

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **Schedule 8.2**

### **CHANGE CONTROL PROCEDURE**

## Change Control Procedure

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

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

### 5 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

5.1 This Schedule sets out the procedure for dealing with Changes.

5.2 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.

5.3 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;

- (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) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

**5.4 NOT USED.**

**5.5** 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.

**5.6** The Supplier shall:

- (a) within 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.

## **6 COSTS**

**6.1** Subject to Paragraph 3.3:

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

- (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) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
  - (ii) such costs exceed those in the accepted Impact Assessment Estimate.

6.2 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 the Supplier's Pricing Model as in Schedule 7 (*Charges and Invoicing*). 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.

6.3 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.

## 7 CHANGE REQUEST

7.1 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.

7.2 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 10 Working Days of the date of issuing the Change Request.

7.3 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.

7.4 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:

- (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.

## **8 IMPACT ASSESSMENT**

8.1 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; and
- (b) details of the impact of the proposed Contract Change on the Services, 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 Performance Indicators and/or the Target Performance Levels;
  - (ii) the format of Authority Data, as set out in the Services Description;
  - (iii) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;
  - (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 implementation, 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.

- 8.2 If the Contract Change involves the processing or transfer of any Personal Data outside the UK, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).
- 8.3 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, it.
- 8.4 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 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 10 Working Days of receiving such notification. 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.
- 8.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
  - (b) facilitate the Financial Transparency Objectives;
  - (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 Change; and
  - (f) include details of any new Sub-contracts necessary to accomplish the Change.

## **9 AUTHORITY'S RIGHT OF APPROVAL**

- 9.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 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 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 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 10 Working Days.

9.2 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 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.

9.3 If the Authority does not sign the Change Authorisation Note within 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 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **10 SUPPLIER'S RIGHT OF APPROVAL**

10.1 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 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

## **11 FAST-TRACK CHANGES**

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

11.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 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 £500,000.00 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 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

11.3 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 4 in a 12 month period.

## **12 OPERATIONAL CHANGE PROCEDURE**

12.1 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.

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

12.3 The RFOC shall include the following details:

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

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



- 12.5 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.

### **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.

### 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:		

## ANNEX 1: 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: _____

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **Schedule 8.3**

### **DISPUTE RESOLUTION PROCEDURE**

## Dispute Resolution Procedure

### 1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>“CEDR”</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>“Counter Notice”</b>	has the meaning given in Paragraph 7.2;
<b>“Expert”</b>	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
<b>“Expert Determination”</b>	determination by an Expert in accordance with Paragraph 6;
<b>“Mediation Notice”</b>	has the meaning given in Paragraph 4.2;
<b>“Mediator”</b>	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
<b>“Multi-Party Dispute”</b>	a Dispute which involves the Parties and one or more Related Third Parties;
<b>“Multi-Party Dispute Representatives”</b>	has the meaning given in Paragraph 9.6;
<b>“Multi-Party Dispute Resolution Board”</b>	has the meaning given in Paragraph 9.6;
<b>“Related Third Party”</b>	a party to:  (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or  (b) a Sub-contract; and
<b>“Supplier Request”</b>	a notice served by the Supplier requesting that the Dispute be treated as a Multi-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 Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

### **2.2 A Dispute Notice:**

- (a) 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 9.2 and 9.3 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 Multi-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 Multi-Party Dispute pursuant to Paragraph 2.2(b), then:**

- (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure 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 9 shall apply.

### **2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure 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);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 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 Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

### **3 EXPEDITED DISPUTE TIMETABLE**

- 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 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 4.2(c), 10 Working Days;
  - (b) in Paragraph 5.2, 10 Working Days;
  - (c) in Paragraph 6.2, 5 Working Days; and
  - (d) in Paragraph 7.2, 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. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

### **4 COMMERCIAL NEGOTIATION**

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's Contract Manager and the Supplier's Programme Director

4.2 If:

- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “**Mediation Notice**”).

## 5 **MEDIATION**

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

## 6 **EXPERT DETERMINATION**

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, 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.



- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, 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 6.2(a) or (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 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.
- 6.3 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 a material failure to follow the agreed procedures) be final and binding on the Parties;
  - (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 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 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.

## **7 ARBITRATION**

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 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 7.5 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 15 Working Day period.
- 7.3 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 7.5 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.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (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 7.5(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 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;
  - (e) the chair of the arbitral tribunal shall be British;

- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

## **8 URGENT RELIEF**

- 8.1 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 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## **9 MULTI-PARTY DISPUTES**

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 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 Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".
- 9.3 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 7, 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.
- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
  - (b) not a Multi-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 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute,

the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

- (a) the Authority;
- (b) the Supplier;
- (c) each Related Third Party involved in the Multi-Party Dispute; and
- (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

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

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

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure 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 5 Working Days of service of the relevant Multi-Party Procedure 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 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or

(c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-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.

- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-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.

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 8.4**

### **REPORTS AND RECORDS PROVISIONS**

## Reports and Records Provisions

### 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 (once approved, the “**Transparency Reports**”).
- 1.2 If the Authority rejects any draft 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 3
- 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 Authority may require any or all of the following reports:
  - (a) delay reports;
  - (b) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
  - (c) reports which the Supplier is required to supply as part of the Management Information;
  - (d) annual reports on the Insurances;
  - (e) security reports; and
  - (f) Force Majeure Event reports.

### 3 RECORDS

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together “**Records**”):
  - (a) in accordance with the requirements of The National Archives 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 shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
  - (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
  - (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.



## **ANNEX 1: NOT USED**

## **ANNEX 2: 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, 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 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 Plan*).**
- 18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement**

**ANNEX 3: RECORDS TO BE KEPT AND MADE AVAILABLE TO THE  
AUTHORITY ON REQUEST**

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
Cl.5.5 (e), (f) 17.1(a), 17.2(a)(ii)	Documentation	As appropriate and agreed by the Authority	.	-	Authority
Cl 14.3	Key Personnel	Sch 9.2	Effective Date	On replacement of Key Personnel	Authority
Sch 2.2, Part B Para 2.3	Performance Monitoring Report	Sch 2.2, Part B	Operational Service Commencement	Within 2 Working Days of the scheduled monthly Programme Board meetings	Authority
Part A – Security Assurance  Sch 2.4, Para 4.4	Security Management Plan	Sch 2.4, Annex 3	Within 20 Working Days of the Effective Date	Regular review and at least annually	Authority
Part A – Security Assurance  Sch 2.4, Para 6.1, 6.2 and 6.3	Security certificates	As appropriate and agreed by the Authority	Prior to receiving, storing or processing any Authority Data	-	-

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
Sch 2.5, Para 4	Evidence of Insurances	Sch 2.5	Effective Date	Within 15 days after policy renewal or replacement	Authority
CI 22	Commercially Sensitive Information	Sch 4.2	Effective Date	Upon Agreement by the Authority to vary the information	Authority and/or Auditor
CI 15.7	Notified Key Subcontractors	Sch 4.3	Effective Date	On replacement of key subcontractor	Authority
CI 15.5	Third Party Contracts	Sch 4.4	Effective Date	On appointment of subcontract	Authority
CI 15.6	Notified Key Sub-Contractors	Sch 4.3	Effective Date	With each approved appointment or variation	Authority
CI 15.23	Supply chain Transparency Information Reports	Sch 8.4, Annex 4	30 days prior to the end of each financial year	Every 12 months	Authority
CI 16,17	Software	Sch 5	Operational Services Commencement Date	Upon Agreement by the Authority to vary the information	Authority
CI 6.4	Detailed Implementation	Sch 6	Within 20 Working	Every 3 months from	Authority

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
	Plan		Days of Effective Date	Effective Date	
Sch 7, Part E Para 1.1	Template Invoice	As appropriate and agreed by the Authority	Within 10 Working Days of the Effective Date	Upon Agreement by the Authority to vary the template	Authority
Sch 7, Annex 4	Risk Register	Sch 7, Annex 4	Effective Date	Upon Agreement by the Risk Management Board	Authority
Sch 7.4 Para 2.3(b)	Financial Indicator Reports	Sch 7.4 para 2.5	As specified in para 2.3(b) of Sch 7.4	As specified in para 2.3(b) of Sch 7.4	Authority
Sch 7.5, para 1.1	Quarterly Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of each Quarter	-	Authority
Sch 7.5, Part B, para 1.2	Annual Contract Report	Sch 7.5, Part B, para 1.2	Within 2 month of the end of the Contract Year to which that report relates	-	Authority
Sch 7.5 Part B,	Financial Reconciliation	Sch 7.5, Part B,	Within 6 months	-	Authority

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
para 1.2	Report	para 1.2	after the end of the Term		
Sch 8, Para 3.3	Representation and Structure of boards	Sch 8 Annex 1	Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority	-	Authority
Sch 8.2 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 Working Days of date of receiving change request.	-	Authority
Sch 8.2 Para 5	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Authority to update under Schedule 8.2 Para 5.4	Authority
Sch 8.2, Para 4	Change Request	Sch 8.2, Annex 1	Within 10 Working Days of Authority issuing the Change	-	Authority

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
			Request		
Sch 8.3, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation	Authority
Sch 8.3, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Authority
Sch 8.4, Para 1	Reports and Records Provisions	Sch 8.4, Annex 1	Within 3 months of the Effective Date	Frequency specified in Sch 8.4, Annex 1	Authority
Sch 8.5, Para 2.1(a)	Register of All Assets, Sub-contracts and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 8.5, Para 2.1(b)	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 8.5, Para 3.1	Exit Information	As appropriate and agreed by the	On reasonable notice given by the	Within 10 Working Days of Authority's written request	Authority and its potential Replacement



<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
		Authority	Authority at any point during the Term		Suppliers
Sch 8.5, Para 4.1	Exit Plan	Sch 8.5, Para 5.3	Within 3 months of the Effective Date	<p>In the first month of each contract year; and</p> <p>Within 14 days if requested by the Authority following a Financial Distress Event</p> <p>Within 20 days after service of Termination Notice or 6 months prior to expiry of the Agreement</p>	Authority
Sch 8.5, Para 6.7(b)	Authority Data (handback)	Sch 8.4, Para 3 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-	Authority
Sch 8.5, Annex 1, Para .1, Para .3 & Para	Termination Services supporting documentation and knowledge transfer	As appropriate and agreed by the	As specified in the Termination Assistance	As specified in the Termination Assistance Notice or otherwise	-

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
.4	material	Authority	Notice and in any event prior to the end of the Termination Assistance Period	requested by the Authority	
Sch 8.6 Service Continuity	Service Continuity Plan	Sch 8.6, Para 2.2	Within 40 days from the Effective Date	Sch 8.6, Para 7.1	Authority
Sch 8.6, Para 6.2	Service Continuity Plan Review Report	Sch 8.6, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.	-	-
Sch 8.6	Corporate Resolution Planning Information	Sch 8.6, Para 11.3	Sch 8.6 Part B Para 11.2	Sch 8.6, Para 11.8	Authority
Sch 9, Part E, Para .1	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Authority	Sch 9, Para .1 A-D	At such intervals as are reasonably requested by the Authority	Authority
Sch 9,	Supplier's Final	As	At least 20	Upon any	Authority

<b>Applicable Clause/ Paragraph</b>	<b>Required Data</b>	<b>Format of Data</b>	<b>Initial Upload Date</b>	<b>Update Requirement</b>	<b>Access Permission and Access Event (where applicable)</b>
Part E, Para .2	Supplier Personnel List	appropriate and agreed by the Authority	Working Days prior to the Service Transfer Date	material change to the list of employees	and, at the discretion of the Authority, the Replacement Supplier and/or any Replacement Subcontractor
Sch 9, Part E, Para .6	Information relating to the manner in which the services are organised	As appropriate and agreed by the Authority	Effective Date	-	Authority
Sch 9, Annex E1	List of Notified Sub-contractors	As appropriate and agreed by the Authority	Effective Date	Upon any change	Authority
Sch 9.2	Key Personnel	Sch 9.2	Effective Date	As amended from time to time	Authority
Sch 11, 0 Para .1	Reports on Data Subject Access Requests	As appropriate and agreed by the Authority	As agreed with Authority	As agreed with Authority	Authority and Supplier

## ANNEX 4: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[ ]			
	Under this Agreement		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year	£[ ]	100%	£[ ]	100%
Total value of Sub-contracted revenues (£) in this Financial Year	£[ ]	[ ]	£[ ]	[ ]
Total value of Sub-contracted revenues to SMEs (£) in this Financial Year	£[ ]	[ ]	£[ ]	[ ]
Total value of Sub-contracted revenues to VCSEs (£) in this Financial Year	£[ ]	[ ]	£[ ]	[ ]

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 8.5**

### **EXIT MANAGEMENT**

## Exit Management

### 1. DEFINITIONS

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

<b>“Emergency Exit”</b>	any termination of this Agreement which is a: <ul style="list-style-type: none"><li>(a) termination of the whole or part of this Agreement in accordance with Clause 33 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;</li><li>(a) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (<i>Termination Rights</i>); or</li><li>(b) wrongful termination or repudiation of this Agreement by either Party;</li></ul>
<b>“Ethical Wall Agreement”</b>	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
<b>“Exclusive Assets”</b>	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
<b>“Exit Information”</b>	has the meaning given in Paragraph 3.1;
<b>“Exit Manager”</b>	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
<b>“Net Book Value”</b>	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
<b>“Non-Exclusive Assets”</b>	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;
<b>“Ordinary Exit”</b>	any termination of the whole or any part of this Agreement which occurs:

	<ul style="list-style-type: none"> <li>(a) pursuant to Clause 33 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or</li> <li>(b) as a result of the expiry of the Initial Term or any Extension Period;</li> </ul>
<b>“Registers”</b>	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
<b>“Transferable Assets”</b>	those of the Exclusive Assets which are capable of legal transfer to the Authority;
<b>“Transferable Contracts”</b>	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
<b>“Transferring Contracts”</b>	has the meaning given in Paragraph 7.2(b).

## 2. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

### 2.1. During the Term, the Supplier shall:

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

the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

- (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
- (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.

2.2. The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.

2.3. Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

### **3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES**

3.1. On reasonable notice at any point during the Term, the Supplier 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 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:

- (a) details of the Service(s);
- (b) a copy of the Registers, 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;
- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and



- (g) such other material and information as the Authority shall reasonably require,

(together, the “**Exit Information**”).

- 3.2. The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information 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 (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).
- 3.3. The Supplier shall:
  - (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
  - (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.
- 3.4. The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.
- 3.5. The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
  - (a) prepare an informed offer for those Services; and
  - (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

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

- 4.1. The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 4.2. If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

#### **5. EXIT PLAN**

- 5.1. The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
  - (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the

Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Agreement;

- (b) complies with the requirements set out in Paragraph 5.2; and
- (c) is otherwise reasonably satisfactory to the Authority.

5.2. The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 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) how the Exit Information is obtained;
- (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
- (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
- (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- (e) the management structure to be employed during the Termination Assistance Period;
- (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
- (g) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
- (h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
- (i) a timetable and critical issues for providing the Termination Services;

- (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
  - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;
  - (l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9 (*Staff Transfer*); and
  - (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4. The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5. The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

#### **Finalisation of the Exit Plan**

- 5.6. Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7. The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in

accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

## **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"**) 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. The Termination Assistance Notice shall specify:
- (a) the date from which Termination Services are required;
  - (b) the nature of the Termination Services required; and
  - (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the terminated Services.
- 6.2. The Authority shall have:
- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the Services or, if applicable, beyond 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; and
  - (b) 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, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
  - (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, 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;
  - (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
  - (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 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 Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

#### **Termination Obligations**

- 6.6. The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7. Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the 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;
  - (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
    - (iv) any items that have been on-charged to the Authority, such as consumables;
  - (e) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Agreement 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 requests for access under this Paragraph 6.7(f)(ii).
- 6.8. Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.
- 3.7 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

## **7. ASSETS, SUB-CONTRACTS AND SOFTWARE**

- 7.1. Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, 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.
- 7.2. 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:
  - (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
    - (i) which, if any, of:
      - (A) the Exclusive Assets that are not Transferable Assets; and
      - (B) the Non-Exclusive Assets,
  - (b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),
- 7.3. in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services.
- 7.4. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:
  - (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
  - (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.5. 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 the same.
- 7.6. Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Authority and/or the Replacement Supplier requires continued use of any

Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

- (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.

7.7. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

7.8. 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.

7.9. The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.

7.10. 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 7.6 both:

- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clause 16 (*Intellectual Property Rights*) and/or Clause 17 (*Transfer and Licences Granted by the Supplier*).

## **8. SUPPLIER PERSONNEL**

8.1. 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 (*Staff Transfer*) shall apply.



- 8.2. The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 8.3. During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.4. The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5. 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 where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

## **9. CHARGES**

- 9.1. During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 9.2. Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
  - (a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
  - (b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3. For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4. Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges 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.

## **10. APPORTIONMENTS**

- 10.1. All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the 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.
- 10.2. Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

## **ANNEX 1: SCOPE OF THE TERMINATION SERVICES**

1. The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
  - (a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);
  - (b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - (c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
  - (d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
  - (e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
  - (f) with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
  - (g) providing the Authority with any problem logs which have not previously been provided to the Authority;
  - (h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
  - (i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
  - (j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
  - (k) providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement

Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;

- (l) provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;
- (m) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- (n) assisting in establishing naming conventions for any new production site;
- (o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (p) generating a computer listing of the Source Code of the AMSP website and web service for events Software] and the core maths platform software in a form and on media reasonably requested by the Authority;
- (q) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (r) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- (s) assisting with the loading, testing and implementation of the production databases;
- (t) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;
- (u) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (v) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- (w) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;

- (x) agreeing with the Authority and/or the Replacement Supplier a plan for the migration of the Authority Data to the Authority and/or the Replacement Supplier;
- (y) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:
  - (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
  - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
- (z) knowledge transfer services, including:
  - (i) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
  - (ii) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
  - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.

2. The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1 (k) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1(o), providing skills and expertise of a suitable standard; and

- (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1(v), providing skills and expertise of a reasonably acceptable standard.
3. To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.
4. The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1 (x) shall include:
- (a) copies of up-to-date procedures and operations manuals;
  - (b) product information;
  - (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
  - (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
  - (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
  - (f) details of physical and logical security processes and tools which will be available to the Authority; and
  - (g) any relevant interface information.
5. During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 5 shall:
    - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
    - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and

- (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

## **ANNEX 2: DRAFT ETHICAL WALL AGREEMENT**

**[THE AUTHORITY]**

**and**

**[THE COUNTERPARTY]**

### **ETHICAL WALL AGREEMENT**



This Agreement is dated [ ] 20[ ]

**Between**

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

**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**). The purpose of this document ("**Agreement**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- (B) The Authority is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- (C) The Authority has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Authority or of a procurement service provider acting on behalf of the Authority who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- (D) Pursuant to Regulation 41 of the PCR, the Authority is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Authority has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Authority under existing contractual arrangements or as a subcontractor under those same arrangements.
- (E) The parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

## IT IS AGREED:

### 1. DEFINITIONS AND INTERPRETATION

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

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

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

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

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

- (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;

**"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;

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

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

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

**"Invitation to Tender"** or **"ITT"** means an invitation to submit tenders issued by the 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;

**“Professional Advisor”** means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

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

**“Representative”** refers to a person's officers, directors, employees, advisers and agents 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; and

**“Third Party”** means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2. Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3. Reference to the disclosure of information, or provision of access, by or to the 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 persons includes legal and natural persons.
- 1.5. Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6. Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7. Reference to any gender includes any other.
- 1.8. Reference to writing includes email.
- 1.9. The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10. The words “include” and “including” are to be construed without limitation.
- 1.11. The singular includes the plural and vice versa.

- 1.12. The headings contained in this Agreement shall not affect its construction or interpretation.

## **2. ETHICAL WALLS**

- 2.1. In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

- (a) 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;
- (b) 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
- (c) 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:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) 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;
- (c) 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:
  - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
  - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) 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;

- (e) 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;
  - (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
  - (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Agreement;
  - (h) 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;
  - (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
  - (j) 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(a) and 2.1(c), the Counterparty shall:
- (a) notify the Authority immediately of all perceived, potential and/or actual conflicts of interest that arise;
  - (b) 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
  - (c) 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(c) 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 .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:
- (a) the Counterparty or any Affiliate or Representative; or
  - (b) 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.
- 2.10. The Counterparty acknowledges and agrees that:
- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and
  - (b) 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 5.2 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:
- (a) any Central Government Body; or
  - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
  - (c) 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 5.
- 5.3. A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

## **6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

## **7. TRANSPARENCY**

- 7.1. The parties acknowledge and agree that the 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:

<b>Manner of Delivery</b>	<b>Deemed time of service</b>	<b>Proof of service</b>
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



	Otherwise, delivery will occur at 9.00am on the next Working Day.	delivery receipt.
Prepaid, Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

- 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
<b>Contact</b>		
<b>Address</b>		
<b>Email</b>		

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

## 9. WAIVER AND CUMULATIVE REMEDIES

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



## **10. TERM**

- 10.1. Each party's obligations under this Agreement shall continue in full force and effect for period of 2 years from the Effective Date.

## **11. GOVERNING LAW AND JURISDICTION**

- 11.1. This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 11.2. The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Counterparty Signed by the

Name:

Signature:

Position in Counterparty:

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 8.6**

### **SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING**

## PART A: SERVICE CONTINUITY PLAN

### 1 DEFINITIONS AND APPLICATION

1.1 In this Schedule, the following definitions shall apply:

<b>“Business Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(ii);
<b>“Business Continuity Services”</b>	has the meaning given in Paragraph 4.2(b);
<b>“Department”</b>	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>(a) Government Department; or</p> <p>(b) Non-Ministerial Department.</p>
<b>“Disaster”</b>	<p>the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 24 hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;</p>
<b>“Disaster Recovery Plan”</b>	has the meaning given in Paragraph 2.2(a)(iii);
<b>“Disaster Recovery Services”</b>	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
<b>“Disaster Recovery System”</b>	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
<b>“Insolvency Continuity Plan”</b>	has the meaning given in Paragraph 2.2(a)(iv).
<b>“Related Service Provider”</b>	any person who provides services to the Authority in relation to this Agreement from time to time;
<b>“Review Report”</b>	has the meaning given in Paragraphs 7.2(a) to 7.2(c);

**“Service Continuity Plan”** means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan;

- 1.2 The requirements as set out in this Schedule shall be construed and applied proportionately to the scale and complexity of the Services. The Authority and the Supplier agree that the requirements shall be considered as part of the overall contract management strategy as referred to in Paragraph 3.2.8 of Schedule 2.1 (*Services Description*).

## **2 SERVICE CONTINUITY PLAN**

- 2.1 Within 40 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 (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) the recovery of the Services in the event of a Disaster.

- 2.2 The Service Continuity Plan shall:

- (a) be divided into four parts:
  - (i) Part A which shall set out general principles applicable to the Service Continuity Plan;
  - (ii) Part B which shall relate to business continuity (the **“Business Continuity Plan”**);
  - (iii) Part C which shall relate to disaster recovery (the **“Disaster Recovery Plan”**);
  - (iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the **“Insolvency Continuity Plan”**); and
- (b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.

- 2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:

- (a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date

on which the draft Service Continuity Plan is first delivered to the Authority.

2.4 If the Authority rejects the draft Service Continuity 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 Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity 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 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

**3 SERVICE CONTINUITY PLAN: PART A – GENERAL PRINCIPLES AND REQUIREMENTS**

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (c) 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, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice which can be accessed via multi-channels (including but without limitation a website (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
  - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;

- (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
  - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
  - (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
  - (v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- (g) provide for documentation of processes, including business processes, and procedures;
  - (h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
  - (i) identify the procedures for reverting to “normal service”;
  - (j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
  - (k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
  - (l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.

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

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; 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 22301 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

- 3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators 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.

## **4 SERVICE CONTINUITY PLAN: PART B – BUSINESS CONTINUITY**

### **PRINCIPLES AND CONTENTS**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the 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 Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
  - (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

## **5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY**

### **PRINCIPLES AND CONTENTS**

- 5.1 The Disaster Recovery Plan shall be designed 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 Recovery Plan shall be invoked only upon the occurrence of a Disaster.

5.3 The Disaster Recovery Plan shall include the following:

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



## **6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN**

### **PRINCIPLES AND CONTENTS**

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
- (a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
  - (b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
  - (c) plans to manage and mitigate identified risks;
  - (d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
  - (e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
  - (f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

## **7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN**

- 7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
- (a) on a regular basis and as a minimum once every 6 months;
  - (b) within 3 calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
  - (c) within 14 days of a Financial Distress Event;
  - (d) within 30 days of a Corporate Change Event; and

- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) 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.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity 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 Service Continuity 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.

7.3 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 20 Working Days after the date on which they are first delivered to the Authority.

7.4 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 7.3 and this Paragraph 7.4 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.

7.5 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.

## **8 TESTING OF THE SERVICE CONTINUITY PLAN**

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity 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 Service Continuity Plan.
- 8.2 If the Authority requires an additional test of the Service Continuity 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 Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity 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.
- 8.4 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.

- 8.5 The Supplier shall, within 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 Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
  - (c) the Supplier's proposals for remedying any such failures.
- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan's procedures) shall not relieve the Supplier of any of its obligations under this Agreement.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

## **9 INVOCATION OF THE SERVICE CONTINUITY PLAN**

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
  - (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

## **PART B: CORPORATE RESOLUTION PLANNING**

### **10 Service Status and Supplier Status**

- 10.1 This Agreement **'is not'** a Critical Service Contract.
- 10.2 The Supplier shall notify the Authority in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

### **11 Provision of Corporate Resolution Planning Information**

- 11.1 Paragraphs 11 to 13 of this Part B shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.
- 11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part B:
- (a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the Effective Date; and
  - (b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.
- 11.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part B:
- (a) is full, comprehensive, accurate and up to date;
  - (b) is split into two parts:
    - (i) Group Structure Information and Resolution Commentary;
    - (ii) UK Public Service / CNI Contract Informationand is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);
  - (c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;
  - (d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works

provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

- (e) complies with the requirements set out at Annex 1 (Group Structure Information and Resolution Commentary) and Annex 2 (UK Public Sector / CNI Contract Information) respectively.

11.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.

11.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:

- (a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of paragraph 11.3 to 11.5 of this Part B shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

11.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 11.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part B if:

- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has

elapsed since the Accounting Reference Date on which the CRP Information was based); and

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

11.8 If this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this )Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (*Financial Difficulties*)
- (b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
- (c) within 30 days of the date that:
  - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or
  - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
  - (i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
  - (ii) unless not required pursuant to Paragraph 11.10.

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to (d) of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.

11.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

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

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (*Financial Difficulties*)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority or Relevant Authorities to the extent required under Paragraph 11.8.

## **12 Termination Rights**

12.1 The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part B and either:

- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within 4 months of the Relevant Authority's or Relevant Authorities' request; or
- (b) the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Agreement.

## **13 Confidentiality and usage of CRP Information**

13.1 The Authority agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.

13.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and



usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under paragraph 13.1 of this Part B and Clause 21.

- 13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority or Relevant Authorities pursuant to Paragraph 11 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part B, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- (a) redacting only those parts of the information which are subject to such obligations of confidentiality
  - (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
    - (i) summarising the information;
    - (ii) grouping the information;
    - (iii) anonymising the information; and
    - (iv) presenting the information in general terms
- 13.5 The Supplier shall provide the Relevant Authority or Relevant Authorities with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

## **ANNEX 1: GROUP STRUCTURE INFORMATION AND RESOLUTION COMMENTARY**

### **1. THE SUPPLIER SHALL:**

- 1.1. provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 2 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
- 1.2. ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
- 1.3. provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Annex 2 and the dependencies between each.

## **ANNEX 2: UK PUBLIC SECTOR / CNI CONTRACT INFORMATION**

### **1. THE SUPPLIER SHALL:**

- 1.1. provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
  - (a) are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
  - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1(a) of this Annex 2 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
  - (c) involve or could reasonably be considered to involve CNI;
- 1.2. provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 8.7**

### **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 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;
  - (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**

- 4.1 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.

# **MODEL AGREEMENT SERVICES SCHEDULES**

## **SCHEDULE 9.1**

### **STAFF TRANSFER**

## Staff Transfer

### 1. DEFINITIONS

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

<b>“Former Supplier”</b>	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>“Notified Sub-contractor”</b>	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>“Replacement Sub-contractor”</b>	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>“Relevant Transfer”</b>	a transfer of employment to which the Employment Regulations applies;
<b>“Relevant Transfer Date”</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>“Service Transfer”</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
<b>“Service Transfer Date”</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>“Staffing Information”</b>	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex E2 ( <i>Table of Staffing Information</i> ) in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in Annex E2 from time to time.

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

## **2. INTERPRETATION**

- 2.1. Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.



**PART A: TRANSFERRING AUTHORITY EMPLOYEES AT  
COMMENCEMENT OF SERVICES**

**NOT USED**

**PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES  
AT COMMENCEMENT OF SERVICES**

**NOT USED**

## **PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

### **1 PROCEDURE IN THE EVENT OF TRANSFER**

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
  - (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### **2 INDEMNITIES**

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment

of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.

2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.4 The indemnities in Paragraph 2.1:

- (a) shall not apply to:

- (i) any claim for:

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

in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

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

- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

### **3 PROCUREMENT OBLIGATIONS**

- 3.1 Where in this Part C the Authority accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

**PART D:**

**NOT USED**

## **PART E: EMPLOYMENT EXIT PROVISIONS**

### **1. PRE-SERVICE TRANSFER OBLIGATIONS**

1.1. The Supplier agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

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

1.2. At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3. The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4. The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5. From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise

and is employed on the same terms and conditions of employment as the person he/she replaces;

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

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6. During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (g) the numbers of employees engaged in providing the Services;
- (h) the percentage of time spent by each employee engaged in providing the Services;
- (i) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (*Pensions*) of this Schedule 9 (*Staff Transfer*)(as appropriate); and
- (j) a description of the nature of the work undertaken by each employee by location.

1.7. The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the



smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

## **2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

- 2.1. The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- 2.2. The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such

sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

2.3. Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
  - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
  - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
  - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the

Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4. The indemnities in Paragraph .3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5. If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

- 2.6. If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7. If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8. Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9. The indemnity in Paragraph 2.8:
- (a) shall not apply to:
    - (iii) any claim for:
      - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
      - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
  - in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
  - (iv) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.
- 2.10. If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in

Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

- 2.11. The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-contractor; and
  - (b) the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12. The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13. Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
  - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
    - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

- (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (iii) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (iv) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

- (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.14. The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

## **ANNEX E1: LIST OF NOTIFIED SUB-CONTRACTORS**



## **ANNEX E2: STAFFING INFORMATION**

## **EMPLOYEE INFORMATION (ANONYMISED)**

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

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

EMPLOYEE DETAILS & KEY TERMS							
Detail s	Job Titl e	Grad e / band	Work Locatio n	Ag e	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

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

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

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

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

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



<b>Emp No</b>						
<b>Emp No</b>						

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

<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						
<b>Emp No</b>						

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

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 9.2**

### **KEY PERSONNEL**

## Key Personnel

KEY ROLE	Name of KEY Personnel	Responsibilities/ Authorities	Phase of the project during which they will be a MEMBER OF Key Personnel	MINIMUM PERIOD in Key Role
Senior Responsible Owner	[REDACTED]	Strategic direction and senior account management	Duration of contract	25 month
Programme Director	[REDACTED]	Leadership of AMSP, high-level representation with the Authority and key stakeholders	Duration of contract	25 month

**MODEL AGREEMENT FOR SERVICES SCHEDULES**  
**SCHEDULE 10**

NOT USED

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 11**

### **PROCESSING PERSONAL DATA**



## 1 Processing Personal Data

- 1.1 This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.
- 1.2 The contact details of the Authority's Data Protection Officer are: [REDACTED]
- 1.3 The contact details of the Supplier's Data Protection Officer are: [REDACTED]
- 1.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Authority is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with Clause 23.2 to 23.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p>
Duration of the processing	<p>The Supplier's data retention policies and practices will conform to legal and statutory obligations.</p> <p>The longest data will be processed for is the Term of the Agreement plus 6 months, unless there is any statutory/legal requirement for a longer timeframe. For example HMRC require payroll records to be kept for 3 years from the end of the tax year they relate to for those who leave an organisation.</p> <p>The Initial Term for the Agreement is 1 July 2022 to 31 July 2024. As the project relates to delivery of education services, including A level tuition, it is anticipated that continued educational provision would be needed until the end of the academic year, even if funding ended in July. Therefore, data would continue to be processed until 31 January 2025.</p> <p>Should the optional 1 year extension to the Agreement be</p>

	enacted, (or any further such extension) then the duration of the processing would be extended accordingly.
Nature and purposes of the processing	Collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data for the purpose of delivering the Services and/or supplying the Deliverables.
Type of Personal Data	<p>For those employed to work for the purpose of delivering the Services and/or supplying the Deliverables - personal data sourced from the individual include:</p> <ul style="list-style-type: none"> <li>Name, address, date of birth, National Insurance number, telephone number, email address, education and employment history, qualifications, bank details, pay and pension (including tax details), medical, professional body membership details, convictions, images, school and student identification numbers, photo proof of identification, emergency contact details for staff, Disclosure and Barring Service records.</li> </ul> <p>For those employed to work for the purpose of delivering the Services and/or supplying the Deliverables - personal data sourced from other organisations include:</p> <ul style="list-style-type: none"> <li>Name, address, date of birth, National Insurance number, telephone number, email address, pay and pension (including tax details), medical, images.</li> </ul> <p>For those that engage with the AMSP programme - personal data sourced from the individual include:</p> <ul style="list-style-type: none"> <li>Name, address, date of birth, telephone number, email address, qualifications, bank details, medical, images, school and student identification numbers, photo proof of identification, emergency contact details.</li> </ul>
Categories of Data Subject	Staff (including volunteers and associates), customers/clients/sub-contractors, suppliers, students/parents/teachers, members of the public, complainants and enquirers, representatives of other organisations, individuals captured by closed-circuit television images, users of AMSP websites.
Plan for return and destruction of the data once the processing is complete  UNLESS	Data that has been specifically collected and consent given in relation to AMSP activities will be returned or destroyed within 6 months of the expiration or earlier termination of the Agreement, as appropriate to its purpose for collection. This will be done using industry standard measures, i.e. electronic erasure and correct destruction of physical

requirement under union or member state law to preserve that type of data	copies.
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## **ANNEX 1: JOINT CONTROLLER AGREEMENT**

NOT USED

## **ANNEX 2:**

### **INTERNATIONAL DATA TRANSFER AGREEMENT AND INTERNATIONAL DATA TRANSFER AGREEMENT ADDENDUM TO THE EU COMMISSION STANDARD CONTRACTUAL CLAUSES**

See Model Agreement for Services – Schedules, Annexes and Parts Version 2.0 –  
11.04.2022

## **ANNEX 3:**

### **STANDARD CONTRACTUAL CLAUSES FOR EU GDPR TRANSFERS**

See Model Agreement for Services – Schedules, Annexes and Parts Version 2.0 –  
11.04.2022

# **MODEL AGREEMENT FOR SERVICES SCHEDULES**

## **SCHEDULE 12**

### **SAFEGUARDING**

## **Schedule 12: Safeguarding Arrangements**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Schedule, the following expressions have the following meanings, unless inconsistent with the context:

**“16–19 Academy”** has the meaning of section 1B of the Academies Act 2010.

**“Candidate”** means any individual who is currently under consideration by the Supplier for employment to perform its obligations under the Agreement, or who is under consideration by the Supplier for any other form of direct engagement in connection with the Supplier’s performance of its services under the Agreement. The term “Candidates” shall be construed accordingly.

**“DBS ID Checking Guidelines”<sup>1</sup>** mean the guidelines issued by the Disclosure and Barring Service for the purpose of verifying the identification of applicants for criminal record checks, as amended from time to time.

**“Disclosure and Barring Service” and “DBS”** mean the non-departmental public body of that name, or such other successor body or organisation as may be appropriate.

**“Disclosure and Barring Service Certificate”** means a criminal record certificate issued by the Disclosure and Barring Service with respect to an individual.

A person satisfies the **“Harm Test”** if that person may harm a child or vulnerable adult or put them at risk of harm. It is something a person may do to cause harm or pose a risk of harm to a child or vulnerable adult.

**“Keeping Children Safe in Education”** means the statutory guidance published under that title by the Secretary of State for Education, as amended from time to time.

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<sup>1</sup> <https://www.gov.uk/government/publications/dbs-identity-checking-guidelines>

**“Independent School”** as defined in section 463 of the Education Act 1996, means any school at which full-time education is provided for:

- (a) five or more pupils of compulsory school age; or
- (b) at least one pupil of that age for whom an EHC plan is maintained or for whom a statement is maintained under section 324 or an individual development plan is maintained, or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989 or section 74 of the Social Services and Well-being (Wales) Act 2014; and which is not a school maintained by a local authority non-maintained special school. It shall specifically include Academy schools and alternative provision Academies as defined in accordance with the Academies Act 2010.

**“Institution within the Further Education Sector”** has the meaning in section 91(3) of the Further and Higher Education Act 1992.

**“Maintained School”** means a community, foundation or voluntary school or a community or foundation special school, or any other school maintained by a local authority.

**“Non-Maintained Special School”** means a school which is approved under section 342 (1) of the Education Act 1996 (as amended).

**“Non-Relevant Conviction”:**

- (a) in the case of an individual who is engaged:
  - (i) in any office or employment which is concerned with the provision of care services to vulnerable adults and which is of such a kind as to enable that individual, in the course of his or her normal duties, to have access to vulnerable adults in receipt of such services.
  - (ii) in any work which is Regulated Activity relating to vulnerable adults, which for the purpose of this definition shall include regulated activity within the meaning of Part 2 of schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had



effect immediately before the coming into force of section 66 of the Protection of Freedoms Act 2012;

- (iii) in any work in an Institution within the Further Education Sector or 16–19 Academy where the normal duties of that work involve regular contact with persons aged under 18;
- (iv) in any work which is Regulated Activity relating to children, which for the purpose of this definition shall include regulated activity within the meaning of Part 1 of schedule 4 to the Safeguarding Vulnerable Groups Act 2006 as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012;
- (v) in any work done infrequently which, if done frequently, would be Regulated Activity relating to children;
- (vi) in any employment or other work that is carried out at a children’s home or residential family centre;
- (vii) as a chartered or certified accountant; or
- (viii) in any other employment or activity deemed to fall within the scope of schedule 1 to The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended);

means any conviction which is ‘protected’ as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (as amended); and

- (b) in the case of an individual who is engaged in employment or activity which does not fall within the scope of points (a)(i)–(a)(viii) above, means any conviction which is ‘spent’ as defined in accordance with Section 1 of the Rehabilitation of Offenders Act 1974.

## **“Pre-Appointment**

<b>Checks”</b>	means such checks and searches as are appropriate and necessary to assess an individual’s suitability for employment and to perform the duties of a particular role, as determined in accordance with clause 3.2.
<b>“Proprietor”</b>	<p>means the person or body of persons responsible for the management of a school, including (but not limited to):</p> <ul style="list-style-type: none"> <li>(a) in relation to a Maintained School, the governing body; and</li> <li>(b) in relation to an Academy, a qualifying Academy proprietor, as defined by section 12(2) of the Academies Act 2010.</li> </ul>
<b>“Real-Time Online Tuition”</b>	means any teaching provision for one or more Relevant Students which is delivered through the use of information and communications technology and during which the student and the teacher communicate in real time through the use of video, audio, text or any other electronic medium, but excluding any provision for which the sole intended audience is one or more members of staff employed by a school, an Institution within the Further Education Sector or a 16–19 Academy.
<b>“Regulated Activity”:</b>	<ul style="list-style-type: none"> <li>(a) in relation to children, takes the definitions contained in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended) and in Part 1 of Schedule 2 to The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (as amended); and</li> <li>(b) in relation to vulnerable adults, takes the definitions contained in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 (as amended) and in Part 2 of Schedule 2 to The Safeguarding Vulnerable Groups (Northern Ireland) Order 2007 (as amended).</li> </ul>
<b>“Relevant Student”</b>	means any person who is enrolled at a school, an Institution within the Further Education Sector or a 16–19 Academy, or who is otherwise deemed to be in receipt of education whether by virtue of provision made by a local authority or otherwise, and with whom Personnel are likely to directly interact, whether such interaction takes place in

person or via such communication medium as may be appropriate to the nature of the Services.

**“Safeguarding”**

takes the meaning given in “Keeping Children Safe in Education”. The term “safeguard” shall be construed accordingly.

**“Safeguarding Incident”**

means any event which has:

- (a) caused harm or had the potential to cause harm to one or more Relevant Students, Young Children, children or vulnerable adults;
- (b) involved the abuse or maltreatment of one or more Relevant Students, Young Children, children or vulnerable adults;
- (c) involved a criminal offence being committed or potentially being committed against one or more Relevant Students, Young Children, children or vulnerable adults; or
- (d) resulted in a substantially elevated risk to the welfare of one or more Relevant Students, Young Children, children or vulnerable adults.

**“Working Together to Safeguard Children”**

means the Government interagency statutory guidance published under that title by the Secretary of State for Education, as amended from time to time.

1.2 All other terms shall take the definitions contained in Schedule 1.

## **2. SAFEGUARDING POLICY**

2.1 The Supplier must ensure that it at all times has in place an effective and appropriate policy (“**Safeguarding Policy**”) in order to safeguard and promote the welfare of Relevant Students, Young Children, children and vulnerable adults with whom Personnel may come into contact or to whom Personnel may have access in the course of performance of the Agreement. This shall specifically include provisions to:

- (a) promote a learning environment which is consistent with the provision of safe and effective care;
- (b) minimise the risk of harm to the welfare and development of Relevant Students, Young Children, children and vulnerable adults, including (but

- not limited to) their physical, emotional and psychological welfare and development;
  - (c) ensure the suitability of Personnel in accordance with clause 3 for the activities in which they are to be engaged, including provisions on when to obtain a criminal record certificate;
  - (d) ensure the appropriate conduct of Personnel;
  - (e) ensure that in the event that concerns are raised in relation to the welfare of one or more Relevant Students, children or vulnerable adults, the school or college's designated safeguarding lead is informed immediately in line with the organisation's child protection policy, to investigate this to minimise any further risk of harm, and to ensure escalation procedures are in place should this not be done;
  - (f) ensure arrangements setting out processes for sharing information with practitioners and safeguarding partners. Provide information on the role of the Supplier's Designated Safeguarding Officer;
  - (g) ensure adequate procedures are in place for recording and informing the school or college's designated safeguarding lead, of any disclosure of abuse which may be made to a member of Personnel by a Relevant Student or other child or vulnerable adult, but which does not relate to the conduct or behaviour of Personnel; and
  - (h) ensuring that any such disclosure is reported to the designated officer(s) at the relevant local authority, and such other body or authority as may be appropriate in the circumstances.
- 2.2 The Supplier must at all times ensure that it complies with the provisions of this Schedule 12 with the provisions of Keeping Children Safe in Education, with the provisions of Working Together to Safeguard Children, with the provisions of Disqualification Under the Childcare Act 2006, with the provisions of the Early Years Safeguarding and Welfare Requirements and with such other legislative provisions and statutory guidance as may be deemed appropriate by:
- (a) the Supplier;
  - (b) the Secretary of State for Education; and/or
  - (c) Her Majesty's Chief Inspector of Education, Children's Services and Skills; in view of the functions to be performed under the Agreement.
- 2.3 The Supplier must review and (if appropriate) update the Safeguarding Policy within the first month of each year of the Term, and additionally:
- (a) whenever the Secretary of State for Education publishes a revised version of Keeping Children Safe in Education, Working Together to Safeguard Children, Disqualification Under the Childcare Act 2006;

- (b) in the event of any change to the Services provided which has a material impact on the nature of the risks to Relevant Students' welfare or to the welfare of Young Children or children or vulnerable adults;
  - (c) in the event that the Supplier is made aware of any concerns regarding the adequacy and effectiveness of the Safeguarding Policy in meeting the aims detailed in clause 2.1; and
  - (d) following any Safeguarding Incident or alleged Safeguarding Incident.
- 2.4 The Supplier must, if requested to do so by the Authority, make available a copy of the Safeguarding Policy for inspection. If, following this, the Authority raises concerns about the arrangements contained within the Safeguarding Policy, the Supplier shall review and update the relevant provisions and resubmit the Safeguarding Policy to the Authority for approval within fourteen days. The Authority may request such further iterative amendments as it deems appropriate to ensure compliance with the Agreement and the relevant statutory requirements. If, following this, the Parties remain unable to reach agreement on the provisions of the Safeguarding Policy, either Party may refer the dispute to the Dispute Resolution Procedure in accordance with Clause 36 (Disputes) of the Agreement.
- 2.5 The Supplier must ensure that a copy of the Safeguarding Policy, Keeping Children Safe In Education and Working Together is made available upon request:
- (a) to Personnel; and
  - (b) to the Proprietors of schools, the governing bodies of Institutions within the Further Education Sector, local authorities and such other individuals and organisations as may have legitimate professional grounds to see it for the purpose of ensuring the welfare of Relevant Students, Young Children, children and vulnerable adults.
- 2.6 The Agreement must ensure that the parties referred at clause 2.5(a) read at least Part 1 of the Keeping Children Safe in Education.
- 2.7 The Supplier must satisfy itself that any Sub-Contractor or agent engaged by it in connection with the performance of services under the Agreement has in place measures which are compliant with the requirements of this Schedule 12 with respect to those individuals employed or otherwise engaged by that Sub-Contractor or agent for the purpose of performing obligations under the Agreement.
- 2.8 The Supplier must at all times ensure that it has a Designated Safeguarding Officer. The Designated Safeguarding Officer shall be required to lead on implementing the Safeguarding Policy and act as the lead Safeguarding contact

for the programme in all circumstances. The Supplier must ensure that an alternative reporting procedure is in place for any circumstances in which:

- (a) the Designated Safeguarding Officer is not available; or
- (b) any Safeguarding concerns relate to the conduct or behaviour of the Designated Safeguarding Officer or those with management responsibility for the Designated Safeguarding Officer.

### **3. ENSURING THE SUITABILITY OF STAFF ON APPOINTMENT**

3.1 The Supplier shall have in place appropriate policies and procedures to establish safer recruitment practices, which minimise the risk of harm to Relevant Students and other children and vulnerable adults, and which ensure the suitability of Personnel who will administer and deliver the programme.

3.2 When appointing a Candidate to a post, the Supplier shall consider the range and nature of activities likely to be performed by the Candidate in the course of that Candidate's duties and shall ensure that it implements a system of Pre-Appointment Checks appropriate to that assessment. This shall, as a minimum, include:

- (a) in relation to any role in which an individual will be engaged in Regulated Activity or will be managing one or more other individuals who are engaged in Regulated Activity:
  - (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
  - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;
  - (iii) obtaining an enhanced criminal record certificate, which must have been issued by the Disclosure and Barring Service not more than three months before the Candidate is due to commence employment or other direct engagement in the role for which the Candidate is being considered; and, where that certificate contains information pertaining to the Candidate's history, consideration of the impact (if any) of that information on the suitability of the individual to carry out the responsibilities of the role for which that individual is under consideration;
  - (iv) establishing that the Candidate is not barred from engaging in Regulated Activity relating to children and/or vulnerable adults as appropriate to the role for which the Candidate is under consideration (i.e. subject to a "Disclosure and Barring Service Bar");
  - (v) establishing that:

- (a) the Candidate is not subject to any direction, prohibition or restriction issued by the General Teaching Council for England (prior to its abolition in 2012), the General Teaching Council for Scotland, the Education Workforce Council, the General Teaching Council for Northern Ireland or any predecessor body or successor that would prevent that Candidate from taking up the position for which that individual is being considered; and
- (b) for any Candidate to be employed in a teaching position, that the Candidate is not subject to a prohibition order or interim prohibition order issued by the Secretary of State for Education and which would prevent that Candidate from taking up the position for which that individual is being considered;
- (c) that the candidate is not subject to a section 128 direction made by the Secretary of State. A section 128 direction will be disclosed when an enhanced DBS check with children's barred list information is requested, provided that 'child workforce independent schools' is specified on the application form as the position applied for. Where a person is not eligible for a children's barred list check but will be working in a management position in an independent school.

The checks a – c above can be carried out using the Teaching Regulation Agency's Employer Access service.

- (vi) verifying that the Candidate has the appropriate qualification(s) the Supplier considers are necessary for the position for which that individual is under consideration;
- (vii) obtaining at least two references, one of which should be from the Candidate's most recent employment. Where the Candidate has worked in more than two employments in the preceding two years, such additional references should be sought as are necessary to cover the whole of that period. References must be obtained directly from the referee, expected to be a senior person with appropriate authority. Open references should only be accepted where the full content of the reference can be verified by the referee. References obtained via email must be sent from a verifiable email address. Any issues of concern arising from references should be explored further with the referee and, where necessary, discussed with the Candidate;
- (viii) scrutinising the Candidate's employment history in the ten years preceding the application and investigating any inconsistencies or unexplained gaps. To help identify any non-disclosed employment, the Supplier should seek to verify from the Candidate's most recent employer the Candidate's reason for leaving that employment;



- (ix) where the Candidate has previously been resident outside the United Kingdom, applying for, and obtaining, criminal records checks or 'Certificates of Good Character' to enable any non-UK criminal record-related information to be identified.<sup>2</sup> Where it proves impossible to obtain this information (for example, in cases where the person must be resident in a country at the time of application), the Supplier must obtain at least two references from verifiable sources, ideally senior individuals with appropriate authority at a previous employer;
  - (x) carrying out such additional searches as the Supplier considers appropriate in order to help assess the suitability of the person to work with Relevant Students, Young Children, children and/or vulnerable adults;
- (b) in relation to any role in which an individual will have access to the Personal Data of one or more Relevant Students, Young Children, children or vulnerable adults or will be managing one or more other individuals who have access to such Personal Data:
- (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
  - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;
  - (iii) obtaining a basic criminal record certificate; and, where that certificate contains information pertaining to the Candidate's history, consideration of the impact (if any) of that information on the suitability of the individual to carry out the responsibilities of the role for which that individual is under consideration;
  - (iv) establishing whether the Candidate is:
    - (a) subject to any direction, prohibition or restriction issued by the General Teaching Council for England (prior to its abolition in 2012, the General Teaching Council for Scotland, the Education Workforce Council, the General Teaching Council for Northern Ireland or any predecessor or successor body; or
    - (b) prohibited (by prohibition order or interim prohibition order) from teaching by the Secretary of State for Education.

Whilst these sanctions will not themselves prevent the person from being appointed, the Supplier will need to determine whether the circumstances that led to the 'sanction' are relevant to the

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<sup>2</sup> The Home Office's application process guidance provides advice on the processes to be followed to obtain such information. This can be found online at <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>.



Candidate's suitability for the role for which that individual is under consideration;

- (v) verifying that the Candidate has the appropriate qualification(s) the Supplier considers are necessary for the position for which that individual is under consideration;
  - (vi) obtaining at least two references, one of which should be from the Candidate's most recent employment. References must be obtained directly from the referee, expected to be a senior person with appropriate authority. Open references should only be accepted where the full content of the reference can be verified by the referee. References obtained via email must be sent from a verifiable email address. Any issues of concern arising from references should be explored further with the referee and, where necessary, discussed with the Candidate;
  - (vii) scrutinising the Candidate's employment history and investigating any inconsistencies or unexplained gaps. To help identify any non-disclosed employment, the Supplier should seek to verify from the Candidate's most recent employer the Candidate's reason for leaving that employment;
  - (viii) where the Candidate has previously been resident outside the United Kingdom, applying for, and obtaining, criminal records checks or 'Certificates of Good Character' to enable any non-UK criminal record-related information to be identified.<sup>3</sup> Where it proves impossible to obtain this information (for example, in cases where the person must be resident in a country at the time of application), the Supplier must obtain at least two references from verifiable sources, ideally senior individuals with appropriate authority at a previous employer; and
  - (ix) carrying out such additional searches as the Supplier considers appropriate in order to help assess the suitability of the person to undertake the duties of the role;
- (c) in relation to any role which falls outside the scope of subclauses 3.2(a) and 3.2(b):
- (i) establishing the Candidate's identity in accordance with the requirements of the DBS ID Checking Guidelines;
  - (ii) establishing the Candidate's legal entitlement to take up employment in the United Kingdom;

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<sup>3</sup> The Home Office's application process guidance provides advice on the processes to be followed to obtain such information. This can be found online at <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants>.

- (iii) verifying that the Candidate has the appropriate qualification(s) the Supplier considers are necessary for the position for which that individual is under consideration;
  - (iv) carrying out such additional searches as the Supplier considers appropriate in order to help assess the suitability of the Candidate to undertake the duties of the role.
- 3.3 In determining the suitability of an individual to carry out a role, the Supplier shall ensure that it does not take into consideration any conviction which is a Non-Relevant Conviction, including any conviction which does not appear on any Disclosure and Barring Service Certificate obtained by the Supplier in accordance with subclause 3.2(a)(iii) or 3.2(b)(iii) as appropriate to the role for which the individual's suitability is being considered.
- 3.4 The Supplier shall ensure that, before carrying out the Pre-Appointment Checks, it makes clear to the Candidate the range and nature of the Pre-Appointment Checks which it intends to carry out.
- 3.5 The Supplier shall ensure that no Candidate is engaged in duties which fall within the scope of subclauses 3.2(a) and 3.2(b) unless and until all relevant Pre-Appointment Checks have been completed and the suitability of the Candidate to undertake such duties has been assured.
- 3.6 In the event that:
  - (a) a Candidate has previously been resident outside the United Kingdom; and
  - (b) in the case of a role which falls within the scope of subclause 3.2(a), all relevant Pre-Appointment Checks with the exception of those for which provision is made under subclause 3.2(a)(ix) have been completed to the Supplier's satisfaction and have not given rise to concerns about the Candidate's suitability for employment or to undertake the duties of the role for which the Candidate is being considered; or
  - (c) in the case of a role which falls within the scope of subclause 3.2(b), all relevant Pre-Appointment Checks with the exception of those for which provision is made under subclause 3.2(b)(viii) have been completed to the Supplier's satisfaction and have not given rise to concerns about the Candidate's suitability for employment or to undertake the duties of the role for which the Candidate is being considered; and
  - (d) the Supplier has made all reasonable endeavours to obtain the information specified under subclause 3.2(a)(ix) or 3.2(b)(viii), but has been unable to do so prior to the commencement of the Candidate's employment; and
  - (e) the Supplier has undertaken an assessment of the risks which the Candidate could present to Relevant Students, children and vulnerable

adults in the course of that Candidate's duties and considered any additional safeguards which may be appropriate in order to mitigate those risks;

the Supplier may, at its discretion, choose to disapply clause 3.5 with respect to that Candidate until such time as the checks for which provision is made under subclause 3.2(a)(ix) or subclause 3.2(b)(viii) have been completed, subject to any additional safeguards identified under subclause 3.6(e) having been implemented for the period during which clause 3.5 is disapplied.

- 3.7 The Supplier shall require all Personnel employed or directly engaged by it and who are to be engaged in duties falling within the scope of subclauses 3.2(a) or 3.2(b) to register with the Disclosure and Barring Service Update Service upon appointment. Except in the circumstances for which provision is made in clause 4.2, this requirement shall not apply to any Personnel already employed or otherwise directly engaged by the Supplier prior to the Effective Date for so long as that employment or other direct engagement continues without interruption.
- 3.8 Subject to the requirements of the Data Protection Legislation, the Supplier shall keep written records:
- (a) confirming which Pre-Appointment Checks have been undertaken in relation to which Personnel and the date on which those checks were carried out;
  - (b) of all decisions made on the suitability of Personnel for employment or to undertake the duties of the role for which those Personnel were Candidates, including the names and positions of those by whom the decisions were made and approved;
  - (c) of all instances where in accordance with clause 3.6, it is determined that a Candidate previously resident outside the United Kingdom may commence duties within the scope of clause 3.2(a) or 3.2(b) prior to completion of the checks provided for in subclause 3.2(a)(ix) or 3.2(b)(viii); and
  - (d) confirming in relation to which Personnel it has issued information in accordance with clause 3.8, and the date on which that information was issued.
- 3.9 If requested to do so by the Authority, the Supplier shall submit copies of records retained in accordance with clause 3.9 to the Authority for inspection within a period not exceeding five Business Days following receipt of such a request.
- 3.10 The Authority undertakes that any information disclosed to it following a request under clause 3.10:

- (a) shall be used solely for the purpose of ensuring the Supplier's compliance with relevant legal requirements and with the provisions of the Agreement; and
- (b) shall be handled securely whilst in the Authority's possession and disclosed only to those employees of the Authority who have a legitimate need to inspect the information for the purpose of undertaking the duties outlined in subclause 3.11(a); and
- (c) shall be returned to the Supplier or securely destroyed when no longer required.

#### **4. ONGOING DUE DILIGENCE**

4.1 Where an individual is registered with the Disclosure and Barring Service Update Service in accordance with clause 3.7, the Supplier shall:

- (a) seek that individual's permission to utilise the Disclosure and Barring Service Update Service to regularly check that individual's Disclosure and Barring Service record for details of convictions;
- (b) agree with that individual the frequency with which such checks shall be carried out;
- (c) implement procedures to ensure that it conducts such checks according to the frequency agreed with the individual in accordance with subclause 4.1(b);
- (d) in the event that the individual is to resume Regulated Activity or the management of one or more other individuals engaged in Regulated Activity following a period in excess of three months during which that individual has not been engaged in such activity or the management of such activity, seek that individual's consent for and conduct an additional check of that individual's Disclosure and Barring Service record regardless of whether or not such a check is foreseen under the schedule agreed in accordance with subclause 4.1(b), prior to the resumption of the individual's engagement in Regulated Activity or the management thereof; and

4.2 In the event that:

- (a) the Supplier becomes aware or reasonably believes that the circumstances of an individual who is employed or otherwise directly engaged by it have changed in such a way as could affect that individual's suitability to perform the duties for which that individual is engaged;
- (b) the Supplier becomes aware or reasonably believes that the circumstances of an individual who is employed or otherwise directly engaged by it are substantially different from what it previously understood

that individual's circumstances to be, and that that individual's circumstances differ from its previous understanding in such a way as might have affected its decision regarding the individual's suitability to perform the duties for which that individual is engaged;

- (c) an individual employed or otherwise directly engaged by the Supplier but who is not currently engaged in Regulated Activity or the management of other individuals who are engaged in Regulated Activity, is to transfer to a role in which that individual is to undertake Regulated Activity or the management of other individuals who are engaged in Regulated Activity;
- (d) an individual employed or otherwise directly engaged by the Supplier but who is not currently engaged in Regulated Activity or the management of others who are engaged in Regulated Activity and does not currently have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or manage others who have access to such Personal Data, is to transfer to a role in which that individual will have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or will be engaged in the management of one or more individuals with access to such Personal Data;
- (e) an individual who is not registered with the Disclosure and Barring Service Update Service is to resume Regulated Activity or the management of one or more other individuals engaged in Regulated Activity following a period in excess of three months during which that individual has not been engaged in such activity or the management of such activity; or
- (f) an individual who is not registered with the Disclosure and Barring Service Update Service is to resume duties in which he or she will have access to the Personal Data of one or more Relevant Students, children or vulnerable adults or will manage others who have access to such Personal Data following a period in excess of three months during which that individual has not been engaged in such duties or the management of individuals engaged in such duties;

the Supplier shall perform or repeat such Pre-Appointment Checks as may be necessary to enable it to reach a decision regarding the suitability of the individual to perform the duties of that individual's role or intended role; and shall ensure that the individual is not engaged in the performance of the duties for which it is necessary to reassess that individual's suitability unless and until the Supplier has satisfied itself of the individual's suitability to perform those duties.

- 4.3 The Supplier undertakes that, where an individual employed or otherwise directly engaged by it is required to visit the premises of a school, an Institution within the Further Education Sector or a 16–19 Academy in the course of that individual's duties, and it is likely that that individual will during the course of that

visit come into direct contact with one or more Relevant Students, children or vulnerable adults, it shall:

- (a) provide in writing to the school, Institution within the Further Education Sector or 16–19 Academy:
  - (i) confirmation of whether the Pre-Appointment Checks in subclauses 3.2(a)(i)–3.2(a)(xi) have been carried out with respect to that individual; and
  - (ii) confirmation that the information returned by the Pre-Appointment Checks has been considered and that the individual has been judged to be suitable to work with children or vulnerable adults (as the case may be); and
  - (iii) the name and contact details of the Designated Safeguarding Officer; and
  - (iv) in the event that the individual will, whilst on the premises of the school, Institution within the Further Education Sector or 16–19 Academy, be employed or otherwise engaged in the provision of Childcare or directly concerned with the management of such provision:
    - (a) confirmation that the individual is not Disqualified from Registration; and
    - (b) confirmation that the individual has been informed that:
      - (i) if he or she is disqualified from registration under The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018, he or she will be committing an offence if he or she is deployed to work in Childcare or directly concerned with the management of such provision; and
      - (ii) he or she must immediately inform the Supplier in the event that his or her circumstances change in such a way as would result in him or her being disqualified from registration under The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018.
- (b) arrange for the individual to provide to the school, Institution within the Further Education Sector or 16–19 Academy:
  - (i) adequate proof of that individual's identity; and

- (ii) where the individual is to visit the premises of a Maintained School and the individual's Disclosure and Barring Service Certificate contains information pertaining to that individual's history, a copy of that certificate; or
  - (iii) where the individual is to visit the premises of an Independent School, a Non-Maintained Special School, or a 16–19 Academy, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; or
  - (iv) where the individual is to visit the premises of an Institution within the Further Education Sector and that individual will be regularly caring for, training, supervising or being solely in charge of persons aged under 18, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; and
- (c) in the event that the school, Institution within the Further Education Sector or 16–19 Academy has concerns about the suitability of the individual to perform the duties for which that individual is to be engaged whilst on the premises of that school, Institution within the Further Education Sector or 16–19 Academy, use all reasonable endeavours to make provision for those duties to be performed by another individual to whom the school, Institution within the Further Education Sector or 16–19 Academy does not so object.

4.4 The Supplier undertakes that, where an individual employed or otherwise directly engaged by it is required to provide Real-Time Online Tuition in the course of that individual's duties, it shall:

- (a) ensure that the individual's consent is obtained to monitor and record that individual's direct interaction with Relevant Students where this interaction takes place remotely;
- (b) implement arrangements to ensure that any real-time direct interaction between the individual and Relevant Students is recorded and that these records are retained for a minimum of ninety days, or longer if required for the purpose of investigating a Safeguarding Incident or alleged Safeguarding Incident; and
- (c) implement arrangements to ensure that real-time direct interaction between the individual and Relevant Students and which takes place remotely is monitored in a way which is suitable for identifying Safeguarding Incidents, including random sampling of not less than one session of Real-Time Online Tuition for every fourteen such sessions delivered as part of the Services;



- (d) where Real-Time Online Tuition is provided for or on behalf of a school, an Institution within the Further Education Sector or a 16–19 Academy:
  - (i) provide in writing to the school or Institution within the Further Education Sector or 16–19 Academy:
    - (a) a list of the Pre-Appointment Checks which have been carried out with respect to that individual; and
    - (b) confirmation that the information returned by the Pre-Appointment Checks has been considered and that the individual has been judged to be suitable to work with children or vulnerable adults (as the case may be); and
  - (ii) arrange for the individual to provide to the school, an Institution within the Further Education Sector or 16–19 Academy:
    - (a) adequate proof of that individual's identity; and
    - (b) where the individual is to provide Real-Time Online Tuition on behalf of a Maintained School and the individual's Disclosure and Barring Service Certificate contains information pertaining to that individual's history, a copy of that certificate; or
    - (c) where the individual is to provide Real-Time Online Tuition on behalf of an Independent School or a Non-Maintained Special School or a 16–19 Academy, a copy of the individual's Disclosure and Barring Service Certificate;
    - (d) where the individual is to provide Real-Time Online Tuition on behalf of an Institution within the Further Education Sector and that individual will be regularly caring for, training, supervising or being solely in charge of persons aged under 18, a copy of the individual's Disclosure and Barring Service Certificate, regardless of whether that certificate contains information pertaining to the individual's history; and
  - (iii) in the event that the school, Institution within the Further Education Sector or 16–19 Academy has concerns about the suitability of the individual to deliver Real-Time Online Tuition to students enrolled at that school, Institution within the Further Education Sector or 16–19 Academy, use all reasonable endeavours to make provision for those duties to be performed with respect to those students by another individual to whom the school, Institution within the Further Education Sector or 16–19 Academy does not so object.

## **5. ADDRESSING SAFEGUARDING CONCERNS/ALLEGATIONS REGARDING EMPLOYEES**



- 5.1 The Supplier shall have in place procedures for managing allegations that might indicate an individual employed or otherwise directly engaged by it would pose a risk of harm if that individual continued to work in regular contact with Relevant Students, children and/or vulnerable adults.
- 5.2 Where an allegation indicates an individual employed or otherwise directly engaged by Supplier might pose a risk of harm if that individual continues to work in regular or close contact with children or vulnerable adults, the Supplier must immediately inform:
- (a) the schools, Institutions within the Further Education Sector and 16–19 Academies at which any Relevant Students, children or vulnerable adults who may have been harmed by that individual are enrolled, in order that appropriate support for those Relevant Students, children or vulnerable adults can be implemented in a timely manner; and
  - (b) the designated officer(s) at the relevant local authority, so that the designated officer can consult police and children’s social care services as appropriate.

The Supplier shall afford to the designated officer(s) all reasonable assistance in considering the nature, content and context of the allegation and agreeing a course of action and shall undertake to comply with any direction issued by the designated officer(s).

The Supplier should also have policies and processes to deal with concerns (including allegations) which do not meet the harms threshold, as described above. Concerns may arise in several ways and from a number of sources. For example: suspicion; complaint; or disclosure made by a child, parent or other adult within or outside of the organisation. It is important that the Supplier has appropriate policies and processes in place to manage and record any such concerns and take appropriate action to safeguard children. Further information on the importance of dealing with concerns such as these can be found in Part 4, Section two of Keeping Children Safe in Education.

- 5.3 Where the Supplier dismisses or ceases to use the services of an individual who has been engaging in teaching work, because of serious misconduct, or might have dismissed that individual or ceased to use that individual’s services had that individual not left first, it must consider whether to refer the case to the Secretary of State for Education, as required by section 141E of the Education Act 2002.
- 5.4 The Supplier must refer to the Disclosure and Barring Service any individual:
- (a) who is or has recently been employed or otherwise directly engaged by the Supplier; and

- (i) who has harmed, or poses a risk of harm, to a child or vulnerable adult;
  - (ii) who satisfies the Harm Test;
  - (iii) who has received a caution or conviction for a relevant offence; or
  - (iv) who there is reason to believe has been cautioned for or convicted of a relevant barred-list offence;
- (b) if that individual:
  - (i) has been removed from engaging in Regulated Activity or has been moved to another area of work that is not Regulated Activity; or
  - (ii) would have been removed from engaging in Regulated Activity had they not, for example, been re-deployed, resigned, retired or left.

This Agreement has been duly executed by the Parties on 30<sup>th</sup> June 2022

1 SIGNED for and on  
behalf of

)  
MATHEMATICS IN  
EDUCATION AND  
INDUSTRY (MEI) by a  
director:

)

)

)

[Redacted]

[Redacted]

Signature:

[Redacted]

Name (block  
capitals):

[Redacted]

**SIGNED** for and on behalf of THE  
SECRETARY OF STATE FOR  
EDUCATION

)

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)

[Redacted]

[Redacted]

[Redacted]

Signature

[Redacted]

Name (block  
capitals):

[Redacted]

Position:

