far as the change in location entails the transfer of Personal Data to a location outside the UK, shall only be given if a Change Request is expressly permitted by Paragraph 1.8 of Schedule 2.8 (*Data Processing and List of Sub-processors*).
- 3.3 The Supplier shall:
- (a) provide the Authority with all Authority Data on demand in an agreed open format;

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- (b) have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;
- (c) securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and
- (d) securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

4 Networking

- 4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network (“PSN”) framework (which makes use of Foundation Grade certified products).
- 4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

5 Security Architectures

- 5.1 The Supplier shall apply the ‘principle of least privilege’ (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Information.
- 5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (<http://www.cesg.gov.uk/awaresstraining/IA-certification/Pages/index.aspx>) for all bespoke or complex components of the Supplier Solution.

6 Personnel Security

- 6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work (including nationality and immigration status).
- 6.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Authority Data.
- 6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.

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- 6.4 All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.
- 6.5 Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within 1 Working Day.
- 6.6 Notwithstanding the Supplier's obligation to ensure that the Security Management Plan is implemented and followed, the Supplier shall ensure that the Supplier Personnel are promptly informed of action taken in relation to any failure to do so.
- 6.7 The Supplier shall ensure that Supplier Personnel complete the security questionnaire as provided by the Authority from time to time.
- 6.8 The Supplier shall perform the Off-Shore Personnel Security Checks in relation to any proposed Off-Shore Personnel prior to their engagement to the reasonable satisfaction of the Authority in the delivery of the Services under this Agreement.

7 Identity, Authentication and Access Control

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the Supplier Solution are uniquely identified and authenticated when accessing or administering the Services. Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the Supplier Solution they require. The Supplier shall retain an audit record of accesses.

8 Audit and Monitoring

- 8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
 - (a) Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Supplier Solution and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - (b) Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.

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- 8.3 The Supplier shall retain audit records collected in compliance with Paragraph 8.1 for a period of at least six (6) months.

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ANNEX 2: SECURITY MANAGEMENT PLAN

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SCHEDULE 2.5

INSURANCE REQUIREMENTS

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Insurance Requirements

1 OBLIGATION TO MAINTAIN INSURANCES

- 1.1 The Supplier shall, for the periods specified in this Schedule, take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances, for example UK employers' liability insurance and/or motor third party liability insurance, as may be required by applicable Law (together the "Insurances").
- 1.2 The Insurances shall be:
- (a) maintained in accordance with Good Industry Practice;
 - (b) (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
 - (c) taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
 - (d) maintained for at least six (6) years after the end of the Term.
- 1.3 The Supplier shall ensure that the public and products liability policy that it has or puts in place shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Services and for which the Supplier is legally liable.

2 GENERAL OBLIGATIONS

- 2.1 Without limiting the other provisions of this Agreement, the Supplier shall:
- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 FAILURE TO INSURE

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be

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obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4 EVIDENCE OF INSURANCES

- 4.1 The Supplier shall upon the Effective Date and within fifteen (15) Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

5 AGGREGATE LIMIT OF INDEMNITY

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

6 CANCELLATION, SUSPENSION, TERMINATION OR NON-RENEWAL

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

7 INSURANCE CLAIMS

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Agreement, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of 10% of the sum required to be insured pursuant to Paragraph 5.1 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

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- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.

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ANNEX 1: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

The Supplier

2 Interest

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

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

loss of or damage to property;

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

3 Limit of indemnity

Not less than **£5,000,000 (five million pounds)***[to be considered by the Authority for each procurement]* in respect of any one occurrence, the number of occurrences being unlimited, but **£15,000,000 (fifteen million pounds)***[to be considered by the Authority for each procurement]* in the aggregate per annum in respect of products and pollution liability.

4 Territorial limits

[to be determined by the Authority]

5 Period of insurance

From the date of this Agreement for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

6 Cover features and extensions

Indemnity to principals clause.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

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- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
 - 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
 - 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
 - 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
 - 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.
- 8 Maximum deductible threshold**
- Not to exceed £*[threshold to be agreed with the bidder/Supplier]* for each and every third party property damage claim (personal injury claims to be paid in full).

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PART B: PROFESSIONAL INDEMNITY INSURANCE

1 Insured

The Supplier

2 Interest

To indemnify the Insured for all sums which the Insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the Insured during the period of insurance (as specified in paragraph 5) by reason of any negligent act, error and/or omission arising from or in connection with the provision of the Services.

3 Limit of indemnity

Not less than £5,000,000 (*five million pounds*)**[to be considered by the Authority for each procurement]** in respect of any one claim, the number of claims being unlimited, *but* £15,000,000 (*fifteen million pounds*)**[to be considered by the Authority for each procurement]** in the aggregate per annum, exclusive of defence costs which are payable in addition.

4 Territorial Limits

[to be determined by the Authority]

5 Period of insurance

From the date of this Agreement and renewable on an annual basis unless agreed otherwise by the Authority in writing (a) throughout the Term or until earlier termination of this Agreement and (b) for a period of six (6) years thereafter.

6 Cover features and extensions

Retroactive cover to apply to any "claims made policy wording" in respect of this Agreement or retroactive date to be no later than the Effective Date.

7 Principal exclusions

7.1 War and related perils

7.2 Nuclear and radioactive risks

8 Maximum deductible threshold

Not to exceed **£[threshold as per Supplier's tender]** for each and every claim.

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SCHEDULE 2.8

DATA PROCESSING AND LIST OF SUB-PROCESSORS

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Data Processing and List of Sub-Processors

DEFINITIONS

In this Schedule, the following definitions shall apply:

“Data Protection Impact Assessment”	means an assessment by the Controller of the impact of the processing on the protection of Personal Data;
“Data Protection Officer”	has the meaning given in the Relevant Data Protection Laws;
“Data Subject”	has the meaning given in the Relevant Data Protection Laws;
“Data Subject Access Request”	a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data;
“GDPR”	means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data being enforced in the EU from 25 May 2018 (repealing Directive 95/46/EC), along with the codes of practice, codes of conduct, regulatory guidance and standard clauses and other related or equivalent domestic legislation, as updated from time to time;
“Off-shore Location”	any place outside of the United Kingdom;
“Personal Data Breach”	means: <ul style="list-style-type: none">(a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed;(b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Personal Data that has previously been subject to a breach within the scope of paragraph (a), which may result in exploitation or exposure of that Personal Data; or

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- (c) any defect or vulnerability with the potential to impact the ongoing resilience, security and/or integrity of systems Processing Personal Data;

“Processor” has the meaning given in the Relevant Data Protection Laws;

[“Sanitised Personal Data” data derived from Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;]

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

1 PROTECTION OF PERSONAL DATA

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

1.2 The Supplier shall:

- (a) not Process or transfer the Personal Data [and/or Sanitised Personal Data] other than in accordance with the Authority's written instructions, as set out in Annex 1, unless required by EU or member state law or UK Law to which the Supplier is subject, in which case the Supplier shall promptly inform the Authority of that legal requirement before Processing or transferring that Personal Data [and/or Sanitised Personal Data], unless prohibited by law;
- (b) acknowledge that the provision of the Services is restricted to the Processing of the types of Personal Data and categories of Data Subject set out in Part 1 of Annex 1, and shall, with the Authority's written consent, update the details in Annex 1 from time to time as necessary;
- (c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data, Personal Data Breaches and/or accidental loss, destruction or damage to the Personal Data [and Sanitised Personal Data], including the measures as are set out in Clause 20 (*Authority Data and Security Requirements*) and having regard to the:

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- (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (d) not disclose or transfer the Personal Data [and/or Sanitised Personal Data] to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data [and/or Sanitised Personal Data] to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);
- (e) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data [and/or Sanitised Personal Data] and ensure that the Supplier Personnel:
- (i) are aware of and comply with the Supplier's duties under this Paragraph 1 and Clause 20 (*Authority Data and Security Requirements*) and 21 (*Confidentiality*);
 - (ii) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
 - (iii) are informed of the confidential nature of the Personal Data [and Sanitised Personal Data] and do not publish, disclose or divulge any of the Personal Data [and/or Sanitised Personal Data] to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement;
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data (as defined in the Relevant Data Protection Laws); and
 - (v) retain evidence of the steps taken in respect of Paragraphs 1.2(e)(i) to 1.2(e)(iv) above for the Authority's inspection;
- (f) notify the Authority immediately upon becoming aware of a reasonably suspected, "near-miss" or actual Personal Data Breach or circumstances that may give rise to a Personal Data Breach, providing the Authority with sufficient information and in a timescale which allows the Authority to meet its obligations to report a Personal Data Breach within 72 hours under Article 33 of the GDPR. Such notification shall as a minimum:
- (i) describe the nature of the Personal Data Breach, the categories and approximate numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

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- (ii) communicate the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;
 - (iii) describe the likely consequences of the Personal Data Breach; and
 - (iv) describe the measures taken or proposed to be taken to address the Personal Data Breach.
- (g) co-operate with the Authority and take such reasonable commercial steps as are directed by it to mitigate or remedy the consequences of a reasonably suspected, “near-miss” or actual Personal Data Breach including but not limited to:
 - (i) documenting any such Personal Data Breaches and reporting them to any supervisory authority;
 - (ii) taking measures to address any such Personal Data Breaches, including where appropriate, measures to mitigate their possible adverse effects; and
 - (iii) conducting Data Protection Impact Assessments of any Processing operations and consulting any supervisory authorities, Data Subjects and their representatives accordingly;
- (h) notify the Authority immediately if it receives:
 - (i) from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Access Request (or purported Data Subject Access Request);
 - (B) a request to rectify, any inaccurate Personal Data;
 - (C) a request to have any Personal Data erased;
 - (D) a request to restrict the Processing of any Personal Data;
 - (E) a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any third party;
 - (F) an objection to any Processing of Personal Data;
 - (G) any other request, complaint or communication relating to the Authority's obligations under the Relevant Data Protection Laws;
 - (ii) any communication from the Information Commissioner’s Office or any other regulatory authority in connection with Personal Data; or

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- (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
 - (i) not, without the Authority's prior written consent, and subject also to Clause 24 (*Publications*), make or permit any announcement in respect of a Personal Data Breach or respond to any request, communication or complaint of the kind listed at Paragraph 1.2(h)(i)-(iii);
 - (j) taking into account the nature of the processing, provide the Authority with full assistance in relation to either Party's obligations under the Relevant Data Protection Laws and any complaint, communication or request as listed at Paragraph 1.2(h) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:
 - (i) the Authority with full details and copies of the complaint, communication or request;
 - (ii) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Relevant Data Protection Laws;
 - (iii) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (iv) assistance as requested by the Authority following any Personal Data Breach;
 - (v) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office[.][;]
 - (k) [without prejudice to Paragraph 1.2(a), not without the prior written consent of the Authority:
 - (i) convert any Personal Data for "big data" analysis or purposes;
or
 - (ii) match or compare any Personal Data with or against any other Personal Data (whether the Supplier's or any third party's);and in each case the Supplier shall only take the steps set out in (i) to (ii) above strictly to the degree required to fulfil its obligations under this Agreement.]
- 1.3 The Supplier's obligation to notify under Paragraph 1.2(f) and 1.2(h) shall include the provision of further information to the Authority in phases, as details become available.

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- 1.4 [Insofar as the Supplier processes Sanitised Personal Data, the Supplier shall not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived.]
- 1.5 The Supplier must obtain the prior written consent of the Authority before appointing any Sub-contractor or other third party to Process any Personal Data [and/or Sanitised Personal Data] ("**Sub-processor**") and the Supplier shall remain fully liable to the Authority and any other Service Recipient for any failure by a Sub-processor to fulfil its obligations in relation to the Processing of any Personal Data [and/or Sanitised Personal Data]. Such consent shall be conditional upon:
- (a) the use of any Sub-processor being otherwise in accordance with Clause 15 (*Supply Chain Rights and Protections*), Schedule 4.3 (*Notified and Key Sub-contractors*) and Paragraph 1.7; and
 - (b) the Supplier entering into a continuing obligation to provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.
- 1.6 In accordance with Paragraph 1.5, the Authority consents to the use by the Supplier as at the Effective Date of the Sub-processors listed in Part B of Annex 1 which shall be updated as required with the written consent of the Authority.
- 1.7 The Supplier shall procure that all Sub-processors:
- (a) prior to commencing the Processing of any Personal Data [and/or Sanitised Personal Data] enter into a written contract in relation to the Processing with either the Authority or the Supplier which shall include substantially the same data protection obligations on the Sub-processor as are imposed on the Supplier by this Agreement and which shall set out the Sub-processor's agreed Processing activities in the same or substantially similar form as provided at Part A of Annex 1; or
 - (b) insofar as the contract referred to at paragraph (a) above involves the transfer of Personal Data [and/or Sanitised Personal Data] to any Off-shore Location in accordance with Paragraph 1.8 [or Paragraph 1.8A], it shall incorporate the Standard Contractual Clauses or such other mechanism as directed by the Authority to ensure the adequate protection of the transferred Personal Data [and/or Sanitised Personal Data];
 - (c) act in accordance with this Paragraph 1.

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- 1.8 [The Supplier shall not Process or otherwise transfer any Personal Data [and/or Sanitised Personal Data] in or to any Off-shore Location.][The Supplier shall not Process or otherwise transfer any Personal Data [and/or Sanitised Personal Data] in or to any Off-shore Location (unless the transfer is required by EU or member state law to which the Supplier is subject, and if this is the case then the Supplier shall inform the Authority of that legal requirement before Processing that Personal Data [and/or Sanitised Personal Data], unless that law prohibits such information being provided). If, after the Effective Date, the Supplier or any Sub-contractor wishes to Process and/or transfer any Personal Data [and/or Sanitised Personal Data] in or to any Off-shore Location, the following provisions shall apply:
- (a) the Supplier shall submit a Change Request to the Authority which, if the Authority agrees, at its sole discretion, to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Paragraphs 1.8(b) to 1.8(d);
 - (b) the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:
 - (i) the Personal Data [and/or Sanitised Personal Data] which will be transferred to and/or Processed in any Off-shore Location;
 - (ii) the Off-shore Location in which the Personal Data [and/or Sanitised Personal Data] will be transferred to and/or Processed;
 - (iii) any Sub-processor who will be Processing and/or receiving Personal Data [and/or Sanitised Personal Data] in an Off-shore Location; and
 - (iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Off-Shore Location(s) so as to ensure the Authority's compliance with the Relevant Data Protection Laws;
 - (c) in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data [and/or Sanitised Personal Data] to any Off-shore Location; and
 - (d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (i) incorporating Relevant Data Protection Laws Standard Contractual Clauses into this Agreement or a separate data processing agreement between the Parties; and

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- (ii) complying with the provisions of Paragraphs 1.5 to 1.7 in relation to any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data [and/or Sanitised Personal Data] in any Off-shore Location and shall either enter into:
 - (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
 - (B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-contractor relating to the relevant Personal Data [and/or Sanitised Personal Data] transfer,

and in each case which the Supplier acknowledges may include the incorporation of Relevant Data Protection Laws Standard Contractual Clauses and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data [and/or Sanitised Personal Data].]

[1.8A Notwithstanding Paragraph 1.8, the Authority authorises the Supplier to Process or otherwise transfer the Personal Data [and/or Sanitised Personal Data] listed in Annex 2 in or to the Off-shore Location and/or to any Sub-processors listed in Annex 2, provided that the Supplier complies with Paragraph 1.8(d) above in respect of such Processing or transfer and complies with the instructions set out in Annex 2.

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

- (a) immediately inform the Authority if, in its opinion, any instruction infringes, or might reasonably be considered to infringe, the Relevant Data Protection Laws;
- (b) provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing, such assistance including, at the discretion of the Authority:
 - (i) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (iii) an assessment of the risks to the rights and freedoms of Data Subjects;and

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- (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;
 - (c) implement, review and maintain organisational and technical security measures to ensure the security of Personal Data in accordance with Article 32 of the GDPR, including by:
 - (i) pseudonymising or encrypting Personal Data [and/or Sanitised Personal Data] with the written consent of the Authority;
 - (ii) ensuring the on-going confidentiality, integrity, availability and resilience of Processing systems and services;
 - (iii) ensuring a means to restore the availability of and access to Personal Data [and/or Sanitised Personal Data] in a timely manner following any physical or technical incident; and
 - (iv) having in place a process for regularly testing, assessing and evaluating the effectiveness of the organisational and technical security measures; and
 - (d) at the written direction of the Authority, promptly and securely delete or return to the Authority or transfer to any Replacement Supplier Personal Data (and any copies of it) in such format as is requested by the Authority, unless the Supplier is required by Law to retain the Personal Data.
- 1.10 The Supplier shall not cause the Authority to breach any obligation under the Relevant Data Protection Laws and shall itself comply fully with its obligations under the Relevant Data Protection Laws including by:
- (a) adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR;
 - (b) designating a Data Protection Officer if required by the Relevant Data Protection Laws;
 - (c) maintaining complete and accurate records of its Processing of Personal Data containing the information set out in Article 30(2) of the GDPR, this requirement applying only where the Supplier employs 250 or more staff, unless:
 - (i) the Processing is not occasional;
 - (ii) the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - (iii) the Processing is likely to result in a risk to the rights and freedoms of Data Subjects; and

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- (d) reporting any suspected non-compliance or actual non-compliance with this Paragraph 1 to the Authority immediately upon becoming aware of such non-compliance.

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

[Data Protection Indemnity]

1.12 [The Supplier will indemnify the Authority and each other Service Recipient against:

- (a) all losses (including all direct, indirect and consequential losses) and liabilities, which shall include without limitation all amounts paid to a regulator by way of a fine, penalty, charge or payment (including a voluntary payment) and all payments made to Data Subjects including without limitation those made on a voluntary basis;
- (b) all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement and expenses; and
- (c) all damages and expenses

that the Authority or the Service Recipient (as applicable) does or will incur or suffer (including without limitation in relation to all claims or proceedings made, brought or threatened against the Authority or Service Recipient (as applicable) and/or in defending or settling any actual or threatened claims or proceeding), in each case arising out of or in connection with any breach by the Supplier or any Sub processor of any of its obligations under this Paragraph 1 (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations) or any act or omission by the Supplier or a Sub processor that causes the Authority or any other Service Recipient to breach any obligation under the Relevant Data Protection Laws.]

OR

[The Supplier will indemnify the Authority and each other Service Recipient against all losses, fines and/or expenses incurred by the Authority and each other Service Recipient including any further costs required in order to meet any additional requirements imposed by a relevant regulatory body as a result of the relevant breach, arising out of or in connection with any breach by the Supplier or any Sub processor of any of its obligations under this Paragraph 1, or any act or omission by the Supplier or a Sub processor that causes the Authority or any other Service Recipient to breach any obligation under the Relevant Data Protection Laws.]

1.13 For the avoidance of doubt, nothing in this Agreement relieves the Supplier of its own direct responsibilities and liabilities under the GDPR.

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ANNEX 1 - DATA PROCESSING AND LIST OF SUB-PROCESSORS**Introduction**

Part A of this Annex lists the types of Personal Data and categories of Data Subject which the Supplier will Process in its provision of the Services together with a description of the nature, purposes and duration of the Processing, the subject matter of the Processing, and the retention policy in respect of that data, and has been collated in accordance with Paragraph 1.2(a) and (b).

Part B of this Annex lists the Sub-Processors agreed by the Parties in accordance with Paragraph 1.5.

Part A: Data Processing

1. The Supplier shall comply with any further written instructions from the Authority with respect to Processing.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>[This should be a high level, short description of what the processing is about i.e. its subject matter]</i>
Duration of the processing	<i>[Clearly set out the duration of the processing including dates]</i>
Nature and purposes of the processing	<p><i>[Please be as specific as possible, but make sure that you cover all intended purposes.</i></p> <p><i>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment</i></p>

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	<p><i>or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</i></p> <p><i>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</i></p>
Type of personal data	<i>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</i>
Categories of data subjects	<i>[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]</i>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under UK Law or EU or member state law to preserve that type of data</p>	<i>[Describe how long the data will be retained for, how it be returned or destroyed]</i>

Part B: Sub-processors as at the Effective Date

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[ANNEX 2 - AUTHORISED OFF-SHORING]

1. The Supplier shall comply with any further written instructions from the Authority with respect to Processing or transfer of Personal Data to an Off-shore Location.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
The Personal Data [and/or Sanitised Personal Data] which will be transferred to and/or Processed in any Off-shore Location	
The Off-shore Location in which the Personal Data [and/or Sanitised Personal Data] will be transferred to and/or Processed	
Any Sub-processors who will be Processing and/or receiving Personal Data [and/or Sanitised Personal Data] in an Off-shore Location	
How the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Off-Shore Location(s) so as to ensure the Authority's compliance with the Relevant Data Protection Laws	
Duration of Processing	

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Other Authority instructions or actions required by the Authority	
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SCHEDULE 4.1

SUPPLIER SOLUTION

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Supplier Solution

Redacted

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SCHEDULE 4.2

COMMERCIALLY SENSITIVE INFORMATION

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No.	Date	Item(s)	Duration of Confidentiality

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SCHEDULE 4.3

NOTIFIED AND KEY SUB-CONTRACTORS

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Notified and Key Sub-Contractors

1 APPOINTMENT OF SUB-CONTRACTORS

- 1.1 The Supplier is entitled to enter into Sub contracts with the Subcontractors set out in Annex 1.
- 1.2 Where the Supplier wishes to enter into a Sub-contract or replace a Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Sub-contractor if it reasonably considers that:
 - (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
 - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Sub-contractor employs unfit persons; and/or
 - (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.2 (*Exclusion of Sub-Contractors*).
- 1.3 In making a request pursuant to Paragraph 1.2, the Supplier shall provide the Authority with the following information about the proposed Sub-contractor:
 - (a) its name, registered office and company registration number;
 - (b) a copy of the proposed Sub-contract;
 - (c) the purposes for which the proposed Sub-contractor will be employed, including the scope/description of any services to be provided by the proposed Sub-contractor;
 - (d) if relevant, confirmation that the Sub-contract requires the proposed Sub-contractor to comply with any relevant service levels;
 - (e) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arms-length" terms;
 - (f) the Sub-contract price expressed as a percentage of the total projected Charges over the Term;
 - (g) (where applicable) the Credit Rating Threshold of the Subcontractor; and
 - (h) any further information reasonably requested by the Authority;
- 1.4 The Supplier shall record details of all Sub-contractors that it appoints from time to time in Annex 1 (Notified Sub-contractors and Key-subcontractors), including whether

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or not the Sub-contract is a Third Party Contract and shall promptly provide the Authority with an updated copy.

- 1.5 The Supplier shall notify the Authority if and to the extent to which any Sub-contractor has or intends to sub-contract to a third party any of the services it provides to the Supplier under the terms of the Sub-contract. Upon such notification, the Authority may request, and the Supplier shall procure that the Key Sub-contractor provides to the Authority, a copy of the contract between the Key Sub-contractor and the third party.

2 SUB-CONTRACTS

2.1 The Supplier shall ensure that each Sub-contract shall include:

- (a) provisions which will enable the Supplier to discharge its obligations under this Agreement;
- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Sub-contract as if it were the Supplier;
- (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (e) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of:
 - (i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5(k) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Sub-contract, including the maintenance of Open Book Data;
 - (v) the conduct of Audits set out in Clause 12.1 to Clause 12.12 (*Records, Reports, Audits & Open Book Data*);
 - (vi) the reporting requirement set out in Paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*);
 - (vii) the tax compliance requirements set out in Clauses 10.9 to 10.13 (inclusive) (*Promoting Tax Compliance*);

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- (viii) the use of off-shore tax structures set out in Clauses 10.18 to 10.21 (inclusive) (*Use of Off-shore Tax Structures*);
 - (ix) the disclosure of Confidential Information set out in Clause 21.3 (Confidentiality); and
 - (x) the slavery and human trafficking compliance requirements set out in Clause 35.5 (Modern Slavery Act).
- (k) provisions enabling the Supplier to terminate the Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 33.1(a) (*Termination by the Authority*) and 34.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement; and
- (l) a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 30 (*Step-in Rights*).
- 2.2 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:
- (a) a copy of any Sub-contract; and
 - (b) any further information relating to that Sub-contract as reasonably requested by the Authority.

3 KEY SUB-CONTRACTS

- 3.1 Without prejudice and in addition to the provision in Paragraph 2.1 to 2.2, the Supplier shall ensure that each Key Sub-contract shall include a provision requiring all Key Sub-contractors to:
- (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such; and
 - (b) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
 - (c) co-operate with the Supplier and the Authority in order to give full effect to the

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provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

4 SUPPLY CHAIN PROTECTION

- 4.1 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:
- (a) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
 - (b) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;
 - (c) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
 - (d) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period;
 - (e) granting the Supplier a right to terminate the Sub-contract if the relevant Sub-contractor fails to comply, in the performance of its Sub-contract, with legal obligations in the fields of environmental, social or labour law and a requirement that the Sub-contractor includes a provision having the same effect in any sub-contract which it awards;
 - (f) requiring the Sub-contractor to provide reports which contain the information referred to in paragraph 1.1(b)(vii) of Schedule 8.2 (Reports and Records); and
 - (g) requiring the Sub-contractor to include a clause to the same effect as this Paragraph 4.1 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.
- 4.2 The Supplier shall, and shall ensure that its Sub-Contractors shall, grant to the Authority and its Authorised Agents the right of access to any of the Supplier Premises and/or Supplier Personnel as the Customer may reasonably require during normal business hours in order to observe the activities of the Supplier and any of its Sub-Contractors for the purposes of monitoring and/or better understanding of the Services.

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5 AMENDMENT OF SUB-CONTRACTS

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

6 RETENTION OF LEGAL OBLIGATIONS

- 6.1 Notwithstanding the Supplier's right to sub-contract pursuant to this Schedule the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

- 6.2 In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

7 IMPROVING VISIBILITY OF SUBCONTRACT OPPORTUNITIES AVAILABLE TO SMES AND VCSES IN THE SUPPLY CHAIN

- 7.1 The following definitions shall apply in this Paragraph 7.1:

“**Contracts Finder**” means the Government’s publishing portal for public sector procurement opportunities;

“**SME**” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; and

“**VCSE**” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

- 7.2 If the contract value per annum (averaged over the life of the contract), as advertised by the Authority as part of the procurement process, is in excess of £5,000,000, the Supplier shall:

- (a) subject to Paragraph 7.4, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services above a minimum threshold of £25,000 that arise during the Term;
- (b) within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
- (c) monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

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- (d) provide reports on the information at Paragraph 7.2(c) to the Authority in the format and frequency as reasonably specified by the Authority; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 7.3 Each advert referred to at Paragraph 7.2 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 7.4 The obligation at Paragraph 7.2 shall only apply in respect of subcontract opportunities arising after the contract award date.
- 7.5 Notwithstanding Paragraph 7.1 to Paragraph 7.4 above, the Authority may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

8 MANAGEMENT CHARGES AND INFORMATION

- 8.1 This Paragraph 8 applies if the contract value per annum (averaged over the life of the contract), as advertised by the Authority as part of the procurement process, is in excess of £5,000,000.
- 8.2 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (MI) reports to the Authority at the Authority's request which incorporate the data described in the MI Reporting Template, as defined below, ("**SME Management Information Reports**") which is:
- (a) the total contract revenue received directly on a specific contract;
 - (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
 - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 8.3 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template (as defined below) and any guidance issued by the Authority from time to time. The Supplier shall use the initial MI Reporting Template which is set out in Annex 2 to this Schedule and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version ("**MI Reporting Template**"). The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- 8.4 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

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ANNEX 1: NOTIFIED SUB-CONTRACTORS AND KEY SUB-CONTRACTORS

1 NOTIFIED SUB-CONTRACTORS AND KEY SUB-CONTRACTORS

- 1.1 In accordance with this Schedule, the Supplier is entitled to sub-contract its obligations under this Agreement to the Sub-Contractors and Key Sub-contractors listed in the table below.
- 1.2 The Parties agree that they will update this Schedule periodically to record any Sub-Contractors and Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Notified Key Sub-Contractors

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold	Third Party Contract?
					[Level 1]	

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Notified Sub-Contractors

Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold	Third Party Contract?
					[Level 1]	

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ANNEX 2: MI REPORTING TEMPLATE



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SCHEDULE 6.1

MOBILISATION

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Mobilisation

DEFINITIONS

In this Schedule, the following definitions shall apply:

"Detailed Mobilisation Plan" means the plan prepared in accordance with paragraph 2.2 of this Schedule 6.1 (*Mobilisation*);

"Mobilisation Commencement Date" means 20/01/2020;

"Mobilisation Plan" the Outline Mobilisation Plan and the Detailed Mobilisation Plan as described in this Schedule;

"Outline Mobilisation Plan" means the plan in the form set out at Annex 1 of this Schedule 6.1 (*Mobilisation*), which contains a summary of the mobilisation Milestones, Deliverables and due dates.

1 GENERAL

1.1 The Supplier shall plan, prepare for and carry out the Mobilisation Activities in accordance with this Schedule, and shall:

- (a) comply with the Detailed Mobilisation Plan; and
- (b) be responsible for overall management of the activities under the Detailed Mobilisation Plan in order to ensure the timely completion of each task and Milestone.

2 APPROVAL OF THE DETAILED MOBILISATION PLAN

2.1 The Supplier shall submit a draft of the Detailed Mobilisation Plan to the Authority for approval within 10 Working Days of the Effective Date. The Supplier shall ensure that the Detailed Mobilisation Plan is developed in accordance with the requirements set out in the Outline Mobilisation Plan.

2.2 The Supplier shall ensure that the draft Detailed Mobilisation Plan:

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Mobilisation Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (i) the completion of any Deliverable; and
 - (ii) the completion of any deployment or transition activity;

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- (c) clearly details all the steps required to implement the Milestones to be achieved up to and including the final Milestone, in conformity with the Authority Requirements;
 - (d) incorporates as a minimum the set of components required to implement the activities of the Mobilisation Plan as set out in Annex 2 (*Minimum Set of Mobilisation Components*);
 - (e) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements;
 - (f) clearly details all the Supplier's dependencies on the Authority in order to complete the activities under the Detailed Mobilisation Plan; and
 - (g) includes all the Supplier's assumptions in setting out the activities and timescales in the Detailed Mobilisation Plan.
- 2.3 Prior to the submission of the draft Detailed Mobilisation Plan to the Authority in accordance with Paragraph 2.1, the Authority shall have the right:
- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Mobilisation Plan; and
 - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Mobilisation Plan.
- 2.4 Following receipt of the draft Detailed Mobilisation Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft Detailed Mobilisation Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Mobilisation Plan no later than 20 Working Days after the date on which the draft Detailed Mobilisation Plan is first delivered to the Authority.
- 2.5 If the Authority rejects the draft Detailed Mobilisation Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft Detailed Mobilisation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Mobilisation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.4 and this Paragraph 2.5 shall apply again to any resubmitted draft Detailed Mobilisation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

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- 2.6 If the Authority approves the draft Detailed Mobilisation Plan, it shall replace the Outline Mobilisation Plan as the Mobilisation Plan from the date of the Authority's notice of approval.
- 2.7 Following the approval of the Detailed Mobilisation Plan by the Authority:
- (a) the Supplier shall submit a revised Detailed Mobilisation Plan to the Authority every month until the Operational Service Commencement Date; and
 - (b) the Authority shall be entitled to request a revised Detailed Mobilisation Plan at any time by giving written notice to the Supplier. The Supplier shall, within 20 Working Days of receiving such a request, submit a draft revised Detailed Mobilisation Plan to the Authority for approval in accordance with the procedure set out in Paragraph 2.1 to 2.6.
- 2.8 Changes to any Milestones, Milestone Payments or Delay Payments shall only be made in accordance with the Change Control Procedure.
- 2.9 Any proposed amendments to the Detailed Mobilisation Plan shall not come into force until they have been approved in writing by the Authority.

3 TRANSITION FROM INCUMBENT SUPPLIER OR THE AUTHORITY

- 3.1 The Supplier shall provide to the Authority any reasonable assistance requested by the Authority to allow any services provided by the Incumbent Supplier or the Authority (as applicable) to continue without interruption during transition and to facilitate the orderly transfer of responsibility for and conduct of those services from the Incumbent Supplier or the Authority (as applicable) to the Supplier without any adverse impact on current service levels and service delivery provided to the Authority.

4 CHARGES

- 4.1 The Supplier's activities for carrying out its obligations set out in this Schedule shall be charged on a Time and Materials basis in accordance with the rate card set out at Annex [XX] of Schedule 7.1 (*Charges and Invoicing*) and payable [as part of a Milestone Payment in accordance with Schedule 7.1 (*Charges and Invoicing*)]

5 REPORTING AND RISKS

- 5.1 The Supplier shall provide to the Authority progress reports on a weekly basis including an executive dashboard, against the Detailed Mobilisation Plan, which will set out:
- (a) the current status of the Mobilisation Activities;
 - (b) the Supplier's progress against all Milestones and other activities set out in the Detailed Mobilisation Plan, any actual or anticipated delays to the Detailed Mobilisation Plan and anticipated remedial activities in respect of such delay;

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- (c) the actual and anticipated risks and issues (including a RAID log as set out in Paragraph 5.2), the impact or likely impact of such risks and issues on the Detailed Mobilisation Plan and the associated mitigation actions being taken by the Supplier.

5.2 The Supplier shall maintain a RAID log which sets out (and promptly report to the Authority upon becoming aware of) any technical, commercial, delivery, financial, legal and other risks, assumptions, issues and dependencies in carrying out the Detailed Mobilisation Plan, including risk mitigation strategies, preventive measures and contingency plans for rapid recovery from the occurrence of all such risks and issues.

6 SECURITY AND SAFETY

6.1 The Supplier shall carry out its obligations under this Schedule in compliance with all applicable site safety and security procedures of the Authority and the Incumbent Supplier to the Authority (as applicable) and in accordance with the relevant provisions of the Agreement.

7 ACHIEVEMENT OF MILESTONES AND READINESS REVIEWS

7.1 Supplier shall cooperate with and assist the Authority in carrying out readiness reviews for the Mobilisation prior to the Operational Service Commencement Date in order to satisfy key Authority stakeholders that the relevant Services can be transferred to the Supplier without impact on business operations.

8 GOVERNMENT REVIEWS

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

9 DELAYS

9.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:

- (a) it shall:
 - (i) notify the Authority (and any applicable Service Recipients) in accordance with Clause 27.1 (*Rectification Plan Process*);
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay;
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
- (b) without prejudice to 9.1(a) above, if the Delay or anticipated Delay relates to a Key Milestone, Delay Payments may be payable.

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ANNEX 1: OUTLINE MOBILISATION PLAN

Milestone	Deliverables <i>(bulleted list showing all Deliverables (and associated tasks) required for each Milestone)</i>	Duration <i>(Working Days)</i>	Milestone Date	Authority Responsibilities <i>(if applicable)</i>	ATP Milestone?	Assurance Criteria
	•					
	•					
	•					
	•					
	•					
	•					

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ANNEX 2: MINIMUM SET OF MOBILISATION COMPONENTS

Mobilisation component	Description
Mobilisation management	To set up and manage the Mobilisation , based on industry standard good practice project and programme management frameworks.
Data management	To perform the detailed data discovery of Service(s) and to manage and maintain the data from service transfer.
Governance	To implement governance for the Detailed Mobilisation Plan (for instance, the organisational forums) as detailed in Schedule 8.1 (<i>Governance</i>) and Schedule 6.1 (<i>Mobilisation</i>), to enable the management of the relationship between the Supplier and the Authority from the Effective Date.
Communication	To plan, prepare and implement an effective communication approach from Mobilisation Commencement Date, as jointly agreed by the Supplier and the Authority.
Staff transfer	To carry out the staff consultation and engagement to effect the smooth transition and integration of in scope roles/staff from Incumbent Supplier to the Supplier, as specified in Schedule 9.1 (<i>Staff Transfer</i>).
Pay, pension and benefits	To plan, prepare and implement the solutions for payroll, pensions and staff benefits.
Workforce management	To manage overall transferring and required workforce resourcing including: attrition, vacant roles, recruitment, backfill for key personnel, contract staff and grade mapping.

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Mobilisation component	Description
Knowledge transfer	To transfer the knowledge from the Incumbent Supplier to the Supplier for the transferred Service(s).
Induction and training	To provide induction information to the transferring staff relating to the Supplier. To deliver appropriate training for staff where needed for service provision under the Supplier's operating model.
In-flight projects	To assess and transfer in flight projects to the Supplier as appropriate. To implement the project management processes and tools to support the delivery of any new projects for the Authority after the transfer of Service(s).
Demand management	To develop processes and tools that enable the Supplier to manage all service requests.
Post Contract Verification	To undertake the detailed discovery to validate assumptions in the contractual documentation and to prepare a final report to agree and approve all Contract Changes prior to the defined period specified in the Agreement.
Asset validation	To validate and make accurate the list of in-scope assets for which management responsibility is to be transferred from the Authority and Incumbent Supplier to the Supplier, in accordance with Schedule 4.5 (<i>Assets</i>).
Operating model and service design	To design and deliver the operating model for service provision including (as a minimum): process, organisation, location, data, applications, tooling, technology and commercials.
Finance	To set up all the processes defined in the Agreement, Schedule 7.1 (<i>Charges and Invoicing</i>) and Schedule 7.5 (<i>Financial Reports, Financial Model and Audit Rights</i>) that the Supplier and the Authority shall use to provide financial information, ensuring the accurate and timely billing and payment for the Service(s).

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Mobilisation component	Description
Contract management	To implement processes and procedures to effectively manage the contract from the Operational Services Commencement Date, and handle queries, issues and Contract Changes as they arise during the Term.
Asset management	To take responsibility for the Incumbent Supplier's asset management solution and continue to operate it.
Reporting	Ensure the continued production of reports as specified in Schedule 6.1 (<i>Mobilisation</i>) and Schedule 8.2 (<i>Reports and Records</i>) in order to support Governance and operations.
Service continuity management	To perform gap analysis and report, agree and align the changes necessary to ensure no disruption to service throughout the transfer of Service(s).
Quality management	To provide assurance to the Supplier and the Authority that the Deliverables are complete, have met their quality criteria and the agreed processes have been observed.
Security management	To report, agree and align the activities necessary to ensure system security is maintained or enhanced during Mobilisation, as specified in Schedule 2.4 (<i>Security Management</i>).
User account provisioning	To set up infrastructure and user accounts including access rights to tools and applications needed for each role.
Testing	To provide evidence that the Supplier Solution as designed and developed is suitable for the delivery of the Service(s) and meets the Authority requirements.
Mobilisation readiness	To assess the state of Supplier readiness for a successful transfer and ongoing end to end provision of Service(s).

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Mobilisation component	Description
Cutover and Day 1 Experience	Over the weeks prior to the transfer of Service(s), to plan and prepare for a smooth transfer of the Service(s) from the Incumbent Supplier to the Supplier. On day of transfer of Service(s), to implement the cutover plan and transfer the Service(s) to the Supplier.
Post Mobilisation aftercare	To plan and implement support arrangements for the period following transfer of Service(s). To resolve issues arising from the transfer of Service(s).

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SCHEDULE 6.3

PROJECTS AND ORDERING

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Projects and Ordering

1 [ORDERS]

1.1 The Customer may order any of the Goods and/or Services at any time by submitting a purchase order [in the form set out in Annex 1] in accordance with the following procedure:

- Initial discussion to scope the requirement
- PPD to raise a Purchase Order through Sap Ariba
- Authorisations will automatically go to a secondary source for authorising

1.2 For the avoidance of doubt, a purchase order shall not be deemed valid and effective unless it includes a purchase order number and a Unique Reference Number

1.3 The Supplier shall provide the Services from, or the Goods on, the delivery date specified in the relevant purchase order provided that this is in accordance with the relevant lead time, calculated from the date of order submission, below:

All work to be started within 5 working days with indicative timescales for completion to be provided within one week

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ANNEX 1 - PURCHASE ORDER

Online Portal

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SCHEDULE 8.1

GOVERNANCE

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Governance

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Contract Management Representatives” in respect of a Review Meeting, those contract management team representatives of either Party whose attendance is reasonably required to achieve the aims and objectives of the meeting, and any other persons considered by the Authority to be necessary for the review; and

“Review Meeting” a review meeting to consider the progress of the Agreement, discuss the Management Information and to review any operational issues that have arisen in the preceding review meetings.

2 MANAGEMENT OF THE SERVICES

2.1 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Agreement can be fully realised.

Meetings

2.2 Each Party shall ensure that its Contract Management Representatives shall make all reasonable efforts to attend Review Meetings at which that Contract Management Representative is required. If any Contract Management Representative is not able to attend a Review Meeting, that person shall use all reasonable endeavours to ensure that:

- (a) a delegate attends the relevant Review 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 Review Meeting.

2.3 Review meetings shall be quorate as long as at least two representatives from each Party are present.

2.4 The provisions of this Schedule are without prejudice to other provisions of this Agreement which require regular meetings to take place between the Parties in connection with the delivery of the Services (including Performance Review Meetings) and such other meetings which may be held with Other Suppliers and/or other third parties that the Authority may request from time to time. For the avoidance of doubt, such meetings shall also form part of the governance of this Agreement and the Supplier shall ensure that an appropriate representative attends, on the Supplier's behalf.

3 CONTRACT MANAGEMENT MECHANISMS

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

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- 3.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
- (a) the identification and management of risks;
 - (b) the identification and management of issues; and
 - (c) monitoring and controlling project plans.

4 REVIEWS

- 4.1 The Parties shall attend Review Meetings at the following frequency:

Contract Review	Annual
Contract Review	Quarterly
Performance Review	Monthly
Operational Review	Weekly

The Parties shall agree the format of the Review Meetings (for example, face to face or telephone conference) in advance.

- 4.2 The Supplier shall provide the Authority with the most up to date Management Information relating to the previous two quarters at least 5 Working Days before each Review Meeting.

Annual Review

- 4.3 The Parties shall hold an annual Review Meeting on a date to be agreed between the Parties or, in the absence of such agreement, within 20 Working Days of the anniversary of the Operational Service Date. The annual Review Meeting will be attended by the Authority's Senior Responsible Owner and the Contract Management Representatives.
- 4.4 In respect of the period under review, the Authority will take into account in the Review Meeting any matters it considers necessary, including:
- (a) the Supplier's performance in respect of the KPIs (including any relevant KPIs trends analysis and whether the KPIs reflect improvements in the Services over the Term and any efficiency gains made by the Supplier);
 - (b) any changes which may need to be made to the Services; and
 - (c) future requirements in relation to the Services.
- 4.5 The Authority shall prepare a report of its findings from the annual Review Meeting and discuss with the Supplier how any proposed changes to the Agreement and/or to the Services shall be addressed. Any Contract Changes to be implemented in accordance with this Paragraph 4.5 shall be implemented in accordance with the Change Control Procedure.

Quarterly Review

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- 4.6 The Parties shall hold a quarterly Review Meeting, on a date to be agreed between the Parties. The quarterly Review Meeting will be attended by the Authority's Commercial Manager and Contract Manager and the Contract Management Representatives.
- 4.7 In respect of the period under review, the Authority will take into account in the Review Meeting any matters it considers necessary, including:
- (a) overall performance against KPIs;
 - (b) volume trends/general trend analysis;
 - (c) compliance and satisfaction levels;
 - (d) sustainability strategy and performance;
 - (e) business continuity issues and updates;
 - (f) proposals for improvements;
 - (g) financial stability;
 - (h) risk assessments; and
 - (i) any security issues and the Security Management Plan.
- 4.8 The quarterly Review Meeting shall be fully minuted by the Supplier. The prepared minutes shall be circulated by the Supplier to all attendees of the meeting, the Authority Representative and any other recipients agreed at the meeting. The minutes of each quarter's Review Meeting will be agreed between the Supplier Representative and the Authority Representative within 14 days of initial circulation.

Monthly Review

- 4.9 A monthly Review Meeting will be held on a date to be agreed between the Parties. The monthly Review Meeting will be attended by the Authority's Commercial Manager and Contract Manager and the Contract Management Representatives.
- 4.10 In respect of the period under review, the Authority will take into account in the Review Meeting any matters it considers necessary, including:
- (a) the progress of the contract;
 - (b) the Management Information; and
 - (c) any problems which have arisen in the preceding months.
- 4.11 The monthly Review Meetings must be fully minuted by the Supplier. The prepared minutes shall be circulated by the Supplier to all attendees of the Review Meeting and also to the Authority Representative and any other recipients agreed at the meeting. The minutes of each month's Review Meeting will be agreed between the Supplier Representative and the Authority Representative within 10 days of initial circulation.

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Weekly Review

- 4.12 A weekly Review Meeting will be held, on an agreed day of each week between the Parties. The weekly Review Meeting will be attended by the Supplier Representative, the Authority Representative and any other day to day contract managers of the Authority and may take the form of a weekly telephone conference.
- 4.13 In respect of the period under review, the Authority will take into account in the Review Meeting any matters it considers necessary, including:
- (d) contract progress;
 - (e) any problems which have arisen in the preceding weeks; and
 - (f) jointly managing a weekly issues and risk log to be updated at these meetings.
- 4.14 The weekly review is not required to be minuted however any actions being taken forward should be agreed in writing or using the issues log as a record.]

5 Contract Management Roles and Dispute Escalation Levels

- 5.1 The Parties shall assign personnel with the appropriate skills and experience to perform the roles and responsibilities listed in the table below and where indicated as a “key role” below, the personnel is Key Personnel.

Role	Key Role	Responsibilities	Contact Name, Title & Contact Details		Escalation Level
			Authority	Supplier	
Senior Responsible Owner	No	Overall responsibility for delivery of the contract.			3
Commercial Director	No	Overall responsibility for the Commercial integrity of the contract.			2
Commercial Lead	No	Responsible for overseeing the Contract Review process.			1
Commercial Manager	Yes	As set out in Schedule 9.2	As set out in Schedule 9.2	As set out in Schedule 9.2	

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Contract Manager	[Yes]	[As set out in Schedule 9.2]	[As set out in Schedule 9.2]	[As set out in Schedule 9.2]	
Mobilisation Manager	[Yes]	[As set out in Schedule 9.2]	[As set out in Schedule 9.2]	[As set out in Schedule 9.2]	

- 5.2 Subject to Clause 11.3 and Schedule 9.2 (*Key Personnel*), in the event that the Supplier wishes to replace any of its representatives in the roles listed in Paragraph 5.1, the Supplier shall notify the Authority in writing of the proposed change for the Authority's agreement (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority representative has at all times a counterpart representative of equivalent seniority and expertise.
- 5.3 The Authority may, by written notice to the Supplier, revoke or amend the authority of any of its representatives in the roles listed in Paragraph 5.1 or appoint a new representative into the role.

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6 Specific Contract Management Requirements

7 Supplier Relationship Management

- 7.1 The Authority's aim is to create a strong, shared supplier relationship management (SRM) approach which engenders, encourages and rewards the implementation of innovative solutions to achieve objectives.
- 7.2 The Authority's intention is, through innovative thinking, to work with suppliers post contract award to produce better solutions at a lower cost, without compromising customer service, than would otherwise be achieved without change.
- 7.3 The Supplier shall take a pro-active approach to the Authority's supplier relationship management (SRM) activity to ensure the strategic aims are achieved through the use by the Supplier of an effective account management structure.
- 7.4 The Supplier shall ensure that the Supplier Representative, who will be responsible for Authority account management, has the necessary authority to influence any operational activities that may be necessary to help strategic objectives and initiatives to be achieved.
- 7.5 The Supplier shall ensure that it commits to Authority account management in support of Supplier relationship management activity. The Supplier shall ensure that the Supplier Representative and is accessible to the Authority at all times during normal working hours (Mon - Fri 08:00 to 18:00), subject to the provisions of Clause 14.3 to 14.5 (*Key Personnel*).
- 7.6 The Authority may require the Supplier, at any time during the Term, to complete:
- (a) an Authority supplier performance management (SPM) questionnaire using the e-sourcing portal;
 - (b) supplier chain risk management questionnaires such as CAESER (now known as "Corporate Responsibility" and details of which can be found at <https://nqc.com/corporate>); and/or
 - (c) data and information assurance assessments or questionnaires such as HADRIAN (now known as "Cyber Security" and details of which can be found at <https://nqc.com/cybersecurity>).

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SCHEDULE 8.2

REPORTS AND RECORDS

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Reports and Records

1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft transparency reports in accordance with Annex 1 (**Transparency Reports**).
- 1.2 If the Authority rejects any proposed Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2 OTHER REPORTS

- 2.1 The Supplier shall provide to the Authority:
 - (a) the reports listed, and at the frequencies set out, in Annex 2 to this Schedule 8.2 (*Reports and Records*); and
 - (b) any or all of the following reports at the Authority's request:
 - (i) delay reports;
 - (ii) reports relating tests carried out under Schedule 6.2 (*Testing Procedures*), Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Business Continuity and Disaster Capability*);
 - (iii) Performance Monitoring Reports;
 - (iv) reports which the Supplier is required to supply as part of the Management Information;
 - (v) annual reports on the Insurances;
 - (vi) security reports;
 - (vii) an SME report, which contains information in relation to Sub-contractors including (without limitation): the name, postal address and registration number of the relevant Sub-contractor; the commencement and expiry dates of the relevant Sub-contract; the

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relevant Sub-contract value and spend in the relevant quarter; and the number of apprentices employed in relation to that Sub-contract; and

(viii) Force Majeure Event reports.

3 RECORDS

3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in this Agreement (together "**Records**");

- (a) in accordance with the requirements of the Public Records Office (PRO) and Good Industry Practice;
- (b) in chronological order;
- (c) in a form that is capable of audit; and
- (d) at its own expense.

3.2 The Supplier agrees that it shall:

- (a) store all records and reports that it is obliged to maintain and provide pursuant to this Agreement in such document repository or system that the Authority may have or put in place for the storing, sharing and management of records and reports as it may notify to the Supplier from time to time ("**Document Repository**"); and
- (b) comply with such guidance as the Authority may issue or provide in relation to the Document Repository from time to time.

It is acknowledged and agreed that the Authority may also use the Document Repository as a means of uploading and storing its documents that the Supplier may need to access from time to time.

3.3 Notwithstanding the provisions of paragraph 3.2, the Supplier shall on demand, at no cost to the Authority and without imposing any restrictions, make the Records available for inspection to and/or copying by the Authority and/or its nominee in a format reasonably accessible to the Authority, subject to the Authority giving reasonable notice.

3.4 The Supplier shall hold Records in electronic format (and, if required by the Authority, paper format) and must be made available and/or be accessible to the Authority and its Audit Agents for audit purposes.

3.5 The Supplier shall, during the Term and a period of at least seven years following the expiry or termination of this Agreement:

- (a) maintain or cause to be maintained in safe storage complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records and Open Book Data; and

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- (b) upon reasonable notice, disclose and allow the Authority and/ or its Audit Agents the right to access the information described at Paragraph 3.5(a).
- 3.6 Following the expiry of seven years after the expiry or termination of this Agreement, the Supplier shall securely dispose of or provide to the Authority all Records without keeping any copies and if required to do so by the Authority, the Supplier shall provide written confirmation of compliance with this Paragraph 3.6.
- 3.7 The provisions of Paragraph 3.6 shall not apply to the extent that the Supplier is required to retain the Records by any applicable Law or for the purposes of any audit.

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ANNEX 1: TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
<i>(Performance)</i>		Digital	Monthly
<i>(Charges)</i>		Digital	Monthly
<i>(Major sub-contractors)</i>		Digital	Monthly
<i>(Performance management)</i>		Digital	Monthly

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ANNEX 2: REPORTS TO BE PROVIDED BY THE SUPPLIER

Reference	Report Title	Report Frequency	Report Content
[Schedule 6.1 <i>Implementation</i> , paragraph 6.5]	[Implementation Report]	Weekly	[See paragraph 6.5 in Schedule 6.1 <i>Implementation</i>]]
[Schedule 4.3 <i>Sub-contractors and Key Sub-contractors</i>]	[SME Management Information Reports]	Monthly	[See paragraph 8 in Schedule 4.3 (<i>Sub-contractors and Key Sub-contractors</i>)]

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ANNEX 3: RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.
2. All other documents which this Agreement expressly requires to be prepared.
3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
4. Notices, reports and other documentation submitted by any Expert.
5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
9. Documents prepared by the Supplier in support of claims for the Charges.
10. Documents submitted by the Supplier pursuant to the Change Control Procedure.
11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
13. Invoices and records related to VAT sought to be recovered by the Supplier.
14. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.
17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management*).

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18. A complete set of records to trace the supply chain of all Goods and Services provided to the Authority in connection with this Agreement, in order to monitor any actual or suspected slavery or human trafficking in those supply chains in compliance with the Suppliers' obligation in Clause 35.5.
19. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

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SCHEDULE 8.3

CHANGE CONTROL PROCEDURE

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Change Control Procedure

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3;
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time as identified in Schedule 9.2 (<i>Key Personnel</i>) or otherwise notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Contract Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
 - (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
 - (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;

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- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
 - (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
 - (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
 - (f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for mobilisation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- (a) within ten (10) Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
 - (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3 COSTS

3.1 Subject to Paragraph 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and

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- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
 - (i) such costs are below £1000
 - (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
 - (iii) such costs exceed those in the accepted Impact Assessment Estimate.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*) and Paragraph 10 (*Changes to Charges*) below. The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

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- (a) the nature of the request for clarification; and
- (b) the reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

5 IMPACT ASSESSMENT

5.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the proposed Contract Change including the reason for the Contract Change;
- (b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;
- (c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:
 - (i) the Services Description, the KPIs and/or the Target Performance Levels;
 - (ii) the format of Authority Data, as set out in the Services Description;
 - (iii) the Milestones, Mobilisation Plan or Project Plan and any other timetable previously agreed by the Parties; and/or
 - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;
- (d) details of the cost of implementing the proposed Contract Change;
- (e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;
- (f) a timetable for the mobilisation, together with any proposals for the testing of the Contract Change;
- (g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and
- (h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Schedule 2.8 (*Data Processing and List of Sub-processors*).

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- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification. The Supplier shall ensure that the reissued Impact Assessment will contain the information requested by the Authority. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and 5.1(e) shall:
- (a) be based on the Models;
 - (b) be in accordance with Paragraph 10 (*Changes to Charges*) below;
 - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (d) include full disclosure of any assumptions underlying such Impact Assessment;
 - (e) include evidence of the cost of any assets required for the Contract Change; and
 - (f) include details of any new Sub-contracts necessary to accomplish the Contract Change.
- 5.6 The Authority may request that any Impact Assessment presents Charges without indexation for the purposes of comparison.

6 AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain

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its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

- (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within five (5) Working Days of such request. Subject to Paragraph 5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within ten (10) Working Days.

6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two (2) copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

6.3 If the Authority does not sign the Change Authorisation Note within ten (10) Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

7 SUPPLIER'S RIGHT OF REJECTION

7.1 Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
 - (i) materially and adversely affect the risks to the health and safety of any person; and/or
 - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

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8 FAST-TRACK CHANGES

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed four (4) in any twelve (12) month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £10,000 and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed four (4) in a twelve (12) month period.

9 OPERATIONAL CHANGE PROCEDURE

9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- (a) have an impact on the business of the Authority;
- (b) require a change to this Agreement;
- (c) have a direct impact on use of the Services; or
- (d) involve the Authority in paying any additional Charges or other costs.

9.2 The Authority may request an Operational Change by submitting a written request for Operational Change (“RFOC”) to the Supplier Representative.

9.3 The RFOC shall include the following details:

- (a) the proposed Operational Change; and
- (b) the timescale for completion of the Operational Change.

9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

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9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10 CHANGES TO CHARGES

10.1 Any change to the Charges shall be developed and agreed by the Parties on the basis that:

(a) such changes to the Charges shall be calculated in accordance with the underlying principles in the Cost Model which make up the Charges prior to the Contract Change;

(b) notwithstanding any other provision of this Schedule, the Supplier Profit Margin on such Charges shall:

(a) be no greater than the Supplier Profit Margin applying to Charges using the same pricing mechanism as set out in the Models as at the Effective Date; and

(b) in no event exceed the Anticipated Contract Life Profit Margin plus 5%;

(c) as part of the Change Control Procedure, the Supplier shall promptly prepare a complete revised copy of each Model (or if agreed otherwise by the Parties, an updated copy of the extract of each Model that has changed) to:

(i) enable the Parties to evaluate the impact of the Contract Change, including sufficient information to allow the Authority to understand any Charges, Costs, anticipated Supplier Profit, anticipated Supplier Profit Margin and Anticipated Contract Life Profit Margin set out in the Model (as applicable); and/or

(ii) document any changes to the Charges agreed in accordance with the Change Control Procedure;

(d) the Supplier shall prepare each iteration of the Models in accordance with Clause 10.28 (*The Models*) and, if such Part is used, Part D (*Cost Model*) of Schedule 7.1 (*Charges and Invoicing*).

(e) any amendment which is made in order to evaluate or reflect the impact of a Contract Change shall relate only to the impact of that Contract Change; and

(f) no amendment to the Charges shall affect, in any way whatsoever, the performance of the Services, except where expressly agreed in accordance with the Change Control Procedure.

10.2 The version of the Models agreed by the Authority in accordance with the Change Control Procedure shall become the current approved version of the Models for the purposes of this Agreement with effect from the date of signature of the Change Authorisation Notice.

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10.3 If there is a Dispute regarding the correct version of any Model, the Authority's copy of the relevant Model shall be authoritative.

11 CHANGES TO CHARGES FOR ANY EXTENSION PERIOD

11.1 The Parties may agree to vary the Charges, in accordance with the Change Control Procedure, with effect from the commencement of any Extension Period. In the absence of any such agreement, the relevant Extension Period will take effect on the terms of this Agreement that subsist immediately prior to the Extension Period taking effect.

12 INDEXATION

12.1 For the avoidance of doubt, the Supplier may not vary Charges to take account of Indexation at any time.

13 COMMUNICATIONS

13.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 44 (*Notices*) shall apply to a Change Communication as if it were a notice.

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ANNEX 1: CHANGE REQUEST FORM

CR NO.:	TITLE:	TYPE OF CHANGE:
CONTRACT:	REQUIRED BY DATE:	
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED (<i>OPTIONAL FIELD</i>):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
SUPPLIER REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

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ANNEX 2: CHANGE AUTHORISATION NOTE

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i>]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE AUTHORITY:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

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SCHEDULE 8.4

DISPUTE RESOLUTION PROCEDURE

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Dispute Resolution Procedure

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

“Dispute Representative”	a person identified as escalation level 1, 2 or 3 in Paragraph 5 (<i>Contract Management Roles and Dispute Escalation Levels</i>) of Schedule 8.1 (<i>Governance</i>). “Level 1 Dispute Representative” shall be interpreted as any such person identified as escalation level 1 and “Level 2 Dispute Representative” and “Level 3 Dispute Representative” shall be interpreted accordingly.
“Counter Notice”	has the meaning given in Paragraph 6.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 5.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 5;
“Related Third Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Related Third Party Dispute Representatives”	has the meaning given in Paragraph 8.6;
“Related Third Party Dispute Resolution Board”	has the meaning given in Paragraph 8.6;
“Related Third Party”	a party to: <ul style="list-style-type: none"> (a) another contract with the Authority or the Supplier which is relevant to this Agreement (provided that it is not an Ecosystem Agreement); or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Related Third Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 DISPUTE NOTICES

2.1 If a Dispute arises then:

(a) the Level 1 Dispute Representatives shall attempt in good faith to resolve the

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Dispute; and

- (b) if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice shall set out:

- (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 8.2 and 8.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Related Third Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Related Third Party Dispute pursuant to Paragraph 2.2(b), then:

- (a) if it is served by the Authority it shall be treated as a Related Third Party Dispute Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 8 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Related Third Party Dispute Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

- (a) first by commercial negotiation (as prescribed in Paragraph 4); and
- (b) lastly by recourse to arbitration (as prescribed in Paragraph 6) or litigation (in accordance with Clause 47 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 5) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 5.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Related Third Party Dispute Initiation Notice or proceedings under Paragraph 7 (*Urgent Relief*).

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- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.1, ten (10) Working Days;
 - (b) in Paragraph 5.2, five (5) Working Days; and
 - (c) in Paragraph 6.2, ten (10) Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Related Third Party Dispute Initiation Notice in respect of the relevant Dispute, the Parties shall refer the Dispute to the Level 2 Dispute Representatives for consideration and resolution. If the Parties are unable to resolve the Dispute within fifteen (15) Working Days of escalation to the Level 2 Dispute Representatives, then the Authority may, at its sole discretion, escalate any Dispute to the Level 3 Dispute Representatives for resolution. If the Parties are unable to resolve the Dispute within five (5) Working Days of escalation to the Level 3 Dispute Representatives then the provision of paragraph 4.2 shall apply.
- 4.2 If the Parties have not settled the Dispute in accordance with Paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice, and where the Dispute is of a kind referred to in Paragraph 5.1, either Party may serve a written notice to proceed to Expert Determination in accordance with Paragraph 5.1. For Disputes which are not of a kind referred to in Paragraph 5.1, the Parties have a right to refer the Dispute to arbitration in accordance with Paragraph 6.

5 EXPERT DETERMINATION

- 5.1 If a Dispute relates to a matter of an IT technical, financial technical or other technical nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.

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- 5.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days of the relevant request made pursuant to Paragraph 5.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
 - (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
 - (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 5.2(a) or 5.2(b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 5.1, such body as may be specified by the President of the Law Society on application by either Party.
- 5.3 The Expert shall act on the following basis:
- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - (b) the Expert's determination shall (in the absence of fraud or manifest error) be final and binding on the Parties, unless within twenty (20) Working Days of that decision a Party serves notice on the other Party referring the Dispute to either arbitration or court proceedings pursuant to Paragraph 7;
 - (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
 - (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;
 - (e) the process shall be conducted in private and shall be confidential; and
 - (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

6 ARBITRATION

- 6.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions

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of Paragraph 5, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 6.5.

- 6.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a “Counter Notice”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 6.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 6.3 If the Authority serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 6.5 shall apply; or
 - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 6.4 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 6.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 6.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 6.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 6.1 to 6.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“LCIA”) (subject to Paragraphs 6.5(e), (f) and (g));
 - (b) the arbitration shall be administered by the LCIA;
 - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - (d) if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

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- (e) the Authority shall decide in its discretion whether the Dispute shall be determined by a single arbitrator or a panel of three arbitrators. The single arbitrator or chair of the arbitral tribunal shall be a senior English-qualified lawyer who shall be a QC of at least ten years standing or a retired judge;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

7 URGENT RELIEF

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

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- (b) where compliance with Paragraph 2.1 may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

8 MULTI-PARTY DISPUTES

- 8.1 All Related Third Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 8 (the "**Related Third Party Dispute Resolution Procedure**").
- 8.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Related Third Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Related Third Party Dispute and specifies the Related Third Parties which are to be involved in the Related Third Party Dispute Resolution Procedure, such notice a "**Related Third Party Dispute Initiation Notice**".
- 8.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 6, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.
- 8.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within five (5) Working Days whether the Dispute is:
 - (a) a Related Third Party Dispute, in which case the Authority shall serve a Related Third Party Dispute Initiation Notice on the Supplier; or
 - (b) not a Related Third Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 7.

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- 8.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Related Third Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 8.6 Following service of a Related Third Party Dispute Initiation Notice a Related Third Party Dispute shall be dealt with by a board (in relation to such Related Third Party Dispute, the “**Related Third Party Dispute Resolution Board**”) comprising representatives from the following parties to the Related Third Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Related Third Party Dispute:
- (a) the Authority;
 - (b) the Supplier;
 - (c) each Related Third Party involved in the Related Third Party Dispute; and
 - (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together “**Related Third Party Dispute Representatives**”).
- 8.7 The Parties agree that the Related Third Party Dispute Resolution Board shall seek to resolve the relevant Related Third Party Dispute in accordance with the following principles and procedures:
- (a) the Parties shall procure that their Related Third Party Dispute Representatives attend, and shall use their best endeavours to procure that the Related Third Party Dispute Representatives of each Related Third Party attend, all meetings of the Related Third Party Dispute Resolution Board in respect of the Related Third Party Dispute;
 - (b) the Related Third Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Related Third Party Dispute Initiation Notice 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 service of the relevant Related Third Party Dispute Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00 am and 5.00 pm on a Working Day; and
 - (c) in seeking to resolve or settle any Related Third Party Dispute, the members of the Related Third Party Dispute Resolution Board shall have regard to the principle that a Related Third Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Related Third Party Dispute.
- 8.8 If a Related Third Party Dispute is not resolved between the Parties and all Related Third Parties within twenty five (25) Working Days of the issue of the Related Third Party Dispute Initiation Notice (or such longer period as the Parties may agree in

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writing), then:

- (a) either Party may request that the Related Third Party Dispute is referred to an expert in which case Paragraph 5 shall apply; and/or
- (b) subject to Paragraph 8.9, Paragraph 6 shall apply to the Related Third Party Dispute,

and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.

- 8.9 If a Related Third Party Dispute is referred to arbitration in accordance with Paragraph 6 or a Dispute becomes a Related Third Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier 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 Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

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SCHEDULE 8.5

EXIT MANAGEMENT (TRANSITION)

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Exit Management

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- "Assistance Commencement Date"** has the meaning set out in Paragraph 6.1(a)
- "Exclusive Assets"** those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services to the Authority;
- "Exit Information"** has the meaning given in Paragraph 4.1;
- "Exit Manager"** the person appointed by each Party pursuant to Paragraph 3.4 for managing the Parties' respective obligations under this Schedule;
- "Government Controlled Company"** means any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law;
- "Fair Market Value"** means the transfer value of any applicable assets or consumables, as determined with reference to assets of a similar type and condition, bought and sold in 'arms length' transactions in an open market. In the absence of agreement between the Parties, Fair Market Value shall be determined by an independent valuation expert appointed by the Parties;
- "Net Book Value"** the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
- "Non-Exclusive Assets"** those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
- "Public Procurement Process"** means the acquisition by public means of a public contract of works, suppliers or

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	services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, suppliers or services are intended for a public purpose, as the same is defined (as 'procurement') in section 2 of the Public Contracts Regulations 2015;
"Registers"	the register and configuration database referred to in Paragraphs 3.2(a) and 3.2(b);
"Services Transfer Date"	the date on which the Services are transferred from the control of and provision by the Supplier to the control of and provision by a Replacement Supplier;
"Termination Assistance Notice"	has the meaning given in Paragraph 6.1;
"Termination Assistance Period"	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended by the Parties from time to time;
"Termination Services"	the activities to be performed by the Supplier pursuant to the Exit Plan, and any other assistance required by the Authority pursuant to the Termination Assistance Notice;
"Transferring Assets"	has the meaning given in Paragraph 8.2(a);
"Transferring Contracts"	has the meaning given in Paragraph 8.2(c);
"Transferring Services"	means the Services or parts of a Service which are removed by the Authority in accordance with the provisions of the Agreement including on termination of the Agreement (in whole or in part);
"Termination Services"	the services and activities to be performed by the Supplier pursuant to the Exit Plan, and any other services required pursuant to the Termination Assistance Notice.

2 OVERVIEW

- 2.1 This Schedule sets out the exit management process by which the Supplier shall transfer Services to a Replacement Supplier (including to the Authority or a Government Controlled Company).

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3 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

- 3.1 The Supplier shall within 30 days from the Effective Date provide to the Authority a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 3.2 The Supplier shall, within three (3) months following the Effective Date and during the Term:
- (a) create and maintain a register of all Assets including their description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Services; and
 - (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services,

(the “Registers”)
- 3.3 The Supplier shall ensure 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 Agreement.
- 3.4 Each Party shall appoint an Exit Manager within three (3) months of the Effective Date. The Parties' Exit Managers shall liaise with one another in relation to all issues relevant to the expiry or termination of this Agreement.

4 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 4.1 On reasonable notice at any point(s) during the Term, the Supplier shall provide to the Authority such reasonable assistance as the Authority may require to enable the Authority to retender for Replacement Services and shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings) the following material and information (including access to it) in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence and/or to assist the Authority and/or its Replacement Supplier with the orderly transition of the Services from the Supplier to the Replacement Supplier:
- (a) details of the Service(s);
 - (b) a copy of the Registers (including details of where and how the Registers are held), updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Authority Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;

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- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees or those who may be Transferring Supplier Employees required to be provided by the Supplier under this Agreement, such information to include the Staffing Information as defined in Schedule 9.1 (*Staff Transfer*); and
- (g) such other material and information as the Authority shall reasonably require,

(together, the "Exit Information").

- 4.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement.
- 4.3 The Supplier shall provide updates of the Exit Information on an as-requested basis as soon as reasonably practicable and shall notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely affect the financial condition, business or operations of the Authority or adversely impact upon the potential transfer and/or continuance of any Services, and shall consult with the Authority in relation to any such changes.
- 4.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Services; and not be disadvantaged in any procurement process compared to the Supplier.
- 4.5 No later than two (2) months prior to the Services Transfer Date, the Supplier shall provide to the Authority and/or its Replacement Supplier an example of the Supplier's format of the payroll information using anonymised data to assist the Authority and/or its Replacement Supplier to carry out a trial run of the payroll for the Transferring Employees.

5 EXIT PLAN

- 5.1 The Supplier shall, within three (3) months after the Effective Date, deliver to the Authority a draft Exit Plan in a format agreed by the Authority which:
 - (a) sets out the Supplier's proposed methodology for achieving an orderly transition of Services (or a particular sub-set of the Services) from the Supplier to the Authority and/or its Replacement Supplier on the expiry or termination (in whole or in part) of this Agreement, and the maintenance of a 'business as usual' environment for the Authority during the Termination Assistance Period;
 - (b) complies with the requirements set out in Paragraph 5.3;
 - (c) is otherwise reasonably satisfactory to the Authority.

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- 5.2 The Parties shall use reasonable endeavours to agree the Exit Plan. If the Parties are unable to agree the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 The Exit Plan shall set out, as a minimum:
- (a) a detailed description of both the transfer and cessation processes, including a timetable;
 - (b) how the Services will transfer to the Replacement Supplier(s) and/or the Authority;
 - (c) details of any contracts which will be available for transfer to the Authority and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
 - (d) proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Services following the Services Transfer Date;
 - (e) proposals for providing the Authority or a Replacement Supplier copies of all documentation relating to the use and operation of the Services and required for their continued use;
 - (f) proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Services;
 - (g) proposals for the identification and return of all Authority Assets in the possession of and/or control of the Supplier or any third party;
 - (h) proposals for the disposal of any redundant Deliverables and materials;
 - (i) how the Supplier will ensure that there is no disruption to or degradation of the Services during the Termination Assistance Period;
 - (j) any other information or assistance reasonably required by the Authority or a Replacement Supplier;
 - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period, together with a timetable, any critical issues, any charges applicable in accordance with this Agreement and a capped estimate of such charges, in each case for those Termination Services; and
 - (l) procedures to:
 - (i) deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*);
 - (ii) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and

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- (iii) identify or develop any measures for the purpose of the Employment Regulations envisaged in respect of Transferring Supplier Employees.

5.4 The Supplier shall:

- (a) maintain and update the Exit Plan no less frequently than:
 - (i) once every six (6) months;
 - (ii) no later than twenty (20) Working Days after a request from the Authority for an up-to-date copy of the Exit Plan; and
 - (iii) as soon as reasonably possible following a Termination Assistance Notice or 6 months prior to the expiry of this Agreement (or such other period as required by the Authority), and in any event no later than twenty (20) Working Days after the date of the Termination Assistance Notice, to prepare a final form that could be implemented immediately;
 - (iv) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following, any material change to the Services,

and shall submit each updated Exit Plan for the Authority's agreement in accordance with paragraph 5.2 above; and

- (b) jointly review and verify the Exit Plan if required by the Authority and promptly correct any identified failures.

5.5 Only if (by notification to the Supplier in writing) the Authority agrees with a draft Exit Plan provided by the Supplier under Paragraph 5.2, shall that draft become the Exit Plan for this Contract.

5.6 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

5.7 In the event that Termination Assistance is required by the Authority but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 5.2, the Supplier shall provide the Termination Services in good faith and in accordance with the principles in this Schedule and the last Authority approved version of the Exit Plan (insofar as it still applies).

6 TERMINATION SERVICES

Notification of Requirements for Termination Services

6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "Termination Assistance Notice"):

- (a) at least 4 months prior to the date of termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice; or

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- (b) where, pursuant to any right under the Agreement or at Law, the Authority has given written notice to remove any Services (or a particular sub-set of the Services) from the scope of the Agreement (whether following a competitive bid process or otherwise).

The Termination Assistance Notice shall specify:

- (a) the date from which the Supplier shall commence providing the Termination Services ("**Assistance Commencement Date**");
- (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 12 months after the date that the Supplier ceases to provide the Services.

- 6.2 The Authority shall have an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire. The Authority shall have the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- (a) continue to provide the Services (as applicable) and otherwise perform its obligations under this Agreement and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
 - (b) provide to the Authority and/or its Replacement Supplier any reasonable assistance and/or access requested by the Authority or the Replacement Supplier including assistance and/or access to allow the Services to continue without interruption following the termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
 - (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 Authority; and
 - (d) subject to Paragraph 6.5, provide the Services and the Termination Services at no detriment to the KPI's, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Agreement;
 - (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority; and

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(f) seek the Authority's prior written consent to access any Authority Premises from which the de-installation or removal of any Assets is required.

6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier 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 Change Control Procedure.

6.5 If the Supplier demonstrates to the Authority'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 Supplier's ability to meet one or more particular KPI's, the Parties shall vary the relevant KPI(s) and/or any applicable Service Credits to take account of such adverse effect.

7 TERMINATION OBLIGATIONS

7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.

7.2 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 Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), the Supplier shall:

- (a) cease to use the Authority Data;
- (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion. The Supplier shall also delete all copies of any Personal Data unless it is required to be retained by EU or member state laws;
- (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
 - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and

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- (iv) any items that have been on-charged to the Authority, such as consumables;
 - (e) vacate any Authority Premises;
 - (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after expiry or termination to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and
 - (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination 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 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.
- 7.4 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.
- 8 ASSETS, SUB-CONTRACTS AND SOFTWARE**
- 8.1 Following notice of termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority'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;
 - (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.
- 8.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Authority shall provide written notice to the Supplier setting out:

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- (a) which, if any, of the Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");
- (b) which, if any, of:
 - (i) the Exclusive Assets that are not Transferring Assets; and
 - (ii) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
- (c) which, if any, of the Sub-contracts the Authority does not require to be assigned or novated to the Authority and/or the Replacement Supplier and all other Sub-contracts shall be the "**Transferring Contracts**",

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferring Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Replacement Services.

- 8.3 With effect from the expiry of the Termination Assistance Period, should the Authority so require, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges or any Termination Payment.
- 8.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for them.
- 8.5 Where the Supplier is notified in accordance with Paragraph 8.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferring Assets or any Non-Exclusive Assets, the Supplier 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 Authority) for the Authority and/or the Replacement Supplier 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 Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 8.6 During the Termination Assistance Period, the Supplier shall not vary, terminate, assign, novate, purport to vary, nor allow any of the listed Transferring Contracts used wholly or mainly to provide the Transferring Services to expire, without the Authority's prior written consent (such consent not to be unreasonably withheld).

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- 8.7 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Authority and/or the Replacement Supplier. The Supplier shall provide full copies of the Transferring Contracts to the Authority (and/or the Replacement Supplier at the Authority's request) no less than 8 weeks before the date the novation or assignment is to take effect. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 8.8 The Authority shall:
- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, 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, or as applicable, procure that the Replacement Supplier does the same.
- 8.9 The Supplier shall hold any Transferring Contracts on trust for the Authority until the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has taken place.
- 8.10 The Supplier shall transfer to the Replacement Supplier the benefit of any manufacturers' warranties ("**Manufacturer's Warranties**") applicable wholly to the Transferring Services where the Supplier is able to transfer the benefit thereunder. To the extent that the benefit of any such Manufacturer's Warranty cannot be transferred to the Replacement Supplier except by way of a novation agreement or by obtaining a consent, an approval, a waiver or the like from the manufacturer or other third party ("**Consents**"):
- (a) the Supplier shall (unless otherwise agreed) use commercially reasonable efforts to procure such Consents or the novation of the relevant Manufacturer's Warranties to the Replacement Supplier; and
 - (b) unless or until any such Manufacturer's Warranty is so novated or any necessary Consent is obtained, the Supplier will receive and hold the benefit of the relevant Manufacturer's Warranty for the Replacement Supplier and the Authority will pay or reimburse any sums (as agreed between the Parties) properly payable in connection with such Manufacturer's Warranty after each Services Transfer Date, as the case may be.
- 8.11 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract.

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9 SUPPLIER PERSONNEL

- 9.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.
- 9.2 The Supplier shall not and shall procure that any relevant Sub-contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) without the prior written consent of the Authority to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier or Replacement Sub-contractor.
- 9.3 During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Sub-contractor shall:
- (a) give the Authority and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to the Supplier's personnel and/or their consultation representatives to present the case for transferring their employment to the Authority and/or the Replacement Supplier and/or to discuss or consult on any measures envisaged by the Authority, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;
 - (b) consent to any election by the Authority, Replacement Supplier and/or Replacement Sub-contractor to carry out pre-transfer collective consultation under S198A - 198B of the Trade Union and Labour Relations (Consolidation) Act 1992 and thereafter facilitate such consultation;
 - (c) co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services.
- 9.4 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply either where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy or where an offer is made pursuant to an express right to make such offer under Schedule 9.1 (*Staff Transfer*) in respect of a Transferring Supplier Employee not identified in the Supplier's Final Supplier Personnel List.

10 CHARGES

- 10.1 The Authority shall pay the Charges to the Supplier in respect of the Termination Services carried out during the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), in accordance with the rates set out in Schedule 7.1 (Charges and Invoicing), The Authority shall not be required to pay any other costs in respect of the Termination Services

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- 10.2 Except as otherwise expressly specified in this Agreement, the Supplier shall not charge for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier 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.

11 APPORTIONMENTS

- 11.1 Where applicable, 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 Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
- (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

- 11.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 11.1 as soon as reasonably practicable.

12 DISPUTES

During any Termination Assistance Period, the Supplier shall maintain and update a list of on-going and/or threatened disputes in relation to any of the Supplier's Solution or Transferring Contracts in so far as they relate to the Transferring Services and shall use its commercially reasonable efforts to resolve such disputes. The Supplier shall not settle any such dispute(s) nor accept any liability (either on its own behalf or that of the Authority) without obtaining the Authority's prior written consent (which shall not be unreasonably withheld) where any such settlement affects the interests of the Authority.

13 Ethical Walls Agreement

The Supplier shall prior to the expiry or earlier termination of this Agreement enter into an agreement in the form set out at Annex 1 of this Schedule 8.5 without which the Authority may elect at its sole discretion that the Supplier may not take part in any future procurement exercise carried out by the Authority in relation to the Services (including Replacement Services).

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ANNEX 1: ETHICAL WALLS AGREEMENT

This Agreement is dated [] 20[]

Between

- (1) THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS of 100 Parliament Street, Westminster, London SW1A 2BQ (the "Authority"); and
- (2) [NAME OF COUNTERPARTY] whose [registered office][principal place of business] is at [ADDRESS OF COUNTERPARTY][and whose company number is [COUNTERPARTY COMPANY NUMBER]] (the "Counterparty").

BACKGROUND

- A. The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the "PCR").
- B. The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "Purpose").
- C. The parties wish to enter into this Agreement to ensure a set of management processes, barriers and disciplines are put in place that ensure 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 words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" means any person who is a subcontractor, subsidiary, subsidiary undertaking or holding company of the Counterparty;

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

"Bid Team" means any Counterparty or Affiliate, connected to the preparation of an ITT Response;

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Authority under any Contract have or have had access to information which creates or may create a conflict of interest.

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“Contract” means the [contract for [] dated [] between the Authority and the Counterparty and/or an Affiliate;

“Government Body” means a Crown body or any department, agency, office or other emanation of the Crown together with any of its arms length bodies;

“Invitation to Tender” or **“ITT”** means an invitation to submit tenders issued by the Authority as part of an ITT Process;

“ITT Process” means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Authority has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Authority as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

“ITT Response” means the tender submitted or to be submitted by the Counterparty or an Affiliate (or, where relevant, by an Other Bidder) in response to an ITT;

“Other Affiliate” any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

“Other Bidder” means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

“Parties” means the Authority and the Counterparty;

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

- 1.2 Reference to the disclosure of information includes any communication or making available of information and includes both direct and indirect disclosure;
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Authority or Representatives of the Counterparty (as the case may be);
- 1.4 Reference to the representatives of any person includes the officers, directors, employees, advisers and agents of that person and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance;
- 1.5 Reference to persons includes legal and natural persons;
- 1.6 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time;

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- 1.7 Reference to clauses and recitals is to clauses of and recitals to this Agreement;
- 1.8 Reference to any gender includes any other;
- 1.9 Reference to writing includes email;
- 1.10 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;
- 1.11 The words “include” and “including” are to be construed without limitation;
- 1.12 The singular includes the plural and vice versa; and
- 1.13 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 Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:
 - 2.1.1 shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Authority under the Contract or pursuant to an open and transparent ITT Process;
 - 2.1.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty’s relationship with the Authority under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
 - 2.1.3 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, shall comply with Clause 2.2.
- 2.2 The Counterparty shall:
 - 2.2.1 not assign any of the Conflicted Personnel to the Bid Team at any time;

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- 2.2.2 provide to the Authority a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
 - 2.2.3 ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (a) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
 - (b) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation its participation in the ITT Process becoming available to the Bid Team.
 - 2.2.4 ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or 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;
 - 2.2.5 ensure that confidentiality agreements which flow down the Counterparty's obligations in this Agreement are entered into as necessary between the Authority and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Authority;
 - 2.2.6 physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
 - 2.2.7 provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
 - 2.2.8 monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement ensure adherence to the ethical wall arrangements;
 - 2.2.9 ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
 - 2.2.10 comply with any other action as the Authority, acting reasonably, may direct.
- 2.3 In addition to the obligations set out in Clause 2.1.1 and 2.1.3, the Counterparty shall:
- 2.3.1 notify the Authority immediately of all potential and/or actual conflicts of interest that arise; and

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- 2.3.2 submit in writing to the Authority full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- 2.3.3 seek the Authority's approval thereto,
- which the Authority shall have the right to grant, grant conditionally or deny (if the Authority denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Authority to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Authority there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.
- 2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1.3 and 2.2.
- 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 Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.
- 2.8 The actions of the Authority pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- 2.9 In no event shall the Authority be liable for any bid costs incurred by:
- 2.9.1 the Counterparty or any Affiliate or Representative; or
- 2.9.2 any Other Bidder, Other Affiliate or Other Representative,
- as a result of any breach by the Counterparty, Affiliate or Representative of this Agreement, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

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2.10 The Counterparty acknowledges and agrees that:

2.10.1 neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and

2.10.2 in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Authority shall have the right to terminate this Agreement and the Counterparty's participation in the ITT Process.

3 SOLE RESPONSIBILITY

3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Authority 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 Subject to clause 6.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.

5.2 The Authority 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 Government Body; or

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

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5.2.3 the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 6.

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

6 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

6.1 Save for any other Government Body whose information is disclosed pursuant to or by virtue of this Agreement, a person who is not party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Agreement. For the avoidance of doubt, the consent of any person who is not a party to this Agreement is not required to effect a termination or variation of this Agreement.

6.2 Any Government Body whose information is disclosed pursuant to or by virtue of this Agreement shall have the right to enforce the terms of this Agreement as though it is the Authority.

7 TRANSPARENCY

7.1 The parties acknowledge and agree that the Authority is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to potential bidders in the ITT Process, 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.	Properly addressed and delivered as evidenced by signature of a delivery receipt

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	Otherwise, delivery will occur at 9.00am on the next Working Day.	
Prepaid, Royal Mail Signed For™ 1 st 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	Authority
Contact		
Address		
Email		

- 8.4 This Clause 9 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.

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10 GOVERNING LAW AND JURISDICTION

10.1 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.

10.2 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 Authority

Name:

Signature:

Position in Authority:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

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SCHEDULE 8.6

BUSINESS CONTINUITY AND DISASTER CAPABILITY

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Business Continuity and Disaster Capability

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- “Business Continuity Plan”** has the meaning given in Paragraph 2.2(a)(ii);
- “Business Continuity Services”** has the meaning given in Paragraph 4.2(b);
- “Disaster”** 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 period of 5 working days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
- “Disaster Capability Plan”** has the meaning given in Paragraph 2.2(a)(iii);
- “Disaster Capability Services”** the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
- “Related Service Provider”** any person who provides services to the Authority in relation to this Agreement from time to time which persons include as at the Effective Date

2 BCDC PLAN

- 2.1 Within thirty (30) Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier 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; and
 - (b) ensure the recovery of the Services in the event of a Disaster.
- 2.2 The BCDC Plan shall:
- (a) be divided into three parts:
 - (i) Part A which shall set out general principles applicable to the BCDC Plan;
 - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**); and

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- (iii) Part C which shall relate to disaster capability (the “**Disaster Capability Plan**”); and
 - (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 and 5.
- 2.3 Following receipt of the draft BCDC Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft BCDC Plan as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the draft BCDC Plan no later than twenty (20) Working Days after the date on which the draft BCDC Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft BCDC Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the draft BCDC Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft BCDC Plan to the Authority for the Authority's approval within twenty (20) Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft BCDC Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3 PART A OF THE BCDC PLAN: GENERAL PRINCIPLES AND REQUIREMENTS

3.1 The BCDC Plan shall:

- (a) set out how the business continuity and disaster capability elements of the BCDC Plan link to each other;
- (b) detail how the BCDC Plan links and interoperates with any overarching and/or connected disaster capability or business continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (c) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the BCDC Plan; and
- (d) provide details of how the invocation of any element of the BCDC Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (e) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity and disaster capability where applicable;
- (f) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;

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- (g) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.
- (h) contain a communication strategy;
- (i) provide for documentation of processes, including business processes, and procedures;
- (j) 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; and
 - (iv) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (k) identify the procedures for reverting to "normal service";
- (l) 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;

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

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the BCDC Plan;
- (b) the adverse impact of any Disaster, service failure, or disruption on the operations of the Authority is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
- (d) it details a process for the management of disaster capability testing.

3.3 The BCDC Plan shall be upgradeable and sufficiently flexible to support any changes to the Services or to the business processes facilitated by and the business operations supported by the Services.

3.4 The Supplier shall not be entitled to any relief from its obligations under the KPIs or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Agreement.

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4 PART B OF THE BCDC PLAN - BUSINESS CONTINUITY PLAN

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 Authority 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 Supplier upon resumption of the Services in order to address any prevailing effect 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 KPIs with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the KPIs 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 PART C OF THE BCDC PLAN - DISASTER CAPABILITY PLAN

5.1 The Disaster Capability Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.

5.2 The Disaster Capability Plan shall be invoked only upon the occurrence of a Disaster.

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- 5.3 The Disaster Capability Plan shall include an approach to business continuity and disaster recover that addresses the following:
- (a) loss of access to the Authority Premises;
 - (b) loss of utilities to the Authority Premises;
 - (c) loss of the Supplier's helpdesk system;
 - (d) loss of a Sub-contractor;
 - (e) emergency notification and escalation process;
 - (f) contact lists;
 - (g) staff training and awareness;
 - (h) BCDC Plan testing;
 - (i) post implementation review process;
 - (j) any applicable KPIs with respect to the provision of the Disaster Capability Services and details of any agreed relaxation to the KPIs in respect of other Services during any period of invocation of the Disaster Capability Plan;
 - (k) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Capability Plan is invoked;
 - (l) access controls to any disaster capability sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - (m) testing and management arrangements.

6 REVIEW AND AMENDMENT OF THE BCDC PLAN

- 6.1 The Supplier shall review the BCDC 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 BCDC Plan (or any part) having been invoked pursuant to Paragraph 8; and
 - (c) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 6.1(a) and 6.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

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- 6.2 Each review of the BCDC Plan pursuant to Paragraph 6.1 shall be a review of the procedures and methodologies set out in the BCDC 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 BCDC Plan or the last review of the BCDC 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 BCDC Plan. The review shall be completed by the Supplier within the period required by the BCDC Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDC Plan, provide to the Authority 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 Supplier's proposals (the “**Supplier's Proposals**”) for addressing any changes in the risk profile and its proposals for amendments to the BCDC Plan following the review detailing the impact (if any and to the extent that the Supplier 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.
- 6.3 Following receipt of the Review Report and the Supplier’s Proposals, the Authority shall:
- (a) review and comment on the Review Report and the Supplier’s Proposals as soon as reasonably practicable; and
 - (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier’s Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.
- 6.4 If the Authority rejects the Review Report and/or the Supplier’s Proposals:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall then revise the Review Report and/or the Supplier’s Proposals as the case may be (taking reasonable account of the Authority’s comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier’s Proposals to the Authority for the Authority’s approval within 20 Working Days of the date of the Authority’s notice of rejection. The provisions of Paragraph 6.3 and this Paragraph 6.4 shall apply again to any resubmitted Review Report and Supplier’s Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

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6.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier'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 Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7 TESTING OF THE BCDC PLAN

7.1 The Supplier shall test the BCDC Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 7.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the BCDC Plan at any time where the Authority 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 BCDC Plan.

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

7.3 The Supplier shall undertake and manage testing of the BCDC Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the supervision of the Authority or its nominee.

7.4 The Supplier shall ensure that any use by it or any Sub-contractor of "live" data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.

7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:

- (a) the outcome of the test;
- (b) any failures in the BCDC Plan (including the BCDC Plan's procedures) revealed by the test; and
- (c) the Supplier's proposals for remedying any such failures.

7.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the BCDC Plan) to remedy any failures in the BCDC Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.

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7.7 For the avoidance of doubt, the carrying out of a test of the BCDC Plan (including a test of the BCDC Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.

8 INVOCATION OF THE BCDC PLAN

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

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SCHEDULE 8.7

CONDUCT OF CLAIMS

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Conduct of Claims

1 INDEMNITIES

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - (d) the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:
 - (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

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- (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2 SENSITIVE CLAIMS

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.