



## MODEL SERVICES CONTRACT

DATED 15<sup>th</sup> January 2025

(1) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

and

(2) BMJ PUBLISHING GROUP LIMITED

### CONTRACT

relating to

**DHSC: National Institute for Health and Care Research (NIHR) Support  
Services:  
Public Partnerships and Maximising Research Impact**

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**Core Terms**  
**[Subject to contract]**  
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**THIS CONTRACT** is made on

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**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE** of 39 Victoria Street, London SW1H 0EU (the “**Authority**”); and
- (2) **BMJ PUBLISHING GROUP LIMITED** a company registered in England and Wales under company number 03102371 whose registered office is at BMA House, Tavistock Square, London WC1H 9JR (the “**Supplier**”)

(each a “**Party**” and together the “**Parties**”).

## **INTRODUCTION**

- (A) **The Authority funds the National Institute for Health and Care Research (“NIHR”) whose mission is to improve the health and wealth of the nation through research. The Authority wishes to meet the following strategic objectives:**
  - i **improve the way partnerships with people and communities in health and care research work (this includes research involvement, participation, and engagement – referred to as ‘Public Partnerships’);**
  - ii **improve how NIHR research is disseminated, and knowledge is mobilised to facilitate uptake and adoption of insights from research (referred to as ‘Maximising Research Impact’); and**
  - iii **act as an integral part of the NIHR Coordinating Centre (“NIHRCC”) – working collaboratively within NIHRCC and across NIHRCC and the Research Delivery Network Coordinating Centre as a co-ordinated joined-up organisation.**
- (B) **On 19 January 2024 the Authority advertised on Find a Tender (reference 2024/S 000-001938), inviting prospective suppliers to submit proposals for support services for the NIHR.**
- (C) **The Supplier is a leading provider of the production and distribution of medical information and has experience in Public Partnerships and Maximising Research Impact.**
- (D) **On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.**
- (E) **Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.**

**IT IS AGREED** as follows:

## **SECTION A - PRELIMINARIES**

### **1 Definitions and Interpretation**

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 Interpretation is as set out in Schedule 1 (*Definitions*).
- 1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1 the Clauses and Schedule 1 (*Definitions*);
  - 1.3.2 Schedules 2 (*Services Description*) and 3 (*Performance Measurement and Monitoring*) and their Annexes;
  - 1.3.3 any other Schedules and their Annexes (other than Schedule 8 (*Supplier Solution*) and its Annexes); and
  - 1.3.4 Schedule 8 (*Supplier Solution*) and its Annexes (if any) unless any part of the Supplier Solution offers a better commercial position for the Authority (as decided by the Authority, in its absolute discretion), in which case that part of the Supplier Solution will take precedence over the documents above.
- 1.4 The Schedules and their Annexes form part of this Contract.
- 1.5 In entering into this Contract the Authority is acting as part of the Crown.

### **2 Due Diligence**

- 2.1 The Supplier acknowledges that:
- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
  - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
  - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
    - (a) the Authority Requirements;
    - (b) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;



- (c) the operating processes and procedures and the working methods of the Authority;
- (d) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and
- (e) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Services; and
- (f) it has advised the Authority in writing of:
  - (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
  - (ii) the actions needed to remedy each such unsuitable aspect; and
  - (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,and such actions, timetable and costs are fully reflected in this Contract, including the Services Description and/or Authority Responsibilities as applicable.

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

- 2.2.1 any unsuitable aspects of the Operating Environment;
- 2.2.2 any misinterpretation of the Authority Requirements; and/or
- 2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

### **3 Warranties**

3.1 The Authority represents and warrants that:

- 3.1.1 it has full capacity and authority to enter into and to perform this Contract;
- 3.1.2 this Contract is entered into by its duly authorised representative;
- 3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and

- 3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
- 3.2 The Supplier represents and warrants that:
  - 3.2.1 it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
  - 3.2.2 it has full capacity and authority to enter into and to perform this Contract;
  - 3.2.3 this Contract is entered into by its duly authorised representative;
  - 3.2.4 it has all necessary consents and regulatory approvals to enter into this Contract;
  - 3.2.5 it has notified the Authority in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
  - 3.2.6 its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
  - 3.2.7 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
  - 3.2.8 all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Contract;
  - 3.2.9 it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
  - 3.2.10 it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which

are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;

- 3.2.11 the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
  - 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
  - 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
  - 3.2.14 within the previous twelve (12) months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
  - 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
  - 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
  - 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
  - 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
  - 3.8 The Supplier indemnifies the Authority against wilful misconduct of the Supplier, Subcontractor and Supplier Personnel that impacts this Contract.

## **SECTION B - THE SERVICES**

### **4     Term**

- 4.1     This Contract shall come into force on the Effective Date unless terminated at an earlier date by operation of Law or in accordance with Clause 4.2 or in accordance with Clause 31 (*Termination Rights*), expire at midnight on the day before the seventh (7<sup>th</sup>) anniversary of the Operational Service Commencement Date.
- 4.2     The Authority may terminate this Contract at the end of the fifth (5<sup>th</sup>) Contract Year by giving not less than nine (9) months' written notice and the Supplier acknowledges and accepts that the Supplier has no right to seek compensation from the Authority for such termination and that Clause 32.4 (*Payments by the Authority*) shall not apply.

### **Guarantee**

- 4.3     In the event of a Financial Distress Event or if in the reasonable opinion of the Authority a Financial Distress Event is reasonably likely to occur, the Authority may by giving written notice to the Supplier require the valid execution and delivery to the Authority of a Guarantee, entered into with a guarantor acceptable to the Authority, within six (6) weeks after receipt of such notice or such other period as may be agreed between the Parties acting reasonably.

### **5     Services**

#### **Standard of Services**

- 5.1     The Supplier shall provide:
- 5.1.1     the Implementation Services from (and including) the Effective Date; and
  - 5.1.2     all other elements of the Services from the Operational Service Commencement Date.
- 5.2     The Supplier shall ensure that:
- 5.2.1     the Services
    - (a)     comply in all respects with the Services Description; and
    - (b)     are supplied in accordance with the Supplier Solution and the provisions of this Contract; and
  - 5.2.2     where:
    - (a)     the Services to be provided from the Operational Service Commencement Date are similar to services that the Authority was receiving immediately prior to that Operational Service Commencement Date (such similar services being "**Preceding Services**"); and
    - (b)     the standard and level of service received by the Authority in respect of any of the Preceding Services in the twelve (12) month period

immediately prior to the Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being “**Relevant Preceding Services**”),

the Services to be provided from the Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Authority in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the Operational Service Commencement Date.

**5.3 The Supplier shall:**

- 5.3.1 perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:
  - (a) all applicable Law;
  - (b) Good Industry Practice;
  - (c) the Standards;
  - (d) the Security Management Plan;
  - (e) the Quality Plans; and
  - (f) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3.1(a) to 5.3.1(e); and
- 5.3.2 indemnify the Authority against any costs resulting from any breach by the Supplier of any applicable Law relating to this Contract; and
- 5.3.3 deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

**5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3.1(a) to 5.3.1(e), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.**

**Supplier covenants**

**5.5 The Supplier shall:**

- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- 5.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain

throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

5.5.3 ensure that:

- (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
- (b) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 5 (*Security Management*)) shall notify the Authority three (3) months before the release of any new Software or Upgrade;
- (c) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
- (d) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
- (e) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);

5.5.4 minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Contract;

5.5.5 ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;

5.5.6 co-operate with any Other Supplier notified to the Supplier by the Authority from time to time by providing:

- (a) reasonable information (including any Documentation);
- (b) advice; and
- (c) reasonable assistance,

in connection with the Services to any such Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces

with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier in accordance with the following collaborative working principles:

- (i) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
- (ii) being open, transparent and responsive in sharing relevant and accurate information with such Other Suppliers;
- (iii) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such Other Suppliers;
- (iv) providing reasonable cooperation, support, information and assistance to such Other Suppliers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- (v) identifying, implementing and capitalising on opportunities to improve Deliverables and deliver better solutions and performance throughout the relationship lifecycle;

- 5.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;
- 5.5.8 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5.7;
- 5.5.9 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- 5.5.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- 5.5.11 notify the Authority in writing as soon as reasonably possible and in any event within one (1) month of any change of Control taking place;
- 5.5.12 notify the Authority in writing within ten (10) Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;

- 5.5.13 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority; and
- 5.5.14 manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses 17.2 and 17.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
  - 5.7.1 remedy any breach of its obligations in Clauses 5.5.2 to 5.5.4 inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
  - 5.7.2 remedy any breach of its obligations in Clause 5.5.1 and Clauses 5.5.5 to 5.5.10 inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
  - 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work,and any failure of the Supplier to comply with its obligations under Clause 5.7.1 or Clause 5.7.2 within the specified or agreed timeframe shall constitute a Notifiable Default.

#### **Specially Written Software warranty**

- 5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.7 (*remedies for breach of covenants*) and any other rights and remedies of the Authority howsoever arising, the Supplier warrants to the Authority that all components of the Specially Written Software shall:
  - 5.8.1 be free from material design and programming errors;
  - 5.8.2 perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and
  - 5.8.3 not infringe any Intellectual Property Rights.

#### **Continuing obligation to provide the Services**

- 5.9 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:



- 5.9.1 any withholding of the Service Charges by the Authority pursuant to the accrual of Service Credits in accordance with Schedule 3 (*Performance Levels*);
  - 5.9.2 the existence of an unresolved Dispute; and/or
  - 5.9.3 any failure by the Authority to pay any Charges,
- unless the Supplier is entitled to terminate this Contract under Clause 31.3.1 (*Termination by the Supplier*) for failure to pay undisputed Charges.

### **Authority Emergent Services**

- 5.10 The Authority may, provided that such requirement does not breach the Public Contract Regulations 2015 (or any replacement legislation), require the Supplier to provide any Authority Emergent Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Authority Emergent Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Authority Emergent Services from any third party.
- 5.11 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Authority Emergent Services.
- 5.12 Following receipt of the Authority's notice pursuant to Clause 5.10:
  - 5.12.1 the Parties shall document the inclusion of the relevant Authority Emergent Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Authority Emergent Services have already been agreed;
  - 5.12.2 the Supplier shall implement and test (if the Authority considers that testing is required in which case the Authority shall specify the details of the required testing) the relevant Authority Emergent Services in accordance with any implementation plan agreed between the Parties in respect of the relevant Authority Emergent Services ("**Authority Emergent Services Implementation Plan**");
  - 5.12.3 any additional charges for the Authority Emergent Services shall be dealt with as specified in Paragraph 3 of Annex 1 to Schedule 15 (*Charges and Invoicing*); and
  - 5.12.4 the Supplier shall, from the date agreed in the Authority Emergent Services Implementation Plan (or, if later, the date of Achievement of any milestones associated with the commencement of the relevant Authority Emergent Services (if any)), provide the relevant Authority Emergent Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Authority Emergent Services as agreed between the Parties as set out in Paragraph 3 of Part B of Schedule 3 (*Performance Measurement and Monitoring*).

## **Power of attorney**

5.13 By way of security for the performance of its obligations under Clauses 5.5.7 and 5.5.8 (*Supplier covenants*) the Supplier:

- 5.13.1 hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time;
- 5.13.2 shall promptly, at its own expense, execute any deed that the Authority may reasonably require to create or perfect the appointment of the power of attorney referred to in this Clause 5.13; and
- 5.13.3 ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in this Clause 5.13.

## **Authority Responsibilities**

5.14 The Authority shall comply with its responsibilities set out in Schedule 7 (*Authority Responsibilities*).

## **6 Implementation**

### **Quality Plans**

- 6.1 The Supplier shall develop, by a date which is no more than twenty (20) Working Days before the Operational Service Commencement Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.
- 6.3 Following the approval by the Authority of the Quality Plans:
  - 6.3.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
  - 6.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

## **Implementation Plan and Delays**

- 6.4 The Parties shall comply with the provisions of Schedule 13 (*Implementation Plan and Transition*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- 6.5.1 comply with the Implementation Plan; and
  - 6.5.2 perform its obligations as set out in the Implementation Plan so as to Achieve the completion of each activity by the relevant Key Project Date (if any).
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay it shall:
- 6.6.1 notify the Authority in accordance with Clause 25.1 (*Rectification Plan Process*);
  - 6.6.2 comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
  - 6.6.3 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

## **Meeting Key Project Dates**

- 6.7 The Authority, acting reasonably, shall decide as to whether any obligation of the Supplier set out in the Implementation Plan has been Achieved by the relevant Key Project Date. If the Supplier disputes any such decision, either Party may refer the Dispute to the Dispute Resolution Procedure.

## **7 Performance Indicators**

- 7.1 The Supplier shall:
- 7.1.1 provide the Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Operational Service Commencement Date; and
  - 7.1.2 comply with the provisions of Schedule 3 (*Performance Measurement and Monitoring*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

## **Performance Failures**

- 7.2 If in any Service Period:
- 7.2.1 a KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process;

- 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process and Service Credits shall accrue as set out in Schedule 3 (*Performance Measurement and Monitoring*).
- 7.3 Service Credits shall be the Authority's exclusive financial remedy for a Material KPI Failure except where:
- 7.3.1 the Supplier has over the previous twelve (12) month period accrued Service Credits in excess of the Service Credit Cap;
- 7.3.2 the Material KPI Failure:
- (a) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
  - (b) results in:
    - (i) the corruption or loss of any Authority Data (in which case the remedies under Clause 18.7 (*Authority Data and Security Requirements*) shall also be available); and/or
    - (ii) the Authority being required to make a compensation payment to one or more third parties;
- 7.3.3 the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- 7.3.4 the Authority is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*).
- 7.4 **[Not used]**
- 7.5 **[Not used]**
- 7.6 **[Not used]**

### **Critical Performance Failure**

- 7.7 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 31.1 or 31.2 (*Termination by the Authority*).

### **Changes to Performance Indicators and Service Credits**

- 7.8 The Authority may give reasonable notice to the Supplier that the Authority requires the Parties to review the Key Performance Indicators and make any changes agreed by the Parties to the Key Performance Indicators or the way in which performance is measured against the Key Performance Indicators to ensure the continued delivery of the Contract in accordance with the Authority's Requirements.
- 7.9 The Parties shall discuss any changes to the Key Performance Indicators at the next meeting of the Contract Management Board which follows the provision of notice by the Authority under Clause 7.8. Should the Parties fail to agree any changes to the

Key Performance Indicators, either party may refer the matter to the Dispute Resolution Procedure.

## **8 Services Improvement**

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Contract Management Board Quarterly on:

8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;

8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;

8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or reduction of operational risk;

8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or

8.1.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

8.4 The Parties shall deal with any Cost Savings resulting from any improvement agreed in accordance with Clause 8.3 in accordance with the gainshare provisions in Paragraph 6 (*Gainshare*) of Schedule 15 (*Charges and Invoicing*).

## **9 Equipment and Maintenance**

### **Supplier Equipment**

9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the

cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.

## **Maintenance**

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the "**Maintenance Schedule**") which shall be agreed with the Authority. Once the Maintenance Schedule has been agreed with the Authority Representative, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

## **SECTION C - PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS**

### **10 Financial and Taxation Matters**

#### **Charges and Invoicing**

- 10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 15 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Meeting Key Project Dates*), 12 (*Records, Reports, Audits and Open Book Data*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*) and, to the extent specified therein, Clause 27 (*Remedial Adviser*) and Clause 28 (*Step-In Rights*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

#### **VAT**

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.

#### **Set-off and Withholding**

- 10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.6 it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.
- 10.8 [Not used]

## **Financial Distress**

10.9 The Parties shall comply with the provisions of Schedule 18 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

## **Promoting Tax Compliance**

10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

10.10.1 notify the Authority in writing of such fact within five (5) Working Days of its occurrence; and

10.10.2 promptly provide to the Authority:

(a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.



## **SECTION D - CONTRACT GOVERNANCE**

### **11 Governance**

- 11.1 The Parties shall comply with the provisions of Schedule 21 (*Governance*) in relation to the management and governance of this Contract.

#### **Representatives**

- 11.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.
- 11.3 The initial Supplier Representative shall be the person named as such in Schedule 29 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).
- 11.4 The Authority shall notify the Supplier of the identity of the initial Authority Representative within five (5) Working Days of the Effective Date. The Authority may, by written notice to the Supplier, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

### **12 Records, Reports, Audits & Open Book Data**

- 12.1 The Supplier shall comply with the provisions of Part A of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.
- 12.2 The Parties shall comply with the provisions of:
- 12.2.1 Part B of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
  - 12.2.2 Part C of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

### **13 Change**

#### **Change Control Procedure**

- 13.1 Any requirement for a Change shall be subject to the Change Control Procedure.

#### **Change in Law**

- 13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:
- 13.2.1 a General Change in Law; or
  - 13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.

- 13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2.2), the Supplier shall:
- 13.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
- (a) whether any Change is required to the Services, the Charges or this Contract; and
  - (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- 13.3.2 provide the Authority with evidence:
- (a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
  - (b) as to how the Specific Change in Law has affected the cost of providing the Services; and
  - (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.

## **SECTION E - SUPPLIER PERSONNEL AND SUPPLY CHAIN**

### **14 Supplier Personnel**

#### **14.1 The Supplier shall:**

- 14.1.1 provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- 14.1.2 ensure that all Supplier Personnel:
  - (a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
  - (b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*) and Schedule 5 (*Security Management*); and
  - (c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 5 (*Security Management*);
- 14.1.3 subject to Schedule 28 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- 14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- 14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- 14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- 14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- 14.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract.

#### **14.2 If the Authority reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:**

- 14.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or
- 14.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

## **Key Personnel**

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 29 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Operational Service Commencement Date.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 14.5.1 requested to do so by the Authority;
  - 14.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
  - 14.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
  - 14.5.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- 14.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
  - 14.6.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
  - 14.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least sixty (60) Working Days' notice;
  - 14.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
  - 14.6.5 ensure that any replacement for a Key Role:
    - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and

- (b) is fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced.

### **Employment Indemnity**

14.7 The Parties agree that:

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

### **Income Tax and National Insurance Contributions**

14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

- 14.8.1 at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- 14.8.2 indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

### **Staff Transfer**

14.9 The Parties agree that:

- 14.9.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 28 (*Staff Transfer*) shall apply as follows:
  - (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 28 (*Staff Transfer*) shall apply;
  - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 28 (*Staff Transfer*) shall apply;

- (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 28 (*Staff Transfer*) shall apply; and
  - (d) Part C of Schedule 28 (*Staff Transfer*) shall not apply;
- 14.9.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 28 (*Staff Transfer*) shall apply, Part D of Schedule 28 may apply and Parts A and B of Schedule 28 (*Staff Transfer*) shall not apply; and
- 14.9.3 Part E of Schedule 28 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

## **15 Supply Chain Rights and Protections**

### **Advertising Sub-contract Opportunities**

- 15.1 The Supplier shall:
  - 15.1.1 subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of twenty-five thousand pounds (£25,000) that arise during the Term;
  - 15.1.2 within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
  - 15.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
  - 15.1.4 provide reports on the information at Clause 15.1.3 to the Authority in the format and frequency as reasonably specified by the Authority; and
  - 15.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.
- 15.4 Notwithstanding Clause 15.1 the Authority may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

### **Appointment of Sub-contractors**

- 15.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:
- 15.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
  - 15.5.2 comply with its obligations under this Contract in the delivery of the Services; and
  - 15.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 15.6 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority in writing of:
- 15.6.1 the proposed Sub-contractor's name, registered office and company registration number;
  - 15.6.2 the scope of any Services to be provided by the proposed Sub-contractor; and
  - 15.6.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.7 If requested by the Authority within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:
- 15.7.1 a copy of the proposed Sub-contract; and
  - 15.7.2 any further information reasonably requested by the Authority.
- 15.8 The Authority may, within ten (10) Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:
- 15.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
  - 15.8.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
  - 15.8.3 the proposed Sub-contractor employs unfit persons; and/or
  - 15.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 15.22 (*Termination of sub-contracts*);
- in which case, the Supplier shall not proceed with the proposed appointment.
- 15.9 If:

15.9.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of ten (10) Working Days of receipt of:

- (a) the Supplier's notice issued pursuant to Clause 15.6; and
- (b) any further information requested by the Authority pursuant to Clause 15.7; and

15.9.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.10 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 11 (*Third Party Contracts*).

### **Appointment of Key Sub-contractors**

15.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

15.10.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;

15.10.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or

15.10.3 the proposed Key Sub-contractor employs unfit persons; and/or

15.10.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 15.22 (*Termination of sub-contracts*).

15.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 10 (*Notified Key Sub-contractors*).

15.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:

15.12.1 provisions which will enable the Supplier to discharge its obligations under this Contract;

15.12.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;

15.12.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;



- 15.12.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- 15.12.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
  - (a) data protection requirements set out in Clauses 18 (*Authority Data and Security Requirements*) and 21 (*Protection of Personal Data*);
  - (b) FOIA requirements set out in Clause 20 (*Transparency and Freedom of Information*);
  - (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5.13 (*Services*);
  - (d) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
  - (e) the conduct of Audits set out in Part C of Schedule 19 (*Financial Reports and Audit Rights*);
- 15.12.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses 31.1.1 (*Termination by the Authority*) and 32.5 (*Payments by the Authority*) and Schedule 16 (*Payments on Termination*) of this Contract;
- 15.12.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 15.12.8 a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 27 (*Remedial Adviser*);
- 15.12.9 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 28 (*Step-in Rights*);
- 15.12.10 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- 15.12.11 a provision requiring the Key Sub-contractor to:
  - (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:

- (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
- (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within ten (10) Working Days of the date on which the Key Sub-contractor first becomes aware of such); and

- (b) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 18 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan, and providing the information specified at Paragraphs 6.4.2(ii) and (iii) of Schedule 18 (*Financial Distress*).

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

### **Supply chain protection**

15.14 For Sub-contracts in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:

- 15.14.1 where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions; or
- 15.14.2 where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions,

that:

- (a) give the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
- (b) require the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) if the Supplier or other party fails to consider and verify an invoice in accordance with sub-Clause (b) (above), the invoice shall be regarded as valid and undisputed for the purpose of sub-Clause (d) (below) after a reasonable time has passed;

- (d) require the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) give the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) require the Sub-contractor to include a clause to the same effect as this Clause 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

**15.15 The Supplier shall:**

- 15.15.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- 15.15.2 include within the Performance Monitoring Report produced by it pursuant to Paragraph 1.2 of Part B of Schedule 3 (*Performance Measurement and Monitoring*) a summary of its compliance with Clause 15.15.1, such data to be certified each Service Period by a director of the Supplier as being accurate and not misleading.

**15.16 Without prejudice to Clause 15.15.1, the Supplier shall:**

- 15.16.1 pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
  - (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
  - (b) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- 15.16.2 include within the Performance Monitoring Report produced by it pursuant to Paragraph 1.2 of Part B of Schedule 3 (*Performance Measurement and Monitoring*) a summary of its compliance with Clause 15.16.1, such data to be certified every six (6) months by a director of the Supplier as being accurate and not misleading.

**15.17 If any Performance Monitoring Report shows that in either of the last two six (6) month periods the Supplier failed to pay ninety-five per cent (95%) or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall provide the Authority within fifteen (15) Working Days of submission of the latest Performance Monitoring Report an action plan (the "**Action Plan**") for improvement. The Action Plan shall include, but not be limited to, the following:**

- 15.17.1 identification of the primary causes of failure to pay ninety-five per cent (95%) or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
  - 15.17.2 actions to address each of the causes set out in Clause 15.17.1; and
  - 15.17.3 mechanism for and commitment to regular reporting on progress to the Supplier's Board.
- 15.18 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within ten (10) Working Days of the date on which the Action Plan is provided to the Authority.
- 15.19 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.20 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 15.21 Notwithstanding any provision of Clauses 19 (*Confidentiality*) and 22 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Performance Monitoring Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay ninety-five (95%) or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

## **Termination of Sub-contracts**

- 15.22 The Authority may require the Supplier to terminate:
- 15.22.1 a Sub-contract where:
    - (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 31.1.2 (*Termination by the Authority*);
    - (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;

- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
  - (d) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.26 (*Exclusion of Sub-contractors*); and
- 15.22.2 a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:
  - (a) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
  - (b) the Authority has not served its notice of objection within six (6) months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

### **Competitive Terms**

- 15.23 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item.
- 15.24 If the Authority exercises its option pursuant to Clause 15.23, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

### **Retention of Legal Obligations**

- 15.25 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

### **Exclusion of Sub-contractors**

- 15.26 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015 (or any replacement Law), then:
- 15.26.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;

- 15.26.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

#### **Reporting SME/VCSE Sub-contracts**

- 15.27 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Authority thirty (30) days prior to the end of each Financial Year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in Annex 2 to Schedule 21 (*Governance*) and in accordance with any guidance issued by the Authority from time to time.
- 15.28 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

## **SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY**

### **16 Intellectual Property Rights**

- 16.1 The Parties agree that the terms set out in Schedule 32 (*Intellectual Property Rights*) shall apply to this Contract.

### **17 IPRs Indemnity**

- 17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 17.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- 17.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
  - 17.2.2 replace or modify the relevant item with non-infringing substitutes provided that:
    - (a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
    - (b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
    - (c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and
    - (d) the terms and conditions of this Contract shall apply to the replaced or modified Services.
- 17.3 If the Supplier elects to procure a licence in accordance with Clause 17.2.1 or to modify or replace an item pursuant to Clause 17.2.2, but this has not avoided or resolved the IPRs Claim, then:
- 17.3.1 the Authority may terminate this Contract (if subsisting) in accordance with Clause 31.1.2 (*Termination by the Authority*) with immediate effect by written notice to the Supplier; and
  - 17.3.2 without prejudice to the indemnity set out in Clause 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

### **18 Authority Data and Security Requirements**

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

- 18.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 18.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).
- 18.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 18.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties) via a secure encrypted method.
- 18.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the requirements of Schedule 5 (*Security Management*).
- 18.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 18.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Authority's notice; and/or
- 18.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*).
- 18.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 18.9 The Supplier shall comply with the requirements of Schedule 5 (*Security Management*).

## **19 Confidentiality**

- 19.1 For the purposes of this Clause 19, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.



- 19.2 Except to the extent set out in this Clause 19 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- 19.2.1 treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
  - 19.2.2 not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;
  - 19.2.3 not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
  - 19.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- 19.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause 20 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
  - 19.3.2 the need for such disclosure arises out of or in connection with:
    - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
    - (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
    - (c) the conduct of a Crown Body review in respect of this Contract; or
  - 19.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 19.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 19.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

- 19.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract;
- 19.5.2 its auditors; and
- 19.5.3 its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause 19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

19.6 The Authority may disclose the Confidential Information of the Supplier:

- 19.6.1 on a confidential basis to any Crown Body for any proper purpose of the Authority or of the relevant Crown Body;
- 19.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 19.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 19.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 19.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 19.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 28 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 27 (*Remedial Adviser*) and Exit Management rights; or
- 19.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 19.

19.7 Nothing in this Clause 19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

## **20 Transparency and Freedom of Information**

20.1 The Parties acknowledge that:

- 20.1.1 the Transparency Reports;

- 20.1.2 the content of this Contract, including any changes to this Contract agreed from time to time, except for:
- (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
  - (b) Commercially Sensitive Information; and
- 20.1.3 the Publishable Performance Information,
- (together the “**Transparency Information**”) are not Confidential Information.
- 20.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 20.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information.
- 20.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 20.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 20.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6.3 (*Confidentiality*)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 20.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- 20.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
  - 20.7.2 transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
  - 20.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
  - 20.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 20.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

## **21 Protection of Personal Data**

- 21.1 The Supplier shall indemnify the Authority against any and all Losses incurred by the Authority due to breach by the Supplier of Data Protection Legislation or Clause 21.

### **Status of the Controller**

- 21.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:
- 21.2.1 "Controller" (where the other Party acts as the "Processor");
  - 21.2.2 "Processor" (where the other Party acts as the "Controller");
  - 21.2.3 "Joint Controller" (where both Parties are considered to jointly control the same Personal Data);
  - 21.2.4 "Independent Controller" of the Personal Data where the other Party is also "Controller" of the same Personal Data in its own right (but there is no element of joint control),

and the Parties shall set out in Schedule 31 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Contract.

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

- 21.3 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 31 (*Processing Personal Data*) by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).
- 21.4 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
- 21.5 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- 21.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;
  - 21.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - 21.5.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 21.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 21.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- 21.6.1 process that Personal Data only in accordance with Schedule 31 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;
  - 21.6.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18 (*Authority Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - (a) nature of the data to be protected;
    - (b) harm that might result from a Data Loss Event;
    - (c) state of technological development; and
    - (d) cost of implementing any measures;
  - 21.6.3 ensure that:

- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 31 (*Processing Personal Data*));
  - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (i) are aware of and comply with the Processor's duties under this Clause 21, and Clauses 18 (*Authority Data and Security Requirements*) and 19 (*Confidentiality*);
    - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
    - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 21.6.4 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or Section 74A of the DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
  - (b) the Controller and/or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or Section 75 of the DPA 2018 and/or Article 46 of the EU GDPR (where applicable)) as determined by the Controller which could include relevant parties entering into:
    - (i) where the transfer is subject to UK GDPR:
      - (A) the UK International Data Transfer Agreement (the "**IDTA**") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
      - (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU [or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time] (the "**EU SCCs**"), together with the UK

International Data Transfer Agreement Addendum to the EU SCCs (the “**Addendum**”) as published by the Information Commissioner's Office from time to time; and/or

- (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the Controller being implemented by the Processor and/or Sub-processor;
  - (c) the Data Subject has enforceable rights and effective legal remedies;
  - (d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- 21.6.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 21.7 Subject to Clause 21.8, the Processor shall notify the Controller immediately if it:
  - 21.7.1 receives a Data Subject Request (or purported Data Subject Request);
  - 21.7.2 receives a request to rectify, block or erase any Personal Data;
  - 21.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - 21.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - 21.7.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - 21.7.6 becomes aware of a Data Loss Event.
- 21.8 The Processor's obligation to notify under Clause 21.7 shall include the provision of further information to the Controller in phases, as details become available.
- 21.9 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under

Clause 21.7 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- 21.9.1 the Controller with full details and copies of the complaint, communication or request;
  - 21.9.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - 21.9.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - 21.9.4 assistance as requested by the Controller following any Data Loss Event; and/or
  - 21.9.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 21.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- 21.10.1 the Controller determines that the processing is not occasional;
  - 21.10.2 the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
  - 21.10.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 21.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 21.12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 21.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- 21.13.1 notify the Controller in writing of the intended Sub-processor and processing;
  - 21.13.2 obtain the written consent of the Controller;
  - 21.13.3 enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 21 such that they apply to the Sub-processor; and



- 21.13.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 21.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 21.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

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

- 21.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 1 to Schedule 31 (*Processing Personal Data*).

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

- 21.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the joint control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 21.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 21.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 21.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 21.21 The Parties shall only provide Personal Data to each other:
- 21.21.1 to the extent necessary to perform their respective obligations under this Contract;
  - 21.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
  - 21.21.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or Section 74A of the DPA 2018 and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
- (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or Section 75 of the DPA 2018 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include the relevant parties entering into:
  - (i) where the transfer is subject to UK GDPR:
    - (A) the UK International Data Transfer Agreement (the "IDTA") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
    - (B) the European Commission's Standard Contractual Clauses per decisions 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time] (the "EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to time; and/or
  - (ii) where the transfer is subject to EU GDPR, the EU SCCs, as well as any additional measures determined by the non-transferring Party being implemented by the transferring Party;
- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
- (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

21.21.4 where it has recorded it in Schedule 31 (*Processing Personal Data*).

21.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and

severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

21.23 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.

21.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("**the Request Recipient**"):

21.24.1 the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

21.24.2 where the request or correspondence is directed to the other Party and/or relates to the other Party's Processing of the Personal Data, the Request Recipient will:

(a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and

(b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

21.25 Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other Party pursuant to this Contract and shall:

21.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Loss Event;

21.25.2 implement any measures necessary to restore the security of any compromised Personal Data;

21.25.3 work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and

21.25.4 not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.

- 21.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 31 (*Processing Personal Data*).
- 21.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 31 (*Processing Personal Data*).
- 21.28 Notwithstanding the general application of Clauses 21.3 to 21.15 (*Where one Party is Controller and the other Party its Processor*) to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 21.17 to 21.27.

### **Standard Contractual Clauses**

- 21.29 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "**UK Adequacy Decision**"). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Contract is not covered by the UK Adequacy Decision or at any time during the term of this Contract the UK Adequacy Decision is:

- 21.29.1 withdrawn, invalidated, overruled or otherwise ceases to have effect, or
- 21.29.2 amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Contract,

Clauses 21.30 to 21.31 below shall apply.

- 21.30 The Parties agree:

- 21.30.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU in respect of data transfers by the Supplier outside of the EU to the UK;
- 21.30.2 that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
- 21.30.3 to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
- 21.30.4 that if there is any conflict between this Contract and the Standard Contractual Clauses, the terms of the Standard Contractual Clauses shall apply.

21.31 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

- 21.31.1 that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in use at the time of such update, amendment, substitution, adoption or publication and that such incorporation is not a Change;
- 21.31.2 that, where no other appropriate safeguard or exemption applies, the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- 21.31.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- 21.31.4 that if there is any conflict between this Contract and the most up to date Standard Contractual Clauses, the terms of the most up to date Standard Contractual Clauses shall apply.

## **22 Publicity and Branding**

22.1 The Supplier shall not:

- 22.1.1 make any press announcements or publicise this Contract or its contents in any way; or
- 22.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders,

without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

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

## **SECTION G - LIABILITY, INDEMNITIES AND INSURANCE**

### **23     Limitations on Liability**

#### **Unlimited liability**

23.1     Neither Party limits its liability for:

- 23.1.1     death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
- 23.1.2     fraud or fraudulent misrepresentation by it or its employees;
- 23.1.3     breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 23.1.4     any liability to the extent it cannot be limited or excluded by Law.

23.2     The Supplier's liability in respect of the indemnities in Clause 10.5 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 17 (*IPRs Indemnity*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

23.3     The Authority's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

#### **Financial and other limits**

23.4     Subject to Clauses 23.1 and 23.2 (*Unlimited Liability*) and Clause 23.7 (*Consequential losses*):

- 23.4.1     the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed ten million pounds (£10,000,000);
- 23.4.2     the Supplier's aggregate liability in respect of loss of or damage to Authority Data and the indemnity at Clause 21.1 (*Protection of Personal Data*) in each and any Contract Year shall in no event exceed ten million pounds (£10,000,000);
- 23.4.3     the Supplier's aggregate liability in respect of all Service Credits incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap;
- 23.4.4     the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier, including the Supplier's aggregate liability in respect of the indemnity at Clause 5.3.2 (*Standard of Services*) shall in no event exceed:

- (a) in relation to Defaults occurring in the first Contract Year, the higher of ten million pounds (£10,000,000) or an amount equal to one hundred per cent (100%) of the Estimated Year 1 Charges;
- (b) in relation to Defaults occurring during any subsequent Contract Year, the higher of ten million pounds (£10,000,000) or an amount equal to one hundred per cent (100%) of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (c) in relation to Defaults occurring after the end of the Term, an amount equal to the higher of ten million pounds (£10,000,000) or one hundred per cent (100%) of the Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term,

provided that where any Losses referred to in this Clause 23.4.4 have been incurred by the Authority as a result of the Supplier's abandonment of this Contract or the Supplier's wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract (including the circumstances referred to in Clause 3.8 (*Warranties*)) the references in this Clause to one hundred per cent (100%) shall be deemed to be references to one hundred and fifty per cent (150%).

23.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 23.4.4.

23.6 Subject to Clauses 23.1 and 23.3 (*Unlimited Liability*) and Clause 23.7 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment, the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Authority shall in no event exceed:

- 23.6.1 in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
- 23.6.2 in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- 23.6.3 in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the twelve (12) month period immediately prior to the last day of the Term.

### **Consequential Losses**

23.7 Subject to Clauses 23.1, 23.2 and 23.3 (*Unlimited Liability*) and Clause 23.8, neither Party shall be liable to the other Party for:

- 23.7.1 any indirect, special or consequential Loss; and/or

- 23.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 23.8 Notwithstanding Clause 23.7 but subject to Clause 23.4 (*Financial and other limits*), the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
- 23.8.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
- 23.8.2 any wasted expenditure or charges;
- 23.8.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
- 23.8.4 any compensation or interest paid to a third party by the Authority; and
- 23.8.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty.

### **Conduct of indemnity claims**

- 23.9 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 27 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

### **Mitigation**

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

## **24 Insurance**

- 24.1 The Supplier shall comply with the provisions of Schedule 6 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.



## **SECTION H - REMEDIES AND RELIEF**

### **25     Rectification Plan Process**

25.1     In the event that:

- 25.1.1     there is, or is reasonably likely to be, a Delay; and/or
- 25.1.2     in any Service Period there has been a KPI Failure or a Material KPI Failure; and/or
- 25.1.3     the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Authority of the Notifiable Default as soon as practicable but in any event within three (3) Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Authority may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

#### **Notification**

25.2     If:

- 25.2.1     the Supplier notifies the Authority pursuant to Clause 25.1 (*Rectification Plan Process*) that a Notifiable Default has occurred; or
- 25.2.2     the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Authority serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

25.3     The “**Rectification Plan Process**” shall be as set out in Clauses 25.4 (*Submission of the draft Rectification Plan*) to 25.9 (*Agreement of the Rectification Plan*).

#### **Submission of the draft Rectification Plan**

25.4     The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within ten (10) Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 25.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

25.5     The draft Rectification Plan shall set out:

- 25.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
  - 25.5.2 the actual or anticipated effect of the Notifiable Default; and
  - 25.5.3 the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 25.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*).

#### **Agreement of the Rectification Plan**

- 25.7 The Authority may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- 25.7.1 is insufficiently detailed to be capable of proper evaluation;
  - 25.7.2 will take too long to complete;
  - 25.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
  - 25.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 25.8 The Authority shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Authority for review within five (5) Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 25.9 If the Authority consents to the Rectification Plan:
- 25.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
  - 25.9.2 the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default,
- save in the event of a Rectification Plan Failure or other Supplier Termination Event.

26 [Not used]

**27 Remedial Adviser**

27.1 If:

27.1.1 any of the Intervention Trigger Events occur; or

27.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an “**Intervention Cause**”), the Authority may give notice to the Supplier (an “**Intervention Notice**”) giving reasonable details of the Intervention Cause and requiring:

- (a) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (b) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 27.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 27.1 prior to or instead of exercising its right to terminate this Contract.

27.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:

27.2.1 the Remedial Adviser shall be:

- (a) a person selected by the Supplier and approved by the Authority; or
- (b) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within ten (10) Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;

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

27.2.3 any right of the Authority to terminate this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for sixty (60) Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the “**Intervention Period**”).

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

- 27.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
  - 27.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
  - 27.3.3 write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
  - 27.3.4 make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
  - 27.3.5 take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 27.4 The Supplier shall:
- 27.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
  - 27.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
  - 27.4.3 submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
  - 27.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
  - 27.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).
- 27.5 The Supplier shall be responsible for:
- 27.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
  - 27.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 27.
- 27.6 If:
- 27.6.1 the Supplier:
    - (a) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or

(b) is in Default of any of its obligations under Clause 27.4; and/or

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

(each a “**Remedial Adviser Failure**”), the Authority shall be entitled to terminate this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*).

## **28 Step-In Rights**

28.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause 28 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 19 (*Confidentiality*)). The Step-In Notice shall set out the following:

28.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);

28.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;

28.1.3 the date on which it wishes to commence the Required Action;

28.1.4 the time period which it believes will be necessary for the Required Action;

28.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and

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

28.2 Following service of a Step-In Notice, the Authority shall:

28.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

28.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;

28.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and

28.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 28.

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

28.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

- 28.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 28.4 shall apply to Deductions from Charges in respect of other Services; and
- 28.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 28.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
  - 28.4.1 the degradation of any Services not subject to the Required Action; or
  - 28.4.2 the non-Achievement of an activity by its Key Project Date,  
  
beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 28.5 Before ceasing to exercise its step in rights under this Clause 28 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:
  - 28.5.1 the Required Action it has actually taken; and
  - 28.5.2 the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 28.6.
- 28.6 The Supplier shall, following receipt of a Step-Out Notice and not less than twenty (20) Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
- 28.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 28.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 28, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
  - 28.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or
  - 28.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

**29     Authority Cause**

29.1     Notwithstanding any other provision of this Contract, if the Supplier has failed to:

- 29.1.1     Achieve any activity by its associated Key Project Date;
- 29.1.2     provide the Services in accordance with the Target Performance Levels;  
and/or
- 29.1.3     comply with its obligations under this Contract,

(each a “**Supplier Non-Performance**”), and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 29):

- (a)     the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (b)     the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
  - (i)     to terminate this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*); or
  - (ii)    to take action pursuant to Clauses 27 (*Remedial Adviser*) or 28 (*Step-In*);
- (c)     where the Supplier Non-Performance constitutes the failure to Achieve any activity by its Key Project Date:
  - (i)     the Key Project Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause; and
  - (ii)    if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Key Project Dates resulting from the Authority Cause; and/or
- (d)     where the Supplier Non-Performance constitutes a Performance Failure:
  - (i)     the Supplier shall not be liable to accrue Service Credits;
  - (ii)    the Authority shall not be entitled to withhold any of the Service Charges as Service Credits pursuant to Schedule 3 (*Performance Measurement and Monitoring*); and
  - (iii)   the Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Authority Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Authority Cause.

29.2 In order to claim any of the rights and/or relief referred to in Clause 29.1, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

29.2.1 the Supplier Non-Performance;

29.2.2 the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract;

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

29.2.4 the relief and/or compensation claimed by the Supplier.

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

29.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Authority Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

29.5 Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

29.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

29.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,

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

29.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 29 shall be implemented in accordance with the Change Control Procedure.

### **30 Force Majeure**

30.1 Subject to the remaining provisions of this Clause 30 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause 30 from liability for failure to meet its obligations under this Contract for as long as and



only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

- 30.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 30 to the extent that consequences of the relevant Force Majeure Event:
- 30.3.1 are capable of being mitigated, but the Supplier has failed to do so;
  - 30.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
  - 30.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).
- 30.4 Subject to Clause 30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 30.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 30.6 Where, as a result of a Force Majeure Event:
- 30.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
    - (a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to Clause 31.1.3 (*Termination by the Authority*) or Clause 31.3.2 (*Termination by the Supplier*); and
    - (b) neither Party shall be liable for any Default arising as a result of such failure;
  - 30.6.2 the Supplier fails to perform its obligations in accordance with this Contract:
    - (a) the Authority shall not be entitled:

- (i) during the continuance of the Force Majeure Event to exercise its rights under Clause 27 (*Remedial Adviser*) and/or Clause 28 (*Step-in Rights*) as a result of such failure; and
    - (ii) to withhold amounts equivalent to Service Credits, from the Service Charges to the extent that a Performance Failure has been caused by the Force Majeure Event; and
  - (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 30.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 30.8 Relief from liability for the Affected Party under this Clause 30 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 30.7.

## **SECTION I - TERMINATION AND EXIT MANAGEMENT**

### **31 Termination Rights**

#### **Termination by the Authority**

31.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier:

- 31.1.1 for convenience at any time;
- 31.1.2 if a Supplier Termination Event occurs;
- 31.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
- 31.1.4 if this Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 (or any replacement Law) require a new procurement procedure,

and this Contract shall terminate on the date specified in the Termination Notice.

31.2 Where the Authority:

- 31.2.1 is terminating this Contract under Clause 31.1.2 due to the occurrence of the circumstances referred to in either limb (b),(h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- 31.2.2 has the right to terminate this Contract under Clause 31.1.2 or Clause 31.1.3, it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

#### **Termination by the Supplier**

31.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

- 31.3.1 this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds two hundred and two thousand, four hundred and four pounds and six pence (£202,404.06) and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or
- 31.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the

operation of Clause 31.3.2 would result in a Partial Termination, the provisions of Clause 31.4 (*Partial Termination*) shall apply.

## **Partial Termination**

- 31.4 If the Supplier notifies the Authority pursuant to Clause 31.3.2 (*Termination by the Supplier*) that it intends to terminate this Contract in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 31.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 31.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- 31.5.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- 31.5.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- 31.5.3 the Supplier shall not be entitled to reject the Change.

## **32 Consequences of Expiry or Termination**

### **General Provisions on Expiry or Termination**

- 32.1 The provisions of Clauses 5.8 (*Specially Written Software warranty*), 10.4 and 10.5 (*VAT*), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17.1 (*IPRs Indemnity*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*), 23 (*Limitations on Liability*), 32 (*Consequences of Expiry or Termination*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 15 (*Charges and Invoicing*), 16 (*Payments on Termination*), 19 (*Financial Reports and Audit Rights*), 23 (*Dispute Resolution Procedure*), 25 (*Exit Management*), 28 (*Staff Transfer*), and 32 (*Intellectual Property Rights*), shall survive the termination or expiry of this Contract.
- 32.2 Accumulated rights of the Parties shall not be affected by termination or expiry of the Contract.

## **Exit Management**

- 32.3 The Parties shall comply with the provisions of Schedule 25 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

## **Payments by the Authority**

- 32.4 If this Contract is terminated by the Authority pursuant to Clause 31.1.1 (*Termination by the Authority*) or by the Supplier pursuant to Clause 31.3.1 (*Termination by the Supplier*) or 34.4 (*Assignment and Novation*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Contract).
- 32.5 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses 31.1.2, 31.1.3, 31.2 (*Termination by the Authority*), 33.8.12(b) (*Modern Slavery*) or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:
- 32.5.1 payments in respect of any Assets or apportionments in accordance with Schedule 25 (*Exit Management*); and
  - 32.5.2 payments in respect of unpaid Charges for Services received up until the Termination Date.
- 32.6 The costs of termination incurred by the Parties shall lie where they fall if:
- 32.6.1 either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 31.1.3 or 31.2.2 (*Termination by the Authority*) or 31.3.2 (*Termination by the Supplier*); or
  - 32.6.2 the Authority terminates this Contract under Clause 31.1.4 (*Termination by the Authority*).

## **Payments by the Supplier**

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

## **Retention of withheld Service Credits**

- 32.8 Where the Authority terminates this Contract under Clause 31.1.2 due to a Rectification Plan Failure, the Authority may retain from any sums due to the Supplier an amount equal to any Service Credits withheld at the time of termination. If there are no sums due to the Supplier, the Authority may issue an invoice to the Supplier for the relevant amount and the Supplier shall pay such invoice within thirty (30) days of receipt.

## **SECTION J - MISCELLANEOUS AND GOVERNING LAW**

### **33     Compliance**

#### **Health and Safety**

33.1     The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:

33.1.1     all applicable Law regarding health and safety; and

33.1.2     the Health and Safety Policy while at the Authority Premises.

33.2     Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

#### **Employment Law**

33.3     The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

#### **Equality and Diversity**

33.4     The Supplier shall:

33.4.1     perform its obligations under this Contract (including those in relation to the Services) in accordance with:

(a)     all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(b)     the Authority's equality and diversity policy as provided to the Supplier from time to time; and

(c)     any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

33.4.2     take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

#### **Official Secrets Act and Finance Act**

33.5     The Supplier shall comply with the provisions of:

33.5.1 the Official Secrets Acts 1911 to 1989; and

33.5.2 section 182 of the Finance Act 1989.

### **Conflicts of Interest**

33.6 The Supplier:

33.6.1 must take action to ensure that neither the Supplier nor the Supplier Personnel are placed in the position of an actual, potential or perceived Conflict of Interest; and

33.6.2 must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

33.7 The Authority will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Contract in accordance with Clause 31.1.2 (*Termination by the Authority*) immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 32.3 (*Exit Management*), 32.5 (*Payments by the Authority*) and 32.7 (*Payments by the Supplier*) shall apply.

### **Modern Slavery**

33.8 The Supplier:

33.8.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;

33.8.2 shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;

33.8.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

33.8.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;

33.8.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;

33.8.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-contractors anti-slavery and human trafficking provisions;

- 33.8.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- 33.8.8 shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- 33.8.9 shall not use, nor allow its employees or sub-contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or sub-contractors;
- 33.8.10 shall not use or allow child or slave labour to be used by its sub-contractors;
- 33.8.11 shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its sub-contractors to the Authority and the Modern Slavery Helpline and relevant national or local law enforcement agencies;
- 33.8.12 if the Supplier is in Default under Clauses 33.8.1 to 33.8.11 the Authority may by notice:
- (a) require the Supplier to remove from performance of the Contract any Sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
  - (b) immediately terminate the Contract in accordance with Clause 31.1.2 (*Termination by the Authority*); and
- 33.8.13 shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains) and such remedial action plan shall be deemed to be a Rectification Plan for the purposes of this Contract;

## **Whistleblowing**

- 33.9 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of:
- 33.9.1 Law;
  - 33.9.2 Clauses 33.1 (*Health and Safety*) to 33.8 (*Modern Slavery*) or 33.10; or
  - 33.9.3 Clause 37 (*Prevention of fraud and bribery*).
- 33.10 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.



**34     Assignment and Novation**

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

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

34.2.1     any Crown Body; or

34.2.2     to a body other than a Crown Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 34.2.

34.3     A change in the legal status of the Authority such that it ceases to be a Crown Body shall not (subject to Clause 34.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

34.4     If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Crown Body or if a body which is not a Crown Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Supplier's guarantor (if any) were references to the Successor Body) and the consequences of termination set out in Clause 32.4 (*Payments by the Authority*) shall apply.

**35     Waiver and Cumulative Remedies**

35.1     The rights and remedies under this Contract 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 Contract 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.

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

**36     Relationship of the Parties**

36.1     Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between

the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

**37 Prevention of Fraud and Bribery**

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

37.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

37.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

37.2 The Supplier shall not during the term of this Contract:

37.2.1 commit a Prohibited Act; and/or

37.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

37.3 The Supplier shall during the term of this Contract:

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

37.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;

37.3.3 keep appropriate records of its compliance with its obligations under Clause 37.3.1 and make such records available to the Authority on request; and

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

37.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 37.1 and/or 37.2, or has reason to believe that it has or any of the Supplier Personnel have:

37.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

- 37.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 37.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 37.5 If the Supplier makes a notification to the Authority pursuant to Clause 37.4, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (*Records, Reports, Audits and Open Book Data*).
- 37.6 If the Supplier is in Default under Clauses 37.1 and/or 37.2, the Authority may by notice:
  - 37.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
  - 37.6.2 immediately terminate this Contract in accordance with Clause 31.1.2 (*Termination by the Authority*).
- 37.7 Any notice served by the Authority under Clause 37.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

### **38 Severance**

- 38.1 If any provision or part provision of this Contract is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.

### **39 Further Assurances**

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

### **40 Entire Agreement**

- 40.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 40.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

#### **41 Third Party Rights**

41.1 The provisions of Clause 17.1 (*IPRs Indemnity*), Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraph 1.4 of Part E of Schedule 28 (*Staff Transfer*) and the provisions of Paragraph 7.9 of Schedule 25 (*Exit Management*) (together “**Third Party Provisions**”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

41.2 Subject to Clause 41.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

41.3 Subject to paragraph 2.2 of Schedule 28 (*Staff Transfer*), no Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.

41.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

#### **42 Notices**

42.1 Any notices sent under this Contract must be in writing.

42.2 Subject to Clause 42.4, the following table sets out the method by which notices may be served under this Contract 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. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other	At the time recorded by the delivery service, provided that delivery is	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

prepaid, next Working Day service providing proof of delivery.	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).	
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- 42.3 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 Contract:

	Supplier	Authority
<b>Contact</b>	Redacted in accordance with	Redacted in accordance with
<b>Address</b>	Redacted in accordance with BMJ Group, BMA House, Tavistock Square, London WC1H 9JP	Department of Health and Social Care, 7 <sup>th</sup> Floor, 39 Victoria Street, London SW1H 0EU
<b>Email</b>	Redacted in accordance with	Redacted in accordance with

- 42.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 42.2:

- 42.4.1 Step-In Notices;
- 42.4.2 Force Majeure Notices;
- 42.4.3 notices issued by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*);
- 42.4.4 Termination Notices; and
- 42.4.5 Dispute Notices.

- 42.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 42.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 42.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

- 42.6 This Clause 42 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 23 (*Dispute Resolution Procedure*)).

**43     Disputes**

- 43.1     The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.
- 43.2     The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

**44     Governing Law and Jurisdiction**

- 44.1     This Contract 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.
- 44.2     Subject to Clause 43 (*Disputes*) and Schedule 23 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), 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 Contract or its subject matter or formation.

This Contract has been duly entered into by the Parties on the date which appears on its front page.

<b>SIGNED</b> for and on behalf of <b>BMJ PUBLISHING GROUP LIMITED</b> by a director:	Signature: Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act 2000  Name (block capitals): Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act 2000  <b>Director</b>
<b>SIGNED</b> for and on behalf of <b>SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE</b>	Signature: Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act 2000  Name (block capitals): Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act 2000  <b>Position:</b> Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act 2000

**MODEL AGREEMENT FOR SERVICES**  
**SCHEDULES, ANNEXES AND PARTS**

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## Schedule 1

### (DEFINITIONS)

#### **1 DEFINITIONS**

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

- 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause or paragraph numbers specified.
- 1.3.11 the headings in this Contract are for ease of reference only and shall not affect the interpretation or construction of this Contract; and
- 1.3.12 where the Authority is a Crown Body it shall be treated as contracting with the Crown as a whole.
- 1.3.13 Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
- (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
  - (ii) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

- 1.4 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.

<b>Achieve</b>	in respect of any activity for which there is a corresponding Key Project Date, confirmation from the Authority that all requirements in respect of the Supplier's completion of that activity have been met and " <b>Achieved</b> " and " <b>Achievement</b> " shall be construed accordingly;
<b>Accountable Officer</b>	has the meaning given to it in Schedule 21 ( <i>Governance</i> );
<b>Additional FDE Group Member</b>	any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 18 ( <i>Financial Distress</i> )
<b>AES Charges or Authority Emergent Services Charges</b>	the Charges payable for the Authority Emergent Services as further defined in Paragraph 2.1 of Schedule 15 ( <i>Charges and Invoicing</i> );
<b>Affected Party</b>	the Party seeking to claim relief in respect of a Force Majeure Event;
<b>Approval</b>	the written consent of the Authority and "Approve" and "Approved" shall be construed accordingly;
<b>Approved Sub-Licensee</b>	any of the following:

	<ul style="list-style-type: none"> <li>(a) a Crown Body;</li> <li>(b) any third party providing services to a Crown Body; and/or</li> <li>(c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;</li> </ul>
<b>Assets</b>	all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;
<b>Associated Person</b>	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;
<b>Audit</b>	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (Records, Reports, Audit and Open Book Data) and Schedule 19 ( <i>Financial Reports and Audit Rights</i> );
<b>Audit Agents</b>	<ul style="list-style-type: none"> <li>(a) the Authority's internal and external auditors;</li> <li>(b) the Authority's statutory or regulatory auditors;</li> <li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li> <li>(d) HM Treasury or the Cabinet Office;</li> <li>(e) any party formally appointed by the Authority to carry out audit or similar review functions; and</li> <li>(f) successors or assigns of any of the above;</li> </ul>
<b>Authority Assets</b>	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
<b>Authority Background IPRs</b>	<ul style="list-style-type: none"> <li>(a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures;</li> <li>(b) IPRs created by the Authority independently of this Contract; and/or</li> <li>(c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;</li> </ul> <p>but excluding IPRs owned by the Authority subsisting in the Authority Software;</p>

<b>Authority Cause</b>	<p>any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:</p> <ul style="list-style-type: none"> <li>(a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or</li> <li>(b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;</li> </ul>
<b>Authority Data</b>	<ul style="list-style-type: none"> <li>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: <ul style="list-style-type: none"> <li>(i) supplied to the Supplier by or on behalf of the Authority; and/or</li> <li>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</li> </ul> </li> <li>(b) any Personal Data for which the Authority is the Controller;</li> </ul>
<b>Authority Emergent Services</b>	the category of services described as such in Schedule 2 ( <i>Services Description</i> ) which may be required by the Authority;
<b>Authority Materials</b>	<p>the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:</p> <ul style="list-style-type: none"> <li>(a) are owned or used by or on behalf of the Authority; and</li> <li>(b) are or may be used in connection with the provision or receipt of the Services,</li> </ul> <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
<b>Authority Premises</b>	premises owned, controlled or occupied by the Authority
<b>Authority Representative</b>	the representative appointed by the Authority pursuant to Clause 11.4 (Representatives);
<b>Authority Requirements</b>	the requirements of the Authority set out in Schedule 2 ( <i>Services Description</i> ), Schedule 3 ( <i>Performance Measurement and Monitoring</i> ), Schedule 4 ( <i>Standards</i> ), Schedule 5 ( <i>Security Management</i> ), Schedule 6 ( <i>Insurance Requirements</i> ), Schedule 13 ( <i>Implementation Plan and Transition</i> ), Schedule 25 ( <i>Exit Management</i> ) and Schedule 26 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> );



<b>Authority Software</b>	software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;
<b>Authority System</b>	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
<b>Breach of Security</b>	has the meaning given to it in Schedule 5 (Security Management);
<b>Cabinet Office Markets and Suppliers Team</b>	means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
<b>Change</b>	any change to this Contract;
<b>Change Authorisation Note</b>	a notice signed by both Parties authorising a Change in the form set out in Annex 2 of Schedule 22 ( <i>Change Control Procedure</i> );
<b>Change Control Procedure</b>	the procedure for changing this Contract set out in Schedule 22 ( <i>Change Control Procedure</i> );
<b>Change in Law</b>	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
<b>Commercially Sensitive Information</b>	<p>the information listed in Schedule 9 (<i>Commercially Sensitive Information</i>) comprising the information of a commercially sensitive nature relating to:</p> <ul style="list-style-type: none"> <li>(a) the pricing of the Services;</li> <li>(b) details of the Supplier's IPRs; and</li> <li>(c) the Supplier's business and investment plans;</li> </ul> <p>which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
<b>Confidential Information</b>	<ul style="list-style-type: none"> <li>(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to: <ul style="list-style-type: none"> <li>(i) the Disclosing Party Group; or</li> <li>(ii) the operations, business, affairs, developments, intellectual property rights,</li> </ul> </li> </ul>

	<p>trade secrets, know-how and/or personnel of the Disclosing Party Group;</p> <p>(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Contract;</p> <p>(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and</p> <p>(d) Information derived from any of the above, but not including any Information which:</p> <p>(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;</p> <p>(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;</p> <p>(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;</p> <p>(iv) was independently developed without access to the Confidential Information; or</p> <p>(v) relates to the Supplier's:</p> <p>(A) performance under this Contract; or</p> <p>(B) failure to pay any Sub-contractor as required pursuant to Clause 15.14 (<i>Supply Chain Protection</i>);</p>
<b>Conflict of Interest</b>	<p>a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority;</p>

<b>Contract Inception Report</b>	the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
<b>Contract Management Board</b>	has the meaning given to it in Schedule 21 ( <i>Governance</i> );
<b>Contract Managers</b>	has the meaning given to it in Schedule 21 ( <i>Governance</i> );
<b>Contracts Finder</b>	the online government portal which allows suppliers to search for information about contracts as prescribed by Part 4 of the Public Contract Regulations 2015;
<b>Contract Year</b>	<p>(a) a period of 12 months commencing on the Operational Service Commencement Date; or</p> <p>(b) thereafter a period of 12 months commencing on each anniversary of the Operational Service Commencement Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination of the Term</p>
<b>Control</b>	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “ <b>Controls</b> ” and “ <b>Controlled</b> ” shall be interpreted accordingly;
<b>Controller</b>	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
<b>Costs</b>	has the meaning given in Schedule 15 ( <i>Charges and Invoicing</i> );
<b>Cost Saving</b>	<p>any savings to the Charges achieved by the Supplier:</p> <p>(a) as a result of the implementation of an improvement in accordance with Clause 8 (<i>Services Improvement</i>); or</p> <p>(b) by any other means under or in connection with this Contract, including in relation to any Sub-contract or Third Party Contract (as defined in Schedule 16 (<i>Payments on Termination</i>));</p>
<b>Critical Performance Failure</b>	<p>where, in any four (4) consecutive Service Periods, the Supplier has, as applicable, achieved:</p> <p>(a) a ‘red’ score for seventy-five per cent (75%) or more of the Key Performance Indicators; or</p> <p>(b) a “Fail” for seventy-five per cent (75%) or more of the Outline Performance Indicators;</p>
<b>Crown Body</b>	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including

	government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
<b>Crown Copyright</b>	has the meaning given in the Copyright, Designs and Patents Act 1998;
<b>CRTPA</b>	the Contracts (Rights of Third Parties) Act 1999;
<b>Data Loss Event</b>	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
<b>Data Protection Impact Assessment</b>	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
<b>Data Protection Legislation</b>	<ul style="list-style-type: none"> <li>(a) the UK GDPR;</li> <li>(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;</li> <li>(c) all applicable Law about the processing of personal data and privacy; and</li> <li>(d) (to the extent that it applies), the EU GDPR;</li> </ul>
<b>Data Subject</b>	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
<b>Data Subject Request</b>	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
<b>Deductions</b>	all Service Credits, or any other deduction which is paid or payable to the Authority under this Contract;
<b>Default</b>	<p>any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> <li>(a) in the case of the Authority, of its employees, servants, agents; or</li> <li>(b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,</li> </ul> <p>in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;</p>
<b>Delay</b>	a delay to the Supplier's Achievement of the relevant activity by its Key Project Date;

<b>Deliverable</b>	an item, feature or software delivered or to be delivered by the Supplier during the performance of this Contract;
<b>Detailed Implementation Plan</b>	the plan developed and revised from time to time in accordance with Schedule 13 ( <i>Implementation Plan and Transition</i> );
<b>Disclosing Party</b>	has the meaning given in Clause 19.1 (Confidentiality);
<b>Disclosing Party Group</b>	<p>(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and</p> <p>(b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Contract;</p>
<b>Dispute</b>	any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
<b>Dispute Notice</b>	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
<b>Dispute Resolution Procedure</b>	the dispute resolution procedure set out in Schedule 23 ( <i>Dispute Resolution Procedure</i> );
<b>Documentation</b>	<p>descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(a) is required to be supplied by the Supplier to the Authority under this Contract;</p> <p>(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;</p> <p>(c) is required by the Supplier in order to provide the Services; and/or</p> <p>(d) has been or shall be generated for the purpose of providing the Services;</p>

<b>DOTAS</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
<b>DPA 2018</b>	the Data Protection Act 2018;
<b>Due Diligence Information</b>	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
<b>Effective Date</b>	the date on which the last party to sign the Contract signs the Contract;
<b>EIRs</b>	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Crown Body in relation to such Regulations;
<b>Emergency Maintenance</b>	<p>ad hoc and unplanned maintenance provided by the Supplier where:</p> <ul style="list-style-type: none"> <li>(a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or</li> <li>(b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;</li> </ul>
<b>Employee Liabilities</b>	<p>all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:</p> <ul style="list-style-type: none"> <li>(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;</li> <li>(b) unfair, wrongful or constructive dismissal compensation;</li> <li>(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender</li> </ul>

	<p>reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;</p> <p>(d) compensation for less favourable treatment of part-time workers or fixed term employees;</p> <p>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</p> <p>(f) employment claims whether in tort, contract or statute or otherwise;</p> <p>(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
<b>Employment Regulations</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
<b>Estimated Year 1 Charges</b>	the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;
<b>EU GDPR</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
<b>Exit Management</b>	the services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in Schedule 25 ( <i>Exit Management</i> );
<b>Exit Plan</b>	the plan produced and updated by the Supplier during the Term in accordance with Schedule 25 ( <i>Exit Management</i> );
<b>Expedited Dispute Timetable</b>	the timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 23 ( <i>Dispute Resolution Procedure</i> );
<b>Expert</b>	has the meaning given in Schedule 23 ( <i>Dispute Resolution Procedure</i> );
<b>Expert Determination</b>	the process described in Paragraph 6 of Schedule 23 ( <i>Dispute Resolution Procedure</i> );
<b>FDE Group</b>	the Supplier and any Additional FDE Group Member;
<b>Financial Distress Event</b>	the occurrence of one or more of the following events:

	<ul style="list-style-type: none"> <li>(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;</li> <li>(b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;</li> <li>(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;</li> <li>(d) any FDE Group entity commits a material breach of covenant to its lenders;</li> <li>(e) a Key sub-contractor notifies the Authority that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;</li> <li>(f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than nine (9) months after its accounting reference date without an explanation to the Authority which the Authority (acting reasonably) considers to be adequate;</li> <li>(g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Authority which the Authority (acting reasonably) considers to be adequate;</li> <li>(h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes but is not limited, commentary liquidity and trading prospects in the reports from directors or external auditors;</li> <li>(i) any of the following: <ul style="list-style-type: none"> <li>(i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, including a profit warning or ability to trade as a going concern;</li> <li>(ii) commencement of any litigation against any FDE Group entity with respect to</li> </ul> </li> </ul>
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	<p>financial indebtedness greater than five million pounds (£5,000,000) or obligations under a service contract with a total contract value greater than five million pounds (£5,000,000);</p> <p>(iii) non-payment by any FDE Group entity of any financial indebtedness;</p> <p>(iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;</p> <p>(v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or</p> <p>(vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity,</p> <p>in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued delivery of the Services in accordance with this Contract; or</p> <p>(j) both of the Financial Indicators numbered 2 and 3 set out in the table Part C set out in the table in Part C of Annex 2 of Schedule 18 (Financial Distress) for any of the FDE Group entities failing to meet the required Financial Target Threshold</p>
<b>Financial Model</b>	has the meaning given in Schedule 19 ( <i>Financial Reports and Audit Rights</i> );
<b>Financial Reports</b>	has the meaning given in Schedule 19 ( <i>Financial Reports and Audit Rights</i> );
<b>Financial Transparency Objectives</b>	has the meaning given in Schedule 19 ( <i>Financial Reports and Audit Rights</i> );
<b>Financial Year</b>	a twelve (12) Month period commencing on 1 April and ending on 31 March (inclusive) during the Term;
<b>FOIA</b>	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Crown Body in relation to such Act;
<b>Force Majeure Event</b>	any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-

	happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;
<b>Force Majeure Notice</b>	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
<b>Former Supplier</b>	a supplier supplying services to the Authority before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>General Anti-Abuse Rule</b>	<p>(a) the legislation in Part 5 of the Finance Act 2013; and</p> <p>(b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;</p>
<b>General Change in Law</b>	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
<b>Good Industry Practice</b>	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
<b>Guarantee</b>	a deed of guarantee in favour of the Authority entered into by a guarantor where required by the Authority under Clause 4.3 in the form set out in Schedule 30 ( <i>Guarantee</i> ), or any guarantee acceptable to the Authority that replaces it from time to time;
<b>Halifax Abuse Principle</b>	the principle explained in the CJEU Case C-255/02 Halifax and others;
<b>Health and Safety Policy</b>	the health and safety policy of the Authority and/or other relevant Crown Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
<b>HMRC</b>	HM Revenue & Customs;

<b>Impact Assessment</b>	has the meaning given in Paragraph 1.4 of Schedule 22 ( <i>Change Control Procedure</i> );
<b>Implementation Period</b>	the period from the Effective Date until the Operational Service Commencement Date;
<b>Implementation Plan</b>	either of the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 2 of Schedule 13 ( <i>Implementation Plan and Transition</i> ), the Detailed Implementation Plan as may be updated in accordance with Paragraph 3 of Schedule 13 ( <i>Implementation Plan and Transition</i> ) from time to time;
<b>Implementation Services</b>	the activities to be performed by the Supplier in respect of (i) transition of services from the Former Supplier and (ii) implementation of the Services, both as set out in the Supplier Solution and Implementation Plan;
<b>Indemnified Person</b>	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract;
<b>Independent Controller</b>	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
<b>Information</b>	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
<b>Insolvency Event</b>	<p>with respect to any person, means:</p> <p>(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:</p> <p style="padding-left: 40px;">(i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or</p> <p style="padding-left: 40px;">(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;</p> <p>(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a</p>

	<p>partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;</p> <p>(d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;</p> <p>(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;</p> <p>(f) where that person is a company, a LLP or a partnership:</p> <p>(i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;</p> <p>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
<b>Intellectual Property Rights” or “IPRs</b>	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade</p>

	<p>secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
<b>Intervention Cause</b>	has the meaning given in Clause 27.1 (Remedial Adviser);
<b>Intervention Notice</b>	has the meaning given in Clause 27.1 (Remedial Adviser);
<b>Intervention Period</b>	has the meaning given in Clause 27.2.3 (Remedial Adviser);
<b>Intervention Trigger Event</b>	<p>(a) any event falling within limb (a) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) where, in any four (4) consecutive Service Periods, the Supplier has, as applicable, achieved:</p> <p>(i) a 'red' score for fifty per cent (50%) or more of the Key Performance Indicators; or</p> <p>(ii) a 'Fail' score for fifty per cent (50%) or more of the Outline Performance Indicators;</p> <p>(d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap;</p>
<b>IP Completion Day</b>	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
<b>IPRs Claim</b>	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;

<b>IT Environment</b>	the Authority System and the Supplier System;
<b>Joint Controllers</b>	has the meaning given in Article 26 of the UK GDPR or the EU GDPR as the context requires;
<b>Key Performance Indicator</b>	the key performance indicators set out in Table 1 of Annex 1 of Part A of Schedule 3 ( <i>Performance Measurement and Monitoring</i> );
<b>Key Personnel</b>	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 29 ( <i>Key Personnel</i> ) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (Key Personnel);
<b>Key Project Date</b>	any date noted as such in the table in paragraph 5 of Schedule 2 ( <i>Services Description</i> ) or in the Implementation Plan;
<b>Key Roles</b>	a role described as a Key Role in Schedule 29 ( <i>Key Personnel</i> ) and any additional roles added from time to time in accordance with Clause 14.4 (Key Personnel);
<b>Key Sub-contract</b>	each Sub-contract with a Key Sub-contractor;
<b>Key Sub-contractor</b>	any Sub-contractor: <ul style="list-style-type: none"> <li>(a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or</li> <li>(b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten percent (10%) of the aggregate Charges forecast to be payable under this Contract as set out in the Financial Model;</li> </ul>
<b>Know-How</b>	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Contract;
<b>KPI Failure</b>	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
<b>Law</b>	any law, statute, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
<b>Licensed Software</b>	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the

	purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
<b>Losses</b>	all losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
<b>Maintenance Schedule</b>	shall have the meaning set out in Clause 9.4 (Maintenance);
<b>Malicious Software</b>	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
<b>Management Information</b>	any management information specified in Schedule 3 ( <i>Performance Measurement and Monitoring</i> ), Schedule 15 ( <i>Charges and Invoicing</i> ) or Schedule 21 ( <i>Governance</i> ) to be provided by the Supplier to the Authority;
<b>Material KPI Failure</b>	<p>any instance where the Supplier, as applicable, achieves:</p> <p>(a) a score of “Red” in respect of a Key Performance Indicator; or</p> <p>(b) a score of “Fail” in respect of an Outline Performance Indicator,</p> <p>in accordance with Part A of Schedule 3 (<i>Performance Measurement and Monitoring</i>);</p>
<b>Maximising Research Impact</b>	refers to the processes described in Recital (A)(ii) to the Core Terms;
<b>Month</b>	a calendar month and “Monthly” shall be interpreted accordingly;
<b>NIHR</b>	the National Institute for Health and Care Research;
<b>NIHR Coordinating Centre</b>	the coordinating centre with the operational responsibility for the NIHR;
<b>New Releases</b>	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
<b>Notifiable Default</b>	shall have the meaning given in Clause 25.1 (Rectification Plan Process);

<b>Object Code</b>	software and/or data in machine-readable, compiled object code form;
<b>Occasion of Tax Non-Compliance</b>	<p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after the Effective Date, which is found on or after the Effective Date to be incorrect as a result of:</p> <ul style="list-style-type: none"> <li>(a) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</li> <li>(b) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime in any jurisdiction; and/or</li> <li>(c) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1<sup>st</sup> April 2025, which gives rise, on or after 1<sup>st</sup> April 2025, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</li> </ul>
<b>Open Book Data</b>	has the meaning given in Schedule 19 ( <i>Financial Reports and Audit Rights</i> );
<b>Open Licence</b>	<p>any material that is published for use, with rights to access, copy and modify and publish, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <a href="https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/">https://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/</a> documented at <a href="https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles">https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles</a> and includes the Open Source publication of Software</p>
<b>Open Source</b>	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
<b>Operating Environment</b>	the Authority System and the Sites;
<b>Operational Service Commencement Date</b>	00:01 (London time) on 1 April 2025
<b>Other Supplier</b>	any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;



<b>Outline Implementation Plan</b>	the outline implementation plan submitted to the Authority as part of the Supplier Solution and which is, until replaced by the Detailed Implementation Plan, set out at Annex 1 of Schedule 13 ( <i>Implementation Plan and Transition</i> );
<b>Outline Performance Indicators</b>	means the performance indicators set out in Table 1 in Annex 1 to Part A of Schedule 3 ( <i>Performance Measurement and Monitoring</i> ) which were submitted by the Supplier as part of the Supplier Solution;
<b>Overhead</b>	those amounts which are intended to recover a proportion of the Supplier's or the relevant Sub-Contractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties), but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of "Costs";
<b>Parent Undertaking</b>	has the meaning set out in section 1162 of the Companies Act 2006 and, for the purposes of this Contract, is the British Medical Association ("BMA"), company number 00008848, BMA House, Tavistock Square, London, WC1H 9JP
<b>Partial Termination</b>	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31.2.2 (Termination by the Authority) or 31.3.2 (Termination by the Supplier) or otherwise by mutual agreement by the Parties;
<b>Parties and Party</b>	have the meanings respectively given on page 1 of this Contract;
<b>Performance Failure</b>	a KPI Failure or a Material KPI Failure;
<b>Performance Indicators</b>	the Key Performance Indicators and/or the Outline Performance Indicators, as applicable;
<b>Permitted Maintenance</b>	has the meaning given in Clause 9.4 (Maintenance);
<b>Personal Data</b>	has the meaning given in the UK GDPR or the EU GDPR (as the context requires);
<b>Personal Data Breach</b>	has the meaning given in the UK GDPR or the EU GDPR (as the context requires);
<b>PP</b>	Public Partnerships
<b>Preceding Services</b>	has the meaning given in Clause 5.2 ( <i>Standard of Services</i> );
<b>Prescribed Person</b>	a legal adviser, an MP, or an appropriate body which a whistle-blower may make a disclosure to as detailed in 'Whistleblowing: list of prescribed people and bodies', available online at: <a href="https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--">https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies--</a>

	<a href="#">2/whistleblowing-list-of-prescribed-people-and-bodies</a> , as updated from time to time;
<b>Processing</b>	has the meaning given to it in the UK GDPR or the EU GDPR (as the context requires) and <b>Process</b> and <b>Processed</b> shall be interpreted accordingly;
<b>Processor</b>	has the meaning given to it under the UK GDPR or the EU GDPR (as the context requires);
<b>Processor Personnel</b>	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor engaged in the performance of its obligations under this Contract;
<b>Prohibited Act</b>	<ul style="list-style-type: none"> <li>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: <ul style="list-style-type: none"> <li>(i) induce that person to perform improperly a relevant function or activity; or</li> <li>(ii) reward that person for improper performance of a relevant function or activity;</li> </ul> </li> <li>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</li> <li>(c) an offence: <ul style="list-style-type: none"> <li>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</li> <li>(ii) under legislation or common law concerning fraudulent acts; or</li> <li>(iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or</li> </ul> </li> <li>(d) any activity, practice or conduct which would constitute one of the offences listed under an offence: above if such activity, practice or conduct had been carried out in the UK;</li> </ul>
<b>Protective Measures</b>	appropriate technical and organisational measures designed to ensure compliance of the obligations of the Parties arising under the Data Protection Legislation which may include:

	pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
<b>Project Specific IPRs</b>	<p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Contract;</p> <p>but shall not include the Supplier Background IPRs or the Specially Written Software;</p>
<b>Public Partnerships</b>	has the meaning given in Recital A(i) in the Core Terms
<b>Public Sector Dependent Supplier</b>	means a supplier where that supplier, or that supplier's group has Annual Revenue of fifty million pounds (£50,000,000) or more of which over fifty percent (50%) is generated from UK Public Sector Business;
<b>Publishable Performance Information</b>	has the meaning given in Annex 1 to Part A of Schedule 3 ( <i>Performance Measurement and Monitoring</i> )
<b>Quality Plans</b>	has the meaning given in Clause 6.1 (Quality Plans);
<b>Quarter</b>	a continuous period of three (3) Months and Quarterly shall be construed accordingly;
<b>Recipient</b>	has the meaning given in Clause 19.1 (Confidentiality);
<b>Rectification Plan</b>	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
<b>Rectification Plan Failure</b>	<p>(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 25.4 (Submission of the draft Rectification Plan) or 25.8 (Agreement of the Rectification Plan);</p> <p>(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 25.7 (Agreement of the Rectification Plan);</p> <p>(c) the Supplier failing to rectify a material Default within the later of:</p> <p>(i) Thirty (30) Working Days of a notification made pursuant to Clause 25.2 (Notification); and</p>

	<p>(ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;</p> <p>(d) a Material KPI Failure re-occurring in respect of the same Performance Indicator for the same (or substantially the same) root cause in any of the 3 Service Periods subsequent to the Service Period in which the initial Material KPI Failure occurred; and/or</p> <p>(e) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;</p>
<b>Rectification Plan Process</b>	the process set out in Clauses 25.4 (Submission of the draft Rectification Plan) to 25.9 (Agreement of the Rectification Plan);
<b>Registers</b>	the registers referred to in Paragraphs 2.1.1 and 2.1.2 of Schedule 25 ( <i>Exit Management</i> );
<b>Relevant IPRs</b>	those IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
<b>Relevant Preceding Services</b>	has the meaning given in Clause 5.2.2(b) ( <i>Standard of Services</i> );
<b>Relevant Requirements</b>	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
<b>Relevant Tax Authority</b>	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
<b>Relevant Transfer</b>	a transfer of employment to which the Employment Regulations applies;
<b>Relief Notice</b>	has the meaning given in Clause 29.2 (Authority Cause);
<b>Remedial Adviser</b>	the person appointed pursuant to Clause 27.2 (Remedial Adviser);

<b>Remedial Adviser Failure</b>	has the meaning given in Clause 27.6 (Remedial Adviser);
<b>Replacement Services</b>	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;
<b>Replacement Sub-Contractor</b>	a sub-contractor of a Replacement Supplier, to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>Replacement Supplier</b>	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
<b>Request For Information</b>	a Request for Information under the FOIA or the EIRs;
<b>Required Action</b>	has the meaning given in Clause 28.1.1 (Step-In Rights);
<b>Security Management Plan</b>	the Supplier's security management plan prepared and developed in accordance with Schedule 5 ( <i>Security Management</i> ) and as may be subsequently revised pursuant to Paragraph 4 of Schedule 5 ( <i>Security Management</i> );
<b>Security Policy</b>	means the Authority's security policy as set out in Schedule 5 ( <i>Security Management</i> );
<b>Service Charges</b>	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 15 ( <i>Charges and Invoicing</i> ) including any Transition Charge, AES Charge or Service Charge;
<b>Service Continuity Plan</b>	has the meaning given in Schedule 26 ( <i>Service Continuity Plan and Corporate Resolution Planning</i> );
<b>Service Credits</b>	amounts that may be withheld by the Authority from sums due from the Authority to the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Annex 2 to Part A of Schedule 3 ( <i>Performance Measurement and Monitoring</i> );
<b>Service Credit Cap</b>	the sum of three hundred thousand pounds (£300,000) in any Contract Year;
<b>Service Period</b>	a Quarter save that:  (a) the first Service Period shall begin on the Operational Service Commencement Date and shall expire at the end of

	<p>the third calendar month after the month in which the Operational Service Commencement Date falls; and</p> <p>(b) the final Service Period shall end on the expiry or termination of the Term;</p>
<b>Services</b>	any and all of the services to be provided by the Supplier under this Contract, including those set out in Schedule 2 ( <i>Services Description</i> );
<b>Services Description</b>	the description of the services to be provided by the Supplier under this Contract as set out in Schedule 2 ( <i>Services Description</i> );
<b>Service Transfer Date</b>	has the meaning given in Schedule 28 ( <i>Staff Transfer</i> );
<b>Sites</b>	<p>any premises (including the Authority Premises, the Supplier's premises or third party premises):</p> <p>(a) from, to or at which:</p> <p>(i) the Services are (or are to be) provided; or</p> <p>(ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or</p> <p>(b) where:</p> <p>(i) any part of the Supplier System is situated; or</p> <p>(ii) any physical interface with the Authority System takes place;</p>
<b>SME</b>	an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
<b>Social Value</b>	the additional social benefits that can be achieved in the delivery of the Contract, set out in the Authority Requirements;
<b>Software</b>	Specially Written Software, Supplier Software and Third Party Software;
<b>Software Supporting Materials</b>	has the meaning given in Paragraph 2.1 Of Schedule 32 ( <i>Intellectual Property Rights</i> );
<b>Source Code</b>	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;

<b>Specially Written Software</b>	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract.
<b>Specific Change in Law</b>	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
<b>Staffing Information</b>	has the meaning given in Schedule 28 ( <i>Staff Transfer</i> );
<b>Standards</b>	the standards, policies and/or procedures identified in Schedule 4 ( <i>Standards</i> );
<b>Step-In Notice</b>	has the meaning given in Clause 28.1 ( <i>Step-In Rights</i> );
<b>Step-In Trigger Event</b>	<ul style="list-style-type: none"> <li>(a) any event falling within the definition of a Supplier Termination Event;</li> <li>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</li> <li>(c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract;</li> <li>(d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 28 (<i>Step-In Rights</i>) is necessary;</li> <li>(e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or</li> <li>(f) a need by the Authority to take action to discharge a statutory duty;</li> </ul>
<b>Step-Out Date</b>	has the meaning given in Clause 28.5.2 ( <i>Step-In Rights</i> );
<b>Step-Out Notice</b>	has the meaning given in Clause 28.5 ( <i>Step-In Rights</i> );
<b>Step-Out Plan</b>	has the meaning given in Clause 28.6 ( <i>Step-In Rights</i> );
<b>Strategic Supplier</b>	means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> ;
<b>Sub-contract</b>	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the

	Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
<b>Sub-contractor</b>	<p>any Parent Undertaking; or</p> <p>any third party with whom:</p> <ul style="list-style-type: none"> <li>(a) the Supplier enters into a Sub-contract; or</li> <li>(b) a third party under the Supplier enters into a Sub-contract; or above enters into a Sub-contract.</li> </ul> <p>or the servants or agents of that third party;</p>
<b>Sub-processor</b>	any third party appointed to process Personal Data on behalf of the Processor related to this Contract;
<b>Successor Body</b>	has the meaning given in Clause 34.4 (Assignment and Novation);
<b>Supplier Background IPRs</b>	<ul style="list-style-type: none"> <li>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</li> <li>(b) Intellectual Property Rights created by the Supplier independently of this Contract,</li> </ul> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
<b>Supplier COTS Background IPRs</b>	<p>any embodiments of Supplier Background IPRs that:</p> <ul style="list-style-type: none"> <li>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</li> <li>(b) has a Non-trivial Customer Base;</li> </ul>
<b>Supplier COTS Software</b>	<p>Supplier Software (including open source software) that:</p> <ul style="list-style-type: none"> <li>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</li> <li>(b) has a Non-trivial Customer Base;</li> </ul>



<b>Supplier Equipment</b>	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;
<b>Supplier Group</b>	the Supplier and its Parent Undertaking;
<b>Supplier Non-COTS Background IPRs</b>	any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
<b>Supplier Non-COTS Software</b>	Supplier Software that is not Supplier COTS Software;
<b>Supplier Non-Performance</b>	has the meaning given in Clause 29.1 (Authority Cause);
<b>Supplier Personnel</b>	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or Parent Undertaking and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Contract;
<b>Supplier Profit</b>	has the meaning given in Schedule 19 ( <i>Financial Reports and Audit Rights</i> );
<b>Supplier Profit Margin</b>	has the meaning given in Schedule 19 ( <i>Financial Reports and Audit Rights</i> );
<b>Supplier Representative</b>	the representative appointed by the Supplier pursuant to Clause 11.3 (Representatives);
<b>Supplier Software</b>	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 ( <i>Software</i> );
<b>Supplier Solution</b>	the Supplier's solution for the Services set out in Schedule 8 ( <i>Supplier Solution</i> ) including any Annexes of that Schedule;
<b>Supplier System</b>	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
<b>Supplier Termination Event</b>	<ul style="list-style-type: none"> <li>(a) the Supplier's level of performance constituting a Critical Performance Failure in accordance with Clause 7.7 (<i>Critical Performance Failure</i>);</li> <li>(b) the Supplier committing a material Default which is irremediable;</li> <li>(c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed eighty per cent (80%) of the value of the aggregate annual liability cap for that Contract</li> </ul>

	<p>Year as set out in Clause 23.4.4 (<i>Financial and other Limits</i>);</p> <p>(d) a Remedial Adviser Failure;</p> <p>(e) a Rectification Plan Failure;</p> <p>(f) where a right of termination is expressly reserved in this Contract, including pursuant to:</p> <p>(i) Clause 17 (IPRs Indemnity);</p> <p>(ii) Clause 33 (Compliance)</p> <p>(iii) Clause 37.6.2 (Prevention of Fraud and Bribery); and/or</p> <p>(iv) Paragraph 7 of Schedule 18 (<i>Financial Distress</i>);</p> <p>(g) the representation and warranty given by the Supplier pursuant to Clauses 3.2.8 or 3.2.9 (<i>Warranties</i>) being materially untrue or misleading;</p> <p>(h) the Supplier committing a material Default under Clause 10.10 (<i>Promoting Tax Compliance</i>) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (<i>Promoting Tax Compliance</i>) which in the reasonable opinion of the Authority are acceptable;</p> <p>(i) the Supplier committing a material Default under any of the following Clauses:</p> <p>(i) Clause 5.5.11 (<i>Services</i>);</p> <p>(ii) Clause 21 (<i>Protection of Personal Data</i>);</p> <p>(iii) Clause 20 (<i>Transparency and Freedom of Information</i>);</p> <p>(iv) Clause 19 (<i>Confidentiality</i>);</p> <p>(v) Clause 33 (<i>Compliance</i>);</p> <p>(vi) in respect of any security requirements set out in Schedule 5 (<i>Security Management</i>) ; and/or</p> <p>(vii) in respect of any requirements set out in Schedule 32 (<i>Intellectual Property Rights</i>); and/or</p>
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	<p>(viii) in respect of any requirements set out in Schedule 28 (<i>Staff Transfer</i>);</p> <p>(j) [<i>not used</i>];</p> <p>(k) an Insolvency Event occurring in respect of the Supplier or the Supplier's guarantor if a Guarantee has been entered into pursuant to Clause 4.3;</p> <p>(l) if a Guarantee has been provided, the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the original guarantor or with another guarantor which is acceptable to the Authority);</p> <p>(m) a change of Control of the Supplier or a guarantor (if any) unless:</p> <p style="padding-left: 40px;">(i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or</p> <p style="padding-left: 40px;">(ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the change of Control took place or the date on which the Authority was given notice of the change of Control;</p> <p>(n) a change of Control of a Key Sub-contractor unless, within six (6) months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is Approved by the Authority pursuant to Clause 15.10 (Appointment of Key Sub-contractors);</p> <p>(o) any failure by the Supplier to enter into or to comply with an Admission Agreement under Part D of Schedule 28 (<i>Staff Transfer</i>);</p> <p>(p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;</p> <p>(q) a failure by the Supplier to comply in the performance of the Services with legal obligations</p>
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	<p>in the fields of environmental, social or labour law; or</p> <p>(r) in relation to Schedule 5 (<i>Security Management</i>), the Supplier fails to patch vulnerabilities in accordance with the Security Requirements;</p>
<b>Target Performance Level</b>	the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in Table 1 in Annex 1 to Part A of Schedule 3 ( <i>Performance Measurement and Monitoring</i> );
<b>Term</b>	the period commencing on the Effective Date and ending on the expiry or earlier termination of this Contract;
<b>Termination Assistance Notice</b>	has the meaning given in Paragraph 6.1 of Schedule 25 ( <i>Exit Management</i> );
<b>Termination Assistance Period</b>	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 6.2 of Schedule 25 ( <i>Exit Management</i> );
<b>Termination Date</b>	the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;
<b>Termination Notice</b>	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination;
<b>Termination Payment</b>	the payment determined in accordance with Schedule 16 ( <i>Payments on Termination</i> );
<b>Termination Services</b>	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 to Schedule 25 ( <i>Exit Management</i> ), and any other services required pursuant to the Termination Assistance Notice;
<b>Third Party Beneficiary</b>	has the meaning given in Clause 41.1 (Third Party Rights);
<b>Third Party COTS IPRs</b>	<p>Third Party IPRs that:</p> <p>(a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>

<b>Third Party COTS Software</b>	Third Party Software (including open source software) that:  (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and  (b) has a Non-trivial Customer base;
<b>Third Party IPRs</b>	Intellectual Property Rights owned by a third party, but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software, which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services;
<b>Third Party Non-COTS IPRs</b>	Third Party IPRs that are not Third Party COTS IPRs;
<b>Third Party Non-COTS Software</b>	Third Party Software that is not Third Party COTS Software;
<b>Third Party Provisions</b>	has the meaning given in Clause 41.1 (Third Party Rights);
<b>Third Party Software</b>	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 ( <i>Software</i> );
<b>Transferring Assets</b>	has the meaning given in Paragraph 7.2.1 of Schedule 25 ( <i>Exit Management</i> );
<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;
<b>Transferring Supplier Employees</b>	those employees of the Supplier and/or Parent Undertaking and/or the Supplier's Sub-Contractors to whom the Employment Regulations will apply on the Service Transfer Date;
<b>Transition Oversight Board</b>	the board to be set up by the Parties in accordance with Schedule 13 ( <i>Implementation Plan and Transition</i> );
<b>Transparency Information</b>	has the meaning given in Clause 20.1 (Transparency and Freedom of Information);
<b>Transparency Reports</b>	any report designated as such by the Authority under Schedule 21 ( <i>Governance</i> );
<b>UK GDPR</b>	has the meaning as set out in Section 3(10) of the DPA 2018, supplemented by Section 205(4) of the DPA 2018;

<b>UK Public Sector Business</b>	means any goods, services or works provision to UK public sector bodies, including Crown Bodies and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
<b>Unconnected Sub-contract</b>	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
<b>Unconnected Sub-contractor</b>	any third party with whom the Supplier enters into an Unconnected Sub-contract;
<b>Updates</b>	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome defects in, or to improve the operation of, that item;
<b>Upgrades</b>	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
<b>Valid Invoice</b>	an invoice issued by the Supplier to the Authority that complies with the invoicing procedure in paragraph 4 ( <i>Invoicing Procedure</i> ) of Schedule 15 ( <i>Charges and Invoicing</i> );
<b>VAT</b>	value added tax as provided for in the Value Added Tax Act 1994;
<b>VCSE</b>	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
<b>Working Day</b>	any day other than a Saturday, Sunday or public holiday in England and Wales.

## **Schedule 2**

### **(SERVICES DESCRIPTION)**

#### **1 Services**

1.1 The Supplier shall:

- 1.1.1 provide the Services so as to deliver the requirements set out in Paragraph 2 below ("**Service Requirements**"); and
- 1.1.2 provide the Authority Emergent Services as set out in Paragraph 3 below.

#### **2 Service Requirements**

##### **2.1 Public Partnerships ("PP"): Improving the way partnerships with people and communities in health and care research work**

###### **2.1.1 (M) PP Requirement 1: Lead and provide expertise and coordination of the National Institute for Health and Care Research ("NIHR") public partnerships policy and operations:**

- Provide expertise and advice on the development of DHSC/NIHR policy, including anticipation of emerging trends, and oversee the implementation of recommendations in the NIHR Strategic Commitments for Public Partnerships accessible at <https://www.nihr.ac.uk/about-us/what-we-do/improving-partner-patients-carers-public> (which succeeded the strategy [Going the Extra Mile](#) referred to in the procurement documents for this Contract) or any successor NIHR PP strategies, to drive reach, quality and impact of health, public health and social care research.
- Ensure NIHR's end-to-end selection and funding processes, governance, structures and strategic decision-making involve, and are informed by, people and communities.
- Drive a culture of quality improvement across the NIHR in public partnerships in research, including embedding and auditing the use of the [UK Patient and Public Involvement Standards](#).

###### **2.1.2 (M) PP Requirement 2: Develop, coordinate and promote PP platforms and networks:**

- Develop, coordinate and promote platforms and networks to engage and involve people and communities in research, encouraging inclusion and diversity therein.
- Bring together other research funders and relevant bodies as a community of practice around public partnerships to share and advance best practice.
- Bring together and support NIHR's distributed public partnership workforce, creating opportunities to share best practice and to facilitate joint-working within NIHR and locally, regionally and nationally.

- Support the simplification of the public user journey across NIHR's digital platforms (in line with the NIHR Digital Strategy) and explore how to bridge the digital divide and support those without access.

#### 2.1.3 **(M) PP Requirement 3 – Promote Equality, Diversity and Inclusion (EDI):**

- Strengthen and diversify the public voices that are heard within NIHR's work and in the research projects that NIHR supports.
- Work closely with other parts of NIHR to align activity and identity opportunities for joint working across the EDI agenda – taking a holistic view of public engagement, involvement and participation activity.
- Bring the research cycle closer to communities and build trust by strengthening NIHR's capacity and researcher capability for local community engagement, working with health and care delivery colleagues.

#### 2.1.4 **(M) PP Requirement 4 - Build PP capacity**

- Provide expertise, challenge, guidance and support to those involved in delivering, supporting and funding health and care research so that it is done 'with' and 'by' the public, and that public contributors are informed on research progress, outcomes and the impact of their contribution.
- Promote and improve the public partnerships development offer for public contributors and researchers, including through peer-to-peer support, guidance and training.
- Develop and facilitate the introduction of models of dedicated funding to support public partnerships in NIHR research.
- Identify and address barriers to public contributors being lead applicants on research funding applications.

#### 2.1.5 **(M) PP Requirement 5 – Capture impact and learning**

- Generate and influence partnership, connectivity and knowledge exchange in and beyond NIHR (national and international) to advance public partnerships in research.
- Develop tools and metrics for collecting and collating activity, feedback and benefits from public partnerships in research, allowing NIHR to monitor, evaluate and learn from activity.
- Build and strengthen strategic partnerships with health, public health and social care organisations, and other key stakeholders, in order to open up opportunities and increase the visibility of, and fair access to, research as an integral part of people's experience of health and care.



- Keep abreast of developments in public partnerships for health and care research, and demonstrate innovation and flexibility in approaches to boosting public partnerships across the research cycle.

## **2.2 Maximising Impact: improving how NIHR research is disseminated, and knowledge is mobilised to facilitate uptake and adoption of insights from research**

### **2.2.1 (M) MI Requirement 1 - Lead and coordinate dissemination and knowledge mobilisation activity across the NIHR:**

- Provide expertise and challenge to improve NIHR dissemination and knowledge mobilisation policy and operations.
- Anticipate emerging trends and advise on how NIHR could influence wider system drivers and incentives to advance dissemination and knowledge mobilisation to facilitate uptake and adoption of insights from research.
- Ensure NIHR's end-to-end selection and funding processes promote the importance of dissemination and knowledge mobilisation to facilitate adoption and uptake
- Drive a culture of quality improvement across the NIHR in research dissemination and knowledge mobilisation.
- Work closely with key NIHR teams, including: Communications, Publishing, Evidence Synthesis, Impact and Business Intelligence

### **2.2.2 (M) MI Requirement 2 – Develop, coordinate and promote MI platforms and networks**

- Forge active partnerships with evidence users to understand their needs and support uptake and adoption of insights from research. Relevant evidence users include:
  - policymakers in DHSC, NHS England, HRA, MHRA and beyond, to inform evidence-based policy- and decision-making
  - Ministers and parliamentarians, to inform evidence-based policy- and law-making
  - commissioners across the health system, including Integrated Care Systems, Integrated Care Board Commissioning Support Units, and NHS England, to inform commissioning decisions
  - local authorities, to inform social care, public health and other relevant policy-making and commissioning
  - social care providers, to inform decision-making in commissioning and provision of social care services
  - health and social care professionals and practitioners, to inform practice

- patients, carers, services users, and the public (including groups and communities), to improve shared decision-making
- Prioritise engagement and partnerships with those that seek to shape and influence health and care policy and practice, for example, policy makers, regulators, providers of guidance, and those who facilitate adoption and uptake of insights from research, such as the Accelerated Access Collaborative.
- Develop, coordinate and promote platforms and networks to reach and engage evidence-users in research findings from NIHR and, where helpful, wider research findings.
- Support the development of streamlined user journeys for evidence users access and engagement with research findings across NIHR's digital platforms (in line with the NIHR Digital Strategy).
- Go where the audiences are: map and support the enrichment of key existing external channels with insights from research, collaborating with partner organisations as appropriate.

#### 2.2.3 **(M) MI Requirement 3 - Dissemination and knowledge mobilisation activity**

- Produce timely, targeted, innovative dissemination products and undertake dissemination and knowledge mobilisation activities based on robust and efficient business processes. Such products and activity should disseminate NIHR research and, where helpful, wider research findings to facilitate uptake and adoption. This should be informed by and align with, where practical, DHSC and Ministerial priorities and NIHR-wide activity, and involve close working with NIHR Programme Directors and other senior leaders to identify and promote research findings.

#### 2.2.4 **(M) MI Requirement 4 – Build research dissemination and knowledge mobilisation capacity**

- Develop and increase the reach and impact of guidance and resources within the research community related to the planning and execution of research dissemination and knowledge mobilisation to maximise impact
- Provide expertise and challenge to those involved in research dissemination and knowledge mobilisation, working to ensure activity is informed by best practice and is likely to lead to uptake and adoption
- Develop and facilitate the introduction of models of dedicated funding to support dissemination and knowledge mobilisation of NIHR research.
- Develop ways to upskill evidence users to understand and use evidence and insights from research, including by building links with NIHR infrastructure.

### 2.2.5 (M) MI Requirement 5 – Capture impact and learning:

- Develop tools and metrics for collecting and collating evidence-user feedback, capturing uptake of research insights, and sharing learning from research dissemination and knowledge mobilisation activities.
- Develop approaches to horizon-scanning (engaging with others in NIHR) to identify and signal active research that may have a bearing on existing policy or practice.
- Develop and support ways of capturing and promoting research findings from early translational NIHR research which has value, but may not have immediately actionable findings.
- Generate and influence partnership, connectivity and knowledge exchange in and beyond NIHR (national and international) to advance the fields of research dissemination and knowledge mobilisation.
- Keep abreast of developments in communication and dissemination, and demonstrate innovation and flexibility in the use of different techniques and channels.

## 2.3 **Cross-NIHR working: to act as an integral part of NIHRCC - working collaboratively within NIHRCC and across NIHRCC & RDNCC (previously CRNCC) as a co-ordinated, joined-up organisation. The work under this Service Requirement seeks to ensure that the Contract works together with other current or future NIHR contracts as part of a coordinated, joined-up organisation**

### 2.3.1 (M) Cross-organisational work, including:

- Working closely with multiple parts of NIHR to identify synergies and align activity where practical
- NIHR Strategy and Engagement Board (approximately 4x meetings a year) - membership of the Board and provision of support for 2 x public members.
- NIHR Centres Executive Board (weekly)
- NIHR Board (several times per year)

2.3.2 The Authority anticipates involvement from the Devolved Governments of Wales and Northern Ireland in relation to the dissemination services under this contract and the Supplier will likely need to engage with the Devolved Governments to ensure that such activity is appropriately shaped and informed by their priorities, and by research and researchers from those nations.

## 2.4 Contract and Service Management

2.4.1 The Supplier must provide executive and operational leadership, management, and governance working with, and on behalf of, the Authority. This shall include:

- Providing the operational headquarters for the contracted services;
  - Maintaining a strategic partnership relationship with the Authority;
  - Performance management of, and planning for, the contracted services;
  - Ensuring that customer needs are met or exceeded, and engaging with stakeholders;
  - Financial management and assurance of the Contract;
  - Governance of the Services;
  - Communications functions for the services;
  - Workforce planning, HR functions and learning and development of all staff; and
  - Provision, use, management, and development, of Information and Communications Technology systems.
- 2.4.2 (M) The Supplier and the Authority shall each appoint a Contract Manager for the purposes of this Contract through whom the Services shall be managed at a day-to-day level.
- 2.4.3 (B) A virtual Contract Management Board will be held quarterly. The Board shall be established by the Department for the purposes of this Contract on which both the Supplier and the Department shall be represented.
- 2.4.4 (M) The Supplier must provide a sufficient level of resource throughout the Contract Term to consistently delivery a quality service to the Authority.
- 2.4.5 (M) The Supplier shall ensure that its staff assigned to the provision of the Services:
- (i) have the relevant qualifications and experience to deliver the Contract; and
  - (ii) understand the Authority's vision and objectives and provide excellent customer service to the Authority throughout the duration of the Contract.

### **3 Authority Emergent Services**

- 3.1 The Authority may, in accordance with Clause 5.10, on or after the Service Commencement Date require the Supplier to deliver under this Contract one or more specific projects or provide additional services or activities not in each case otherwise provided for under its terms ("**Authority Emergent Services**").
- 3.2 The need for Authority Emergent Services is unpredictable as at the Effective Date, and each Authority Emergent Service will be subject to the agreement of both Parties and Approval (including assessment of affordability and value for money) by the Authority.

## 4 **Social Value**

4.1 This Contract will support the following Social Value Themes under the Government Commercial Function's Social Value Model:

- **Theme 3 – Fighting Climate Change** with the Policy Outcome of *Effective stewardship of the environment*; and
- **Theme 5 - Wellbeing** with the Policy Outcome to *Improve community integration*

## 5 **KEY PROJECT DATES**

5.1 The table below sets out certain activities relating to the project (listed in the column headed "Project Activity") and the relevant date ("Key Project Date") by which the associated Project Activity must be completed, delivered or take place, as relevant.

Key Project Dates	Project Activity
Within 20 Working Days of the Effective Date	Draft Detailed Implementation Plan submitted to the Authority for agreement in accordance with the Contract
By 31 March 2025	All activities in the Detailed Implementation Plan delivered to the satisfaction of the Authority
By 31 March 2025	Draft Services Continuity Plan submitted to the Authority for agreement
By 31 March 2025	Exit Plan drafted and agreed with the Authority
At least twenty (20) Working Days before the Operational Service Commencement Date.	Annual Strategic and Operational Plan applicable to first Financial Year submitted to the Authority for agreement
At least twenty (20) Working Days before each of the January quarterly meetings of the Contract Management Board.	Annual Strategic and Operational Plan for each successive Financial Year submitted to the Authority for agreement
April 2025	First Contract Management Board meeting

### **Schedule 3**

#### **(PERFORMANCE MEASUREMENT AND MONITORING)**

##### **PART A - KEY PERFORMANCE INDICATORS**

##### **1 KEY PERFORMANCE INDICATORS**

- 1.1 Annex 1 of this Part A sets out the Outline Performance Indicators (as defined in paragraph 5.2 of Schedule 13 (*Implementation Plan and Transition*)).
- 1.2 The Outline Performance Indicators shall apply to the measurement of the performance of the Services by the Supplier until such time as the Parties have agreed the Key Performance Indicators further to Paragraph 5 (*Agreement of Key Performance Indicators*) of Schedule 13 (*Implementation Plan and Transition*). Once the Parties have agreed the Key Performance Indicators, these shall be included in Annex 1 and used to measure the performance of the Services and delivery of Social Value by the Supplier for the remainder of the Term and the Outline Performance Indicators shall no longer apply.
- 1.3 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B to this Schedule.
- 1.4 Service Credits shall accrue for any Material KPI Failure and shall be calculated in accordance with Annex 2 of this Schedule.

## ANNEX 1 TO PART A

### **1 KEY PERFORMANCE INDICATORS**

- 1.1 The Outline Performance Indicators and/or Key Performance Indicators as set out below in Table 1 are specific to the performance of the Services as outlined in Schedule 2. These will be considered “**Publishable Performance Information**” meaning any of the information in performance monitoring reporting as it relates to a Performance Indicator in the table shall not constitute Commercially Sensitive Information.

**TABLE 1 – OUTLINE PERFORMANCE INDICATORS**

NO.	OUTLINE PERFORMANCE INDICATOR TITLE	DEFINTION	FREQUENCY OF MEASUREMENT	PERFORMANCE LEVELS	TARGET PERFORMANCE LEVEL
<b>Public Partnerships (“PP”)</b>					
KPI 1	Stakeholder Engagement Events	Number of events and participation rates	Quarterly	PASS/FAIL	Conduct twelve (12) stakeholder engagement events per year
KPI 2	Public Contributor Involvement	Percentage of projects with public contributor involvement	Quarterly	PASS/FAIL	Public contributors are involved in 90% of all new projects (where appropriate)
KPI 3	EDI Activities	External assessment of EDI activities	Annually	PASS/FAIL	EDI activities meet standards of meaningful action and impact - to be agreed by the Contract Management Board
KPI 4	Diverse Public Voices	Diversity metrics of public contributors	Annually	PASS/FAIL	<p>For Year 1, by way of a report, clearly demonstrate (with metrics) Supplier activities that have increased the diversity of public contributors.</p> <p>For Year 2 onwards move to a percentage increase on these metrics agreed by</p>



NO.	OUTLINE PERFORMANCE INDICATOR TITLE	DEFINTION	FREQUENCY OF MEASUREMENT	PERFORMANCE LEVELS	TARGET PERFORMANCE LEVEL
					Contract Management Board.
KPI 5	Training and Development Sessions	Number of sessions and participant feedback	Quarterly	PASS/FAIL	Deliver minimum of four training sessions/products per year
<b>Maximising Impact (“MI”)</b>					
KPI 6	Dissemination Products	Number of dissemination products created	Quarterly	PASS/FAIL	Produce minimum of one-hundred (100) dissemination products per year
KPI 7	Stakeholder Engagement	Number of meetings and engagement outcomes	Quarterly	PASS/FAIL	Conduct twelve (12) engagement meetings per year
KPI 8	MI Platforms and Networks	Number of networks and user engagement metrics	Annually	PASS/FAIL	Develop and maintain two (2) new MI networks per year
KPI 9	Impact Tools and Metrics	Usage statistics and awareness metrics from annual user survey	Annually	PASS/FAIL	For Year 1, by way of a report, clearly demonstrate (with metrics) Supplier activities that have increased the awareness and usage of NIHR impact tools. For Year 2 onwards, move to a percentage increase on these metrics agreed by

NO.	OUTLINE PERFORMANCE INDICATOR TITLE	DEFINTION	FREQUENCY OF MEASUREMENT	PERFORMANCE LEVELS	TARGET PERFORMANCE LEVEL
					Contract Management Board.
KPI 10	Training and Development Sessions	Number of sessions and participant feedback	Quarterly	PASS/FAIL	Deliver minimum of four training sessions/products per year
<b>Cross-Cutting Initiatives</b>					
KPI 11	Efficiency Improvements	Number of improvements and cost savings	Annually	PASS/FAIL	Identify and implement five efficiency improvements annually
KPI 12	Digital Strategy Implementaton	User satisfaction surveys	Annually	PASS/FAIL	Achieve 90% user satisfaction with Supplier managed NIHR digital platforms
KPI 13	Environmental Impact	Carbon footprint metrics	Annually	PASS/FAIL	For Year 1, by way of a report, clearly demonstrate (with metrics) Supplier activities that have reduced impact on the environment. For Year 2 onwards, move to a percentage change on these metrics agreed by Contract Management Board.
<b>Reporting and Governance</b>					
KPI	Quarterly and Annual Reports	Timeliness and completeness of reports	Annually and Quarterly	PASS/FAIL	Submit all required reports on time with comprehensive data

NO.	OUTLINE PERFORMANCE INDICATOR TITLE	DEFINTION	FREQUENCY OF MEASUREMENT	PERFORMANCE LEVELS	TARGET PERFORMANCE LEVEL
KPI	Committee Participation	Attendance records and participation feedback	Each occurrence of governance meetings	PASS/FAIL	Ensure >90% attendance and active participation in governance meetings

**TABLE 2 - PERFORMANCE LEVEL CONSEQUENCES**

**1. Outline Performance Indicators**

<b>PASS</b>	Target Performance Level met
<b>FAIL</b>	Target Performance Level not met. This shall be deemed a Material KPI Failure and Service Credits (calculated in accordance with Paragraph 1.1 of Annex 2 of this Part A) shall accrue and the Parties shall also comply with Clause 25 ( <i>Rectification Plan Process</i> ).

**2. Key Performance Indicators**

<b>GREEN</b>	Target Performance Level met
<b>AMBER</b>	A KPI Failure. The Parties shall comply with Clause 25 ( <i>Rectification Plan Process</i> )
<b>RED</b>	A Material KPI Failure and Service Credits (calculated in accordance with Paragraph 1.1 of Annex 2 of this

	Part A) shall accrue and the Parties shall also comply with Clause 25 ( <i>Rectification Plan Process</i> ).
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## **ANNEX 2 TO PART A**

### **SERVICE CREDITS**

#### **1 SERVICE CREDITS**

- 1.1 Each Service Credit shall be equal to the sum of twenty-five thousand pounds (£25,000).
- 1.2 Service Credits shall be calculated by reference to the number of occasions in any one Service Period that the Supplier achieves, as applicable, a Performance Level of:
  - 1.2.1 “Red” in respect of any Key Performance Indicator in accordance with the Performance Level description set out in Table 1 of Annex 1; or
  - 1.2.2 “Fail” in respect of any Outline Performance Indicator in accordance with the Performance Level description set out in Table 1 of Annex 1.
- 1.3 In respect of Service Credits accrued, the Authority may only withhold up to a maximum one hundred thousand pounds (£100,000) per Service Period or three hundred thousand pounds (£300,000) in any Contract Year.
- 1.4 The Authority shall review its withholding of Service Credits in respect of any Service Period in the subsequent Service Period and either:
  - 1.4.1 if the Material KPI Failure which led to the withholding of a Service Credit has been rectified further to the Supplier’s implementation of a Rectification Plan, reimburse the Supplier;
  - 1.4.2 impose a further withholding of the Service Credit if, in respect of the Material KPI Failure which led to the withholding of the Service Credit, the Supplier has not:
    - (i) begun to rectify or improve its performance in respect of the relevant Performance Indicator in accordance with the Rectification Plan;
    - (ii) implemented the Rectification Plan in accordance with its terms; or
  - 1.4.3 in the event of a Rectification Plan Failure, terminate the Contract under Clause 31.1.2
- 1.5 In the case of any Performance Indicator against which the Supplier’s performance is reported annually, if the same KPI Failure occurs in two adjacent Contract Years, this will be considered a Supplier Termination Event and the provisions of Clause 31 (*Termination Rights*) shall apply.
- 1.6 If the Supplier fails to achieve the Target Performance Level for any three (3) or more Key Performance Indicators or Outline Performance Indicators during two (2) consecutive Service Periods or any three (3) Service Periods in any rolling eighteen (18) month period, this will be considered a Supplier Termination Event and the provisions of Clause 31 (*Termination Rights*) shall apply.

## **PART B - PERFORMANCE MONITORING**

### **1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW**

- 1.1 In addition to any requirements in Schedule 21 (*Governance*), the Supplier shall implement all measurement and monitoring tools and procedures necessary to measure, monitor and report on the Supplier's performance of the provision of the Services against the Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators, including but not limited to the provisions as set out in paragraph 2 of this Part B.
- 1.2 Within ten (10) Working Days before each Contract Management Board Meeting, the Supplier shall provide a report to the Authority Representative which sets out, at the level of detail referred to in paragraph 1.1 above, the performance by the Supplier against each of the Performance Indicators ("**Performance Monitoring Report**").

### **2 GENERAL**

- 2.1 The Authority shall be entitled to raise any additional questions and/or request any further information regarding any failure to achieve Performance Indicators.
- 2.2 The Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance by the Supplier.
- 2.3 Unless the Authority specifies otherwise, the Supplier shall obtain Approval of the relevant measuring and monitoring tools and procedures prior to using the same.
- 2.4 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of the Supplier's provision of the Services.
- 2.5 The Authority shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Services which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.
- 2.6 All other suggestions for improvements to the provision of Services shall be dealt with as part of the continuous improvement programme pursuant to Clause 8 (*Services Improvement*).
- 2.7 The Authority shall have the right to Audit and inspect performance monitoring information as detailed further in Clause 12 (*Records, Reports, Audits & Open Book Data*).

### **3 Authority Emergent Services**

- 3.1 If the Authority requires any Authority Emergent Services, the Parties shall, if required by the Authority, agree, acting reasonably and in good faith, Performance Indicators relevant to such Authority Emergent Services ("**AES KPIs**") and the method by which the AES KPIs shall be measured (including reporting mechanisms and remedies available to the Authority).

## **Schedule 4**

### **(STANDARDS)**

#### **1 STANDARDS**

1.1 The Supplier shall at all times during the Term comply with the Standards, including, but not limited to, the following:

- 1.1.1 any Standards referred to in Schedule 21 (*Governance*);
- 1.1.2 ISO 22301 Code of Practice for Business Continuity Management (or equivalent);
- 1.1.3 ISO/IEC 27031:2011 Information Technology (or equivalent);
- 1.1.4 certified as compliant with ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
- 1.1.5 certified as compliant with Cyber Essentials PLUS;
- 1.1.6 Government Security Standards policy (dated: 2021) (or equivalent);
- 1.1.7 PRINCE2 and MSP methodologies or equivalent methodologies;
- 1.1.8 UK Standards for Public Involvement Standards: [UK Standards for Public Involvement \(google.com\)](#) ;
- 1.1.9 the NHS Constitution (<https://www.gov.uk/government/publications/the-nhs-constitution-for-england/the-nhs-constitution-for-england>);
- 1.1.10 the NIHR branding guidance from time to time as issued by the Authority;
- 1.1.11 the research governance framework from time to time as issued by the Authority; and
- 1.1.12 any standards imposed from time to time under NIHR's Digital Strategy, Inclusion or Sustainability Strategies,

including any subsequent amendment(s) or replacement of such Standards.

1.2 The Supplier shall for 1.1.4 and 1.1.5 provide the Authority with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or process Authority Data.

1.3 The Supplier shall meet the applicable Government Buying Standards applicable to the Services which can be found online at:

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

1.4 Throughout the Term the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the Authority,

of the Services. The adoption of any such new or emergent standard, or changes to existing Standards, shall be agreed in accordance with the Change Control Procedure. Any change to an existing Standard which is included in this Schedule 4 (*Standards*) shall, in addition, require the Approval of the Authority.

- 1.5 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier's provision, or the Authority's receipt of the Services is explained to the Authority (within a reasonable timeframe), prior to the implementation of the new or emergent Standard.
- 1.6 Where a standard, policy or document is referred to in Schedule 4 (*Standards*) by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall agree the impact of such change.
- 1.7 Where Standards referenced conflict with each or any other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

## **2 SUPPLIER CODE OF CONDUCT**

- 2.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/779660/20190220-Supplier\\_Code\\_of\\_Conduct.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct.pdf)

- 2.2 The Authority expects to meet, and expects its suppliers and subcontracts to meet, the standards set out in that Code.

## **3 ENVIRONMENTAL REQUIREMENTS**

- 3.1 The following terms have the following meanings in the Paragraph 3:

**"Waste Hierarchy"** means the prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:

- (a) Prevention;
  - (b) Preparing for re-use;
  - (c) Recycling;
  - (d) Other Recovery; and
  - (e) Disposal.
- 3.2 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
  - 3.3 The Supplier warrants that it has obtained relevant Environment Management System (EMS) certified to ISO 14001 or an equivalent certification from a UKAS



accredited body and shall comply with and maintain certification requirements throughout the Term.

- 3.4 In performing its obligations under this Contract the Supplier shall, where applicable to this Contract, to the reasonable satisfaction of the Authority:
- 3.4.1 demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority's reasonable questions;
  - 3.4.2 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
  - 3.4.3 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
  - 3.4.4 ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal;
  - 3.4.5 in circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency; minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
  - 3.4.6 reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
- 3.5 In performing its obligations under this Contract, the Supplier shall to the reasonable satisfaction of the Authority (where the anticipated Charges in any Contract Year are above five million pounds (£5,000,000) per annum (excluding VAT)), where related to and proportionate to the Contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.

## **Schedule 5**

### **(SECURITY MANAGEMENT)**

#### **1 DEFINITIONS**

1.1 In this Schedule 5, the following definitions shall apply:

"Breach of  
Security"

means the occurrence of:

- (a) any unauthorised access to or use of the Services, the Sites and/or any Information and Communication Technology ("**ICT**"), information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Contract; and/or
- (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Contract,

in either case as more particularly set out in the Security Policy in Annex 1 of Schedule 5;

"COTS Software"

Supplier COTS Software and Third Party COTS Software; and

"Information  
Management  
System"

- (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Authority Data; and
- (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);

#### **2 INTRODUCTION**

2.1 The purpose of this Schedule 5 is to ensure a good organisational approach to security under which the specific requirements of this Contract will be met;

2.2 This Schedule 5 covers:

2.2.1 principles of protective security to be applied in delivering the Services;

2.2.2 the creation and maintenance of the Security Management Plan; and

2.2.3 obligations in the event of actual or attempted Breaches of Security.

### **3 PRINCIPLES OF SECURITY**

3.1 The Supplier acknowledges that the Authority places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.

3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

3.2.1 is in accordance with the Law and this Contract;

3.2.2 as a minimum demonstrates Good Industry Practice;

3.2.3 complies with the Security Policies in Annex 1;

3.2.4 meets any specific security threats of immediate relevance to the Services and/or the Authority Data; and

3.2.5 complies with the Authority's ICT policy (if so required by the Authority).

3.3 Subject to Clause 18 (*Authority Data and Security Requirements*) of this Contract the references to standards, guidance and policies contained or set out in paragraph 3.2 of this Schedule 5 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Authority's Representative of such inconsistency immediately upon becoming aware of the same, and the Authority's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

### **4 SECURITY MANAGEMENT PLAN**

4.1 Introduction

4.1.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule 5. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

4.2 Content of the Security Management Plan

4.2.1 The Security Management Plan shall:

(i) comply with the principles of security set out in paragraph 3 of this Schedule 5 and any other provisions of this Contract relevant to security;

(ii) identify the necessary delegated organisational roles defined for those responsible for ensuring it is complied with by the Supplier;

- (iii) detail the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the provision of the Services, the Sites and any ICT, Information and data (including the Authority's Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
- (iv) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the provision of the Services, including the Sites, and any ICT, information and data (including the Authority's Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that information, data and/or the Services;
- (v) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the provision of the Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Contract;
- (vi) set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and the Security Policy in Annex 1; and
- (vii) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the provision of the Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule 5.

#### 4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Effective Date (or such other period agreed by the Parties in writing), the Supplier shall prepare and deliver to the Authority for Approval a Security Management Plan which meets the requirements set out in paragraph 4.2 above n.
- 4.3.2 The Authority shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event, within twenty (20) Working Days of receipt and shall either issue the Supplier with:
  - (i) notice that the Authority Approves the Security Management Plan in which case the Supplier shall adopt, implement and maintain the Security Management Plan in accordance with this Schedule 5; or
  - (ii) a rejection notice, which shall set out the Authority's reasons for rejecting the Supplier's proposed Security Management Plan.

- 4.3.3 If the Authority rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Authority's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Authority for review within ten (10) Working Days or such other timescale as agreed with the Authority. The Parties will use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than thirty (30) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority:
- (i) Approves the resubmitted Security Management Plan, Paragraph 4.3.2(i) shall apply; or
  - (ii) does not approve the resubmitted Security Management Plan, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.3.4 The Authority shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraphs 4.3.2 and 4.3.3. However a refusal by the Authority to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.3.5 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3.2 of this Schedule 5 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule 5.

#### 4.4 Amendment and Revision of the Security Management Plan

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
- (i) emerging changes in Good Industry Practice;
  - (ii) any change or proposed change to the Services and/or associated processes;
  - (iii) any change to the Security Policy;
  - (iv) any new perceived or changed security threats; and
  - (v) any reasonable change in requirements requested by the Authority.
- 4.4.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:
- (i) suggested improvements to the effectiveness of the Security Management Plan;
  - (ii) updates to the risk assessments; and

- (iii) suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Authority or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until Approved by the Authority. Any revised version Security Management Plan Approved by the Authority shall be adopted, implemented and maintained by the Supplier in accordance with this Schedule 5
- 4.4.4 The Authority may, where it is reasonable to do so, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

## **5 BREACH OF SECURITY**

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Supplier shall:
  - 5.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:
    - (i) minimise the extent of actual or potential harm caused by any Breach of Security;
    - (ii) remedy such Breach of Security to the extent possible and protect the integrity of the Authority and the provision of the Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
    - (iii) prevent an equivalent breach in the future exploiting the same root cause failure; and
    - (iv) as soon as reasonably practicable provide to the Authority, where the Authority so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.
- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy or the requirements of this Schedule 5, then any required change to the Security Management Plan shall be at no cost to the Authority.

## **6 Vulnerabilities and Corrective Action**

- 6.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Authority Data.
- 6.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
  - 6.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
  - 6.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 6.3 Subject to Paragraph 6.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
  - 6.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
  - 6.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
  - 6.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 6.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 6.3 shall be extended where:
  - 6.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 6.3 if the vulnerability becomes exploitable within the context of the Services;
  - 6.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or
  - 6.4.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.
- 6.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Authority

in writing. All COTS Software should be no more than N-1 versions behind the latest software release.



## **ANNEX 1 - SECURITY POLICIES**

<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>

<https://www.ncsc.gov.uk/guidance/introduction-understanding-cloud-security>

## **Schedule 6**

### **(INSURANCE REQUIREMENTS)**

#### **1 OBLIGATION TO MAINTAIN INSURANCES**

- 1.1 Without prejudice to its obligations to the Authority under this Contract, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 (Required Insurances) to this Schedule 6 and any other insurances as may be required by applicable Law (together the **Insurances**). The Supplier shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
- 1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 1.3 The Insurances shall be taken out and maintained with insurers, who are:
- 1.3.1 of good financial standing;
  - 1.3.2 appropriately regulated;
  - 1.3.3 regulated by the applicable regulatory body and who are in good standing with that regulator;
  - 1.3.4 except in the case of any Insurances provided by an Affiliate of the Supplier, and of good repute in the international insurance market.
- 1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with this Contract and for which the Supplier is legally liable.

#### **2 GENERAL OBLIGATIONS**

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

### **3 FAILURE TO INSURE**

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

### **4 EVIDENCE OF POLICIES**

- 4.1 The Supplier shall upon the Effective Date and within fifteen (15) Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Contract.

### **5 INSURANCE**

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

### **6 CANCELLATION**

- 6.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least five (5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs solely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

### **7 INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES**

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at the Supplier's own expense including without limitation providing information and documentation in a timely manner.

- 7.2 The Supplier shall maintain a register of all claims under the Insurances in connections with this Contract and shall allow the Authority to review such register at any time.
- 7.3 Except where the Authority is the claimant party, the Supplier shall give the Authority notice within twenty (20) Working Days after any insurance claim in excess of one thousand pounds (£1,000) relating to or arising out of the provision of the Services or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.
- 7.4 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.5 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

## **ANNEX 1 - REQUIRED INSURANCES**

### **1 REQUIRED INSURANCES**

1.1 The Supplier shall, during the Term and for a period of one year thereafter, effect and maintain in force at least the following insurance policies with reputable insurance companies to cover its potential liabilities in connection with this Contract:

1.1.1 professional indemnity insurance with a minimum limit of indemnity of ten million pounds sterling (£10,000,000) per claim;

1.1.2 public liability insurance with a minimum limit of ten million pounds sterling (£10,000,000) per claim; and

1.1.3 employers' liability insurance in respect of the Supplier's employees with a minimum limit of ten million pounds sterling (£10,000,000) (or such higher minimum limit as required by Law from time to time) for claims arising from a single event or series of related events in a single year.

## **Schedule 7**

### **AUTHORITY RESPONSIBILITIES**

#### **Schedule 7 Authority Responsibilities**

##### **1 Introduction**

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Contract. Any obligations of the Authority in Schedule 2 (*Services Description*) and Schedule 8 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be "Authority Responsibilities" and cross referenced in the Table in Paragraph 3.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

##### **2 General Obligations**

- 2.1 The Authority shall:
  - 2.1.1 perform those obligations of the Authority which are set out in the Clauses of this Contract and the Paragraphs of the Schedules (except Schedule 2 (*Services Description*) and Schedule 8 (*Supplier Solution*));
  - 2.1.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
  - 2.1.3 provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Contract as defined in the Implementation Plan;
  - 2.1.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
  - 2.1.5 procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

##### **3 Specific Obligations**

- 3.1 The Authority shall, in relation to this Contract perform the Authority's responsibilities identified as such in this Contract the details of which are set out below:

Document	Location (Paragraph)
As at the Effective Date, there are none.	

## **Schedule 8**

### **(SUPPLIER SOLUTION)**

#### **Overview**

**Our vision for this initiative** - BMJG is a proud champion of UK research internationally and we aim to establish NIHR as the global exemplar among its peers in the impact of health and care research. We will bring together the two sections of this tender - public partnerships and impact and dissemination - as a single initiative as part of the NIHR Coordinating Centre, with impact of activities measured through clear and agreed KPIs.

In summary, within two years we aim to show measurable improvements in awareness and understanding of the value of health and care research among both the public and policymakers. By mid-term, we aim to show more inclusive and impactful NIHR research projects that reflect the needs of our diverse communities and greater engagement in impact by NIHR stakeholders. By term, we will show significant measurable improvements in health and care outcomes through the adoption of research findings in practice and policy. Although our focus is primarily on the health and wealth of the UK we will convene NIHR's international peers and contribute to the open sharing of knowledge to not only improve the UK delivery of this initiative but also help deliver benefits to global health and care research - including those in the DHSC Global Health Research Portfolio.

**Key aspects of our approach** - Through the negotiation phase, we would work with NIHR to map the strengths of both organisations and define clear and ambitious KPIs for BMJG deliverables. We will base our approach on an agreed theory of change model, with operational processes structured around three key pillars underpinning delivery -

**(1) Access and input from the world's top experts** - building on BMJG's capabilities of running over 100 high-efficiency advisory boards, reference groups and communities of practice.

**(2) Joined up strategic direction working closely with NIHR** - leveraging BMJG's experience in building long-term strategic plans for complex multi-stakeholder partners (such as the WHO and NHS England), and based on an understanding of the NIHR's pivotal position in the UK health and care ecosystem at the interface of research, policy and care delivery.

**(3) Innovative solutions** - bringing new technologies and approaches, such as the award-winning BMJ Impact Analytics, to provide more efficient and impactful delivery and measurement of outcomes.

**A partnership for increasing health and wealth through research** - We believe BMJG brings a unique set of capabilities to this initiative. We bring the internal skillset of an experienced health consultancy or technical provider, with clients such as the Asia Development Bank and the US Government. We bring a global research and academic research network through collaborations with most UK universities and national and international research collaboratives. We also bring new and innovative research tools and services, such as BMJ Impact Analytics, BMJ Research to Publication and the BMJ Research Forum.

Our ambition is to bring a refreshed and innovative approach to support the NIHRCC public partnerships, dissemination and impact that sets a global example for delivering excellence in improving national health and care through research.

#### **OVERALL DELIVERY**

**Overview** - We will tailor the delivery of this programme based on our further discussions with NIHR and input from key stakeholders during the inception phase; however, we propose and envisage the key components below to form the core of our delivery. We offer the reassurance of high-quality delivery of the requirements of 6.1 and 6.2 but also go beyond these with innovative plans for the NIHR to be a global exemplar of how public partnerships can enhance the impact of health research. Our approach is to combine impact and dissemination activities (6.2) with public partnership and EDI activities (6.1)



from inception, as we believe such a combined approach will lead to the best research outcomes. We have also focussed on activities that build relationships for collaboration and partnership (rather than a rigid programmatic approach), within and beyond NIHR, to ensure that change is meaningful and sustained.

We have built a proposal split into a spend of 78% to build on the existing programme architecture and to deliver a robust day-to-day service for NIHR staff and stakeholders and ensure a smooth transition. The remaining 22% is focused on innovative new infrastructure and solutions which by leveraging existing BMJG infrastructure we are confident of not only exceeding the requirements and expectations of the core deliverables but bringing high-value additions such as a new NIHR Impact Platform, NIHR Research Forum and an access initiative to increase public partnerships in research.

We have structured this joint PP and MI programme around our three key pillars –

1. The best expertise from world leading research professionals and stakeholders

How we'll do this-

- Leveraging BMJG's standing as an independent, trusted and recognisable brand to convene all NIHR stakeholders on an equal footing - one of the reasons we haven't bid with specific universities so we can work with all
- Bring best practice from beyond the UK by establishing a two-way knowledge exchange with NIH (USA), CIHR (Canada), NHMRC (Australia), DZG (Germany), INSERM (France), RIKEN (Japan) and MOST (China)
- Hosting stakeholder NIHR Dialogue Events, advisory boards and reference groups during the inception stage- which we feel is critical to bring the best expertise and guidance to this initiative but also achieve early buy-in
- Bring BMJG's expertise of running 100+ highly efficient advisory boards, reference groups and communities of practice-which we we feel brings wider impact and lower cost than the paid NIHR consultant model

2. The best strategy from joined up working with NIHR and an experienced core team

How we'll do this-

- Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)
- BMJG brings strong internal strategic design experience having worked on large national programmes including the Asia Development Bank's 10-year health strategy and an 8 country global health initiative for the US Government
- An experienced core strategy team will be complemented by a network of reference and advisory groups to ensure strategy is validated against NIHR objectives and stakeholder needs and to adapt quickly as priorities change
- NIHR will have access to BMJG's project management workspace to have instant access to all documents and see in real time delivery against objectives and KPIs

3. The best solution by bringing new innovative technologies to measure and drive impact

How we'll do this -

- Implement new technologies and approaches for NIHR, such as a new major impact platform, to provide more efficient and innovative delivery of objectives and improved measurement of outcomes
- Bring expertise from BMJGs teams in events, education, research and communications who engage with over 21m users and 11,000 institutions each year

- Leverage BMJG's engagement experience from running 40+ events per year, including the BMJ Research Forum, to bring new in-person and virtual ways to build skills, engage communities of practice and showcase success In addition to traditional research metrics, we'll move to provide KPI based metrics that demonstrate research impact on policy, implementation and end patient outcomes all linked to economic value where possible

### **Details of delivery**

1. The best expertise from world leading research professionals and stakeholders.

### **Activity 1.1 - Four NIHR Stakeholder Dialogue Forums (formation May 2025 - November 2026)**

Themes (1) Strengthening research through public partnerships (2) Bridging Gaps: Equity, Diversity, and Inclusion in Research (3) NIHR From Research to Impact (4) Patients and the Public Engagement in Research (lived experience and inclusion experts)

- These events aim to identify the shared (1) opportunities (2) challenges (3) recommendations from stakeholders to inform NIHR's approach as well as achieve early stakeholder buy-in
- Typically representatives from 20-25 stakeholder organisations/cohort groups invited with advance desk research, quantitative and qualitative surveys of participants and pre-event briefing calls
- Highly structured event through breakout groups with expert facilitators and rapporteurs capturing discussions to form summary report which will form a reference for future work
- A subgroup would be invited to join an ongoing community of research. From the public partnerships forum, an additional 'co-production taskforce' as per the 'Going the Extra Mile' recommendations would be established.

### **Activity 1.2 - Develop an expert faculty (16-20 people) for strategic guidance (full term)**

- Public Partnership Faculty - To provide strategic guidance on how we ensure NIHR's end-to-end selection and funding processes, governance, structures and strategic decision-making involve, and are informed by people and communities

### **Activity 1.3 - NIHR Reference Groups (full term)**

- Developing a series of reference groups (8-10 people) of end users for consulting on strategy - groups to include public/patient partnerships, impact methodology and measurement, and social care research
- Drawn from a mix of internal NIHR staff along with key stakeholders
- Provide expertise and challenge to improve NIHR dissemination and knowledge mobilisation policy and operations

### **Activity 1.4 - Establish a global knowledge exchange with other funders of health and care research (full term)**

- Annual knowledge exchange event preceding NIHR Research Forum (Activity 3.2) each December
- Invite-only for equivalent national bodies e.g. NIH (USA), CIHR (Canada), NHMRC (Australia), DZG (Germany), INSERM (France), RIKEN (Japan), MOST (China)
- Topics to discuss could include successes and challenges of translating research into policy and practice, best practices for public involvement, and improving equality diversity and inclusion (EDI) in research
- Hybrid event with opportunity for satellite events coordinated through BMJG's hubs

## 2. The best strategy from joined up working with NIHR and an experienced core team.

<b>Activity 2.1 - Public Partnerships (PP) Strategic Development</b> <ul style="list-style-type: none"><li>- Policy and Operations Leadership: Establish a PP policy leadership team to provide expertise, foresee emerging trends, and ensure strategic alignment with DHSC/NIHR policies.</li><li>- Platforms and Networks: Develop and promote existing PP platforms and networks to enhance engagement, ensuring diversity and inclusion. This involves leveraging digital strategies and addressing the digital divide together.</li><li>- Capacity Building: Focus on strengthening PP across NIHR RDN and NIHR grantees, including training, peer support, and developing funding models to support PP in research.</li></ul>	<b>Activity 2.2 - Maximising Impact (MI) Strategic Development</b> <ul style="list-style-type: none"><li>- Coordination and Leadership: Form an MI coordination team to enhance dissemination, knowledge mobilisation, and policy, addressing emerging trends and system drivers.</li><li>- Platforms and Engagement: Build platforms and networks to connect with evidence users, ensuring NIHR research findings are accessible and actionable.</li><li>- Capacity and Capability Building: Enhance existing guidance and support for research dissemination and knowledge mobilisation, including dedicated funding models.</li></ul>
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This strategic team will be responsible for -

**Activity 2.3** - Delivery and regular updating of a joint implementation plan to NIHR with clear roles and responsibilities, and specified milestones and timelines

**Activity 2.4** - Transition management plan - coordinate closely with the incumbent supplier and DHSC for a smooth transition, ensuring continuity of digital services and compliance with TUPE regulations for staff and services

**Activity 2.5** - Establish clear KPIs for both PP and MI activities, and processes for regular monitoring, reporting, and feedback mechanisms

**Activity 2.6** - Designing and approving a continuous improvement process to leverage feedback and performance data to refine and enhance strategies and operations

BMJG will provide the NIHR core team access to a project workspace to have full access to all documents and current timelines and view real-time delivery against objectives and KPIs. Representatives of this strategic group will also attend the Quarterly Review Meetings (QRMs) with NIHR when required as well as NIHR Strategy and Engagement Board (supporting 2 public members), NIHR Centres Executive Board and the NIHR Board (6.3.2).

## 3. The best solutions by bringing innovative technologies to drive and measure impact

**Activity 3.1 - Major new NIHR Impact Platform to provide up-to-date data on how NIHR-funded research has been used as evidence to inform health policy and clinical guidance in the UK and around the world (full term)**

- A new and innovative custom-built NIHR Impact Platform drawing on the most comprehensive database of trustworthy citation evidence from clinical, health, medical, policy, and clinical guidance sources across the globe, developed by the team that built the award-winning [BMJ Impact Analytics](#)
- The platform will provide NIHR and stakeholders with real-time alerts and detailed insights into the real world impact of NIHR research and where health and social policy has been influenced. It can also assist with future research plans by identifying gaps in evidence-based policy.
- This NIHR Impact Platform will differ from other impact tools as it is based on BMJ Impact Analytics that was created collaboratively and specifically for the health and social care research community. It covers the widest breadth of global health policy and clinical guidance content., including coverage of national clinical guidelines.

- The NIHR Impact Platform will draw on this award-winning product development approach and create an innovative new resource that will be developed in consultation and meet the needs of key NIHR stakeholders and internal departments
- Create dashboards for each RDN and NIHR centre to deliver data and data visualisations of the real-world impact of NIHR-funded research and how it reaches patients and the public
- At BMJG we believe that understanding how research influences patient care is crucial to assessing the real-world impact of health research. The NIHR Impact Platform can also help identify research that has informed national clinical decision support tools and care pathways (interventions for mutual decision-making and organisation of care processes for patients) as another indication of this type of impact
- Co-production sessions will be run with stakeholders and departments during the inception phase to understand how real-world data is used currently and to also unearth any challenges around discovery, which will inform how we develop this solution for NIHR

### **Activity 3.2 - Annual NIHR Conference on Health Research aligned to tender priorities (annual)**

In 2021 BMJG established the [BMJ Research Forum](#) which aims to drive real-world impact from health research by convening funders, research organisations as well as current and future researchers. With partners, including NIHR, NICE, F1000, AMRC, the event convenes over 300+ people over 2 days each year, with keynote speakers such as Lucy Chappel. We propose to -

- Relaunch and rebrand this event in partnership with NIHR for the next seven years to deliver against the areas of focus in this tender with an annual theme on these core NIHR deliverables
- Establishing this as the annual celebration of NIHR research with awards to recognise exemplars, sharing best practice via poster and oral presentations, and skills-based workshops
- Specific closed NIHR pre-day for internal staff - internal networking, upskilling activities and an opportunity to discuss the successes and challenges of the previous year

### **Activity 3.3 - Annual NIHR/BMJ Themed Special Collection/Supplement (annual)**

- Under the direction of an experienced Editor, work with the expert reference groups to commission an annual series of 5-6 papers (a mix of research, analysis, case studies and commentary)
- Include some of the Test Bed Projects from the [UK Standards for Public Involvement](#) Initiative
- Publish as either an open-access BMJ Collection as a learning resource and legacy document from this initiative or a co-publication with NIHR journals library
- To include explanatory infographics, multimedia and author webinars to enhance learning
- NIHR team to be involved in shaping this collection, potentially chairing the advisory group and recognised as making this special body of work possible through this tender

### **Activity 3.4 - Establish engaged communities of practice across NIHR researchers and key stakeholders (full term)**

- Refresh and re-establish NIHR PP and MI web and online assets from the transition to include -
  - Central hub for Educational and Training, Publications, Reports and Tools, Events and Networks
  - Current Projects and Programmes along with exemplar case studies and reports
  - Information and opportunities for potential partners on how to engage with public entities
  - Signposting to helping public understanding of health and care research and their involvement (such as the HRA Putting People First content and NIHR TV channels)
- We plan to use existing networks and social media channels rather than building new platforms
- Work with the NIHR comms team on engagement activities, including a monthly email newsletter, quarterly webinar series and in-person engagement, such as 'meet-ups' and side events at our partner conferences such as Peer Review Congress and HSRUK Annual Conference
- Offer support, facilitation and experts to existing stakeholder online groups who are already working in public engagement and maximising the impact of NIHR research
- 'Drop-in' online surgeries to facilitate joint-working within NIHR locally, regionally and nationally

### **Activity 3.5 - On demand Learning Centre across PP and MI themes (full term)**

- A suite of six interactive learning modules (accredited for clinical researchers with CME/CPD credits) with certificate issued on completion
- Example topics proposed - EDI - Understanding EDI in Health Research; Inclusive Leadership in Health Research; Designing and Conducting Inclusive Research PP; Navigating Legal and Ethical Considerations in Public Partnerships; Effective Communication and Stakeholder

Engagement; Project Management and Collaboration Tools for Health Research Partnerships;  
Sustainable Partnership Development and Funding Strategies

**Activity 3.6 - Access initiative to support researchers with direct Public Partnerships (full term)**

- Build on NIHR's '[Learning for Involvement](#)' initiative by establishing a database of 50+ patient organisations, health charities and access groups across the UK open to research partnerships
- Maintain an up-to-date accessible directory of key contacts at each organisation who can be approached by NIHR researchers to support public partnerships
- Prepare guidance information for both parties on (a) how organisations can support NIHR researchers and the benefits of doing so and (b) how researchers can maximise value from public partnerships

**Activity 3.7 - Support the improvement of existing systems (full term)**

- Provide a team to support the simplification of the public user journey across these NIHR digital platforms (in line with the NIHR Digital Strategy and [UK Standards for Public Involvement in Research](#)) with input from 1.1 Dialogue Event and user survey
- Internal gap analysis to follow the dialogue forum to validate the key barriers for NIHR researchers with comparison to research industry standards and best practice
- Engagement work and regular briefings with key NIHR teams, including: Communications, Publishing, Evidence Synthesis, Impact and Business Intelligence
- Through internal comms, 'lunch and learns', and engagement events, target senior staff and stakeholder engagement within NIHR to establish the importance of dissemination and knowledge implementation, and internal NIHR barriers and drivers
- Embed knowledge implementation and dissemination activities into the grant award process. Building on our experience working with research funders in the US -
  - Embedding dissemination thinking and planning as part of the application process
  - Mandatory publishing and comms workshops at the start of funding allocation
  - Access to on-demand as well as drop-in webinars to support early thinking on dissemination and maximising impact while research underway
  - Provide the new NIHR impact platform as a tool to help applicants detect opportunities for research and where research can best influence policy, health and care guidance
- Provide NIHR with quantitative and qualitative data and case examples on success stories
- Support NIHR researchers with external engagement
  - Provide access to a self-service suite of tools to assist NIHR researchers to plan, implement and measure the impact of their research
  - Support from our programme team of communication, public relations and marketing experts
  - Provide researchers with a set of KPIs and best practice examples for external engagement and how best to champion NIHR research and maximise impact
  - Access to the Impact platform so that researchers can track how their research is used as evidence in health policy, and health and care guidance.
  - Provide researchers with a list of health, public health and social care organisations (PP Deliverable 5.3)
- Drive a culture of continuous improvement across the NIHR and support the cultural change aspects of the NIHR's strategic focus areas; we will embed and share a culture of continuous improvement to facilitate the changes needed internally and externally
- Make available the best education content from BMJG's International Forum (the world's largest quality improvement conference), including our improvement science content to support NIHR researchers, and inform NIHR staff, patients, and the public
- Establish a clear set of KPIs and measurement via the new NIHR Impact Analytics platform

**Activity 3.8 - Establish a team to strengthen strategic partnerships with health and care organisations**

- Experienced team to map and build partnerships for this initiative and focus on outreach to these strategic partners to open up opportunities for public engagement in research and support these partners through the programme and NIHR research

**Additional resourcing information**

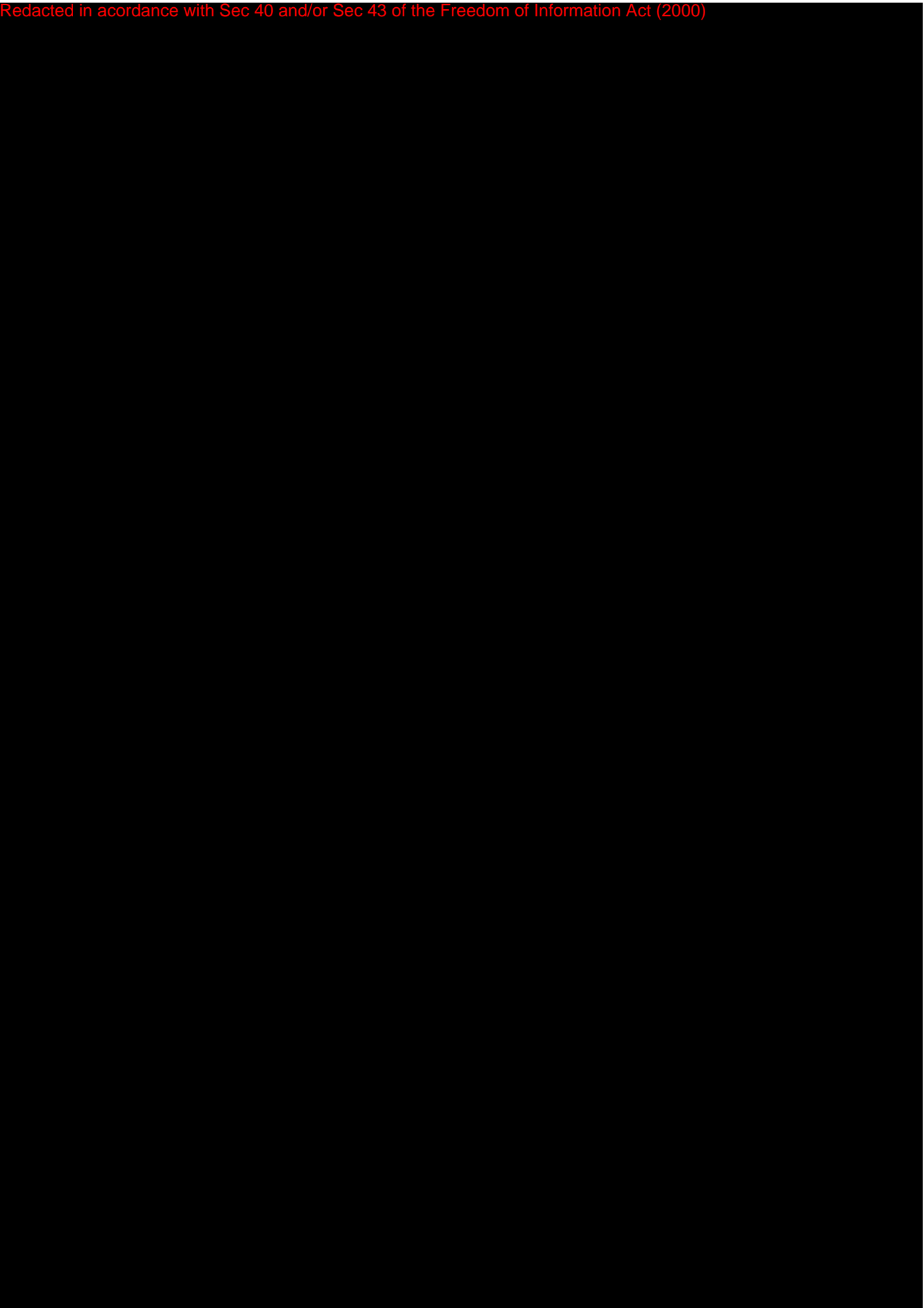
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Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)

**Programme risk management** - BMJG has managed a number of contracts for NIHR and is aware of the importance of risk management for a programme of this size. A risk register will be established at the beginning of the contract assessed against the likelihood and impact to be reviewed in monthly BMJG contract management board meetings and NIHR quarterly review meetings. BMJG has a robust and tested business continuity programme and disaster recovery plan. We implement redundancy for critical systems, have established alternative work arrangements, and develop recovery strategies for key operations. Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)

. At BMJG our project finances are tracked in real-time and will be reviewed in monthly governance meetings and escalated where needed. Our large pool of flexible staff and nominated HR Lead who is responsible for sourcing and onboarding new roles mean we can quickly adapt to changing resource requirements.

**Approach to technology systems** - During the discussion and inception phase we would want to review with you the web assets listed in Attachment 2 of the tender documentation to ensure their effectiveness and consolidation where needed. BMJG manages 100+ externally facing high-traffic websites and systems. We have a 49 person in-house technology team that provides 24-hour technology cover.



## TEAM

### Core team composition (excludes advisory and honoraria roles)

Our core team is built on detailed review of the tasks and functions required to deliver a successful programme while maintaining cost-effectiveness. Core BMJG functions such as HR, legal, finance and IT are included in the overhead contribution. In addition to the core team, we will rely on around 100+ advisory, reference and committee members, most to contribute their time voluntarily although we have retained funds for honoraria as per usual BMJG policy.

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## **Our approach to effective and efficient team working with NIHR**

BMJG has an experienced and dedicated Partnerships Team who have successfully delivered numerous contracts in excess of the size and scope of this tender. We have a robust internal programme delivery process that includes -

### **Dedicated BMJG management team**

- BMJG will allocate a dedicated project management team, including a Programme Lead, to oversee the tender's execution. This team will serve as the single point of contact for NIHR, ensuring streamlined communication and coordination.
- Roles and responsibilities: Clear delineation of roles and responsibilities within the BMJG team and regular updates to NIHR to maintain transparency and accountability.

### **Regular communication and updates between project team and NIHR**

- Structured communication plan: Implementation of a structured communication plan detailing frequency, channels, and formats for regular updates, progress reports, and meetings.
- Regular meetings: Scheduled weekly or bi-weekly meetings with NIHR stakeholders to discuss progress, address challenges, and align priorities. These meetings will be supported by detailed agendas and follow-up actions.

### **Collaborative platforms and tools providing NIHR with real-time oversight**

- Use of collaborative tools: Deployment of project management and collaboration tools to facilitate real-time collaboration, document sharing, and status tracking.
- Secure document exchange: Utilising secure platforms for sensitive information and document exchanges to ensure confidentiality and data protection.

### **Feedback and adaptation mechanisms for continuous improvement**

- Feedback loops: Establishing mechanisms for regular feedback from NIHR to continuously refine and improve the collaboration process.
- Adaptive management: The project team will be agile, ready to adapt strategies and workflows in response to feedback, new insights, or changing requirements from NIHR.

### **Transparent reporting and documentation against NIHR agreed KPIs**

- Comprehensive reporting: Providing comprehensive, transparent reports on project milestones, budget utilisation, and performance metrics.
- Documentation and knowledge sharing: Ensuring all project documentation, decisions, and changes are well-documented and shared with NIHR, fostering an environment of transparency and mutual trust.

### **Continuous risk management**

- Proactive risk identification and mitigation: Regular risk assessments to identify potential challenges and proactive strategies to mitigate them, keeping NIHR informed of potential risks and the measures in place to address them.
- Continuous financial review: weekly monitoring and evaluation of budget allocations and expenditures on a regular basis to ensure financial integrity, budget sustainability and remedial action when required

### **Senior BMJG input through a Contract Management Board**

- Establishment of a Contract Management Board Forming a joint Board comprising senior representatives from DHSC, NIHR (including the Chief Scientific Adviser and representative

from the Science, Research and Evidence directorate), Programme Director and BMJG CEO as programme sponsor to oversee the project's strategic direction, resolve high-level issues, and ensure the project aligns with NIHR's goals.

### **Team development and training**

Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)



**Maintaining up-to-date knowledge -** A custom learning and development programme for staff would be hosted via our existing BMJ Learning and HR platforms and we would hope to gain access to NIHR Learn where appropriate. To ensure our team's knowledge remains current, we plan to engage with ongoing developments within the NIHR, such as the Health Determinants Research Collaborations (HDFCs) and also actively participate in NIHR Applied Research Collaborations (ARCs).

We will encourage team staff to access relevant NIHR events, products and activities in relation to the programme. Within the team, the Programme Lead will be responsible for cascading information regarding the NIHR and other relevant changes and developments in health and social care through team meetings and regular 'lunch and learns'. We will also leverage our advisory boards (documented in AQ1) to assist us in fostering a culture of innovation, thought leadership and knowledge in the core delivery team.

Annual objective setting and appraisal process is standard across BMJG which helps support a team member's accomplishments, strengths, weaknesses, possible areas of improvement and overall contribution. All staff will have an annual development plan which will be reviewed regularly. We have a culture of shared objectives which supports transparency, team-working and cross-team collaboration.

## MANAGEMENT AND GOVERNANCE

### Proposed NIHR/BMJG Governance Structure

Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)



Building off our structure from past successful BMJG programmes of work and focused on delivering all key requirements of the tender we have structured our suggested governance as follows:

#### **1. Contract Management Board (CMB)**

- Purpose: Ensure alignment with DHSC and NIHR's broader goals, Provide strategic direction, oversee the project's overall progress.
- Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)

#### **2. Operational Management Team (OMT)**

- Purpose: Serve as the core operational team, overseeing day-to-day operations, project planning, performance monitoring, and reporting
- Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)

#### **3. Public Partnerships Committee (PPC)**

- Purpose: Lead and coordinate efforts to enhance public partnerships in health and care research, ensuring diversity, inclusion, and meaningful engagement
- Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)

#### **4. Maximising Impact Committee (MIC)**

- Purpose: Guide and coordinate activities related to the dissemination of research findings and knowledge mobilisation to facilitate their uptake and adoption
- Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)

#### **5. Cross-NIHR Boards and collaboration**

- Purpose: Ensure alignment and synergy between the project and other NIHR entities, promoting integrated and coherent approaches across the board
- Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)

## 6. Expert Reference Groups and Expert Faculty

- Purpose: Provide insights, feedback, and advice from a broad range of stakeholders, including patients, carers, health and care professionals, and researchers
- Members: Diverse representatives from the public, patient groups, health and care professionals, and academia across our Expert Reference Groups and Expert Faculty

## 7. Quality and Continuous Improvement Team

- Purpose: Monitor service quality, facilitate continuous improvement initiatives, and ensure compliance with standards and best practices
- Members: Redacted in accordance with Sec 40 and/or Sec 66 and representatives from each operational sub-group as required

## 8. Sustainability and Environmental Stewardship Team

- Purpose: Develop and implement strategies to reduce the carbon footprint and promote environmental sustainability within the project activities
- Members: Redacted in accordance with Sec 40 and/or Sec 66 and representatives from each operational sub-group as required

### ***BMJG Executive and Operational Oversight:***

**Executive Sponsor:** BMJG CEO will serve as the Executive Sponsor, providing strategic oversight and ensuring alignment with the broader organisational goals and the NIHR's objectives.

**BMJG Management Team:** Comprising experienced managers overseeing specific areas such as HR, events, partnership management, quality assurance, and financial management. This team ensures the day-to-day operational excellence of the contract.

**Governance and Compliance Officer:** Dedicated to ensuring that all aspects of the contract adhere to regulatory, ethical, and quality standards, including reporting requirements and governance structures.

**Operational Management Team (OMT)** - This team will be the leadership responsible for the deliverables in the contracted services. They will be hybrid working from BMJG headquarters - providing office, technical and meeting facilities - in London. As well as day to day delivery, their governance responsibilities include Performance Management and Developing and tracking KPIs.

Developing and implementing a performance management system that aligns with the requirements in Section 9 of the Specification and Schedule 21 of the Contract. This system will include regular performance reviews, quality assurance checks, and KPI monitoring to ensure all service deliverables meet or exceed the standards set forth in Section 19 of the Specification.

Working closely with our internal impact analysis team, we will work with DHSC, to develop meaningful KPIs that are based on intended outcomes in addition to process measures. We will use a co production technique to include public and other external stakeholder views in developing the KPIs. Wherever practicable, the KPIs will be linked to publically reported goals, and to individual team member's objectives. We aim to develop impact assessment KPIs to become considerably more sophisticated based on the technology available eg. NIHR Impact Analytics platform. Service level KPIs (e.g. response times) will be agreed in contracting.

**BMJG's contract management approach** - We will apply BMJG's tried and tested approach to the management of large contracts but ensure this is tailored during the discussion and inception period to best meet NIHR's requirements and the ambitions for this programme. Our key principles are -

Ensure strategic alignment with NIHR objectives:

- Regular reviews with NIHR of strategic objectives to ensure our services remain aligned with NIHR's evolving needs
- Engagement with NIHR leadership to understand and anticipate shifts in health research priorities, adapting our service delivery accordingly.

#### Communication and Collaboration:

- Establishing clear lines of communication within the leadership team and with key NIHR stakeholders to foster transparency and collaboration.
- Implementing a collaborative platform for sharing information, updates, and feedback between BMJG and NIHR, ensuring all parties are informed and engaged.

#### Performance and Quality Management:

- Development and monitoring of KPIs to ensure high standards of service delivery, including timeliness, quality, and impact
- Implementation of a continuous improvement process, using feedback from NIHR and service users to refine and enhance service delivery

#### Innovation and Adaptability:

- Encouraging innovation within the leadership team to explore new approaches to service management and delivery that can provide added value to NIHR
- Building an adaptable operational model that can quickly respond to changes in NIHR's requirements or external challenges.

#### Stakeholder Engagement and Management:

- Engaging with a wide range of NIHR stakeholders, including researchers, healthcare professionals, and the public, to ensure their needs and perspectives inform service delivery
- Establishing mechanisms for regular stakeholder feedback and engagement, ensuring that BMJG's service delivery remains relevant and responsive

#### Financial Oversight and Management:

- Ensuring rigorous financial oversight of the contract, with transparent reporting to NIHR and efficient allocation of resources to meet service delivery objectives
- Implementing cost-control measures and seeking efficiencies without compromising the quality of service.

**Quality assurance of contract deliverables** - In line with the requirements of section 16, we will establish a comprehensive quality assurance framework to continuously monitor, measure, and improve service quality and outcomes.

#### Quality Standards Establishment:

- Define clear, measurable quality standards aligned with NIHR's objectives.
- Ensure standards encompass all aspects of service delivery, from content accuracy to stakeholder engagement.

#### Regular Monitoring and Evaluation:

- Implement continuous monitoring of service delivery against established quality standards.
- Utilise both qualitative and quantitative metrics for comprehensive evaluation.

#### Stakeholder Feedback Integration:

- Regularly gather and analyse feedback from NIHR and other stakeholders.
- Use feedback to identify areas for improvement and to refine service delivery continuously.

#### Dedicated QA Team:

- Deploy a specialised QA team responsible for overseeing all aspects of quality control.
- Ensure the team has access to the latest tools and methodologies for effective QA.

#### Continuous Improvement Process:

- Establish a continuous improvement loop based on QA findings and stakeholder feedback.
- Prioritise actions that drive improvements in service quality and stakeholder satisfaction.

#### Reporting and Transparency:

- Provide regular, transparent reports to NIHR on QA activities, findings, and improvements.
- Ensure open lines of communication for any quality concerns or recommendations from NIHR.

Alongside our QA process for NIHR, we also plan to actively engage with NIHR stakeholders, including key stakeholders and research communities, to ensure their needs are met and exceeded. Our approach will include regular feedback mechanisms and engagement with the Reference Groups to foster open communication and co-creation of value.

**Financial and Resource Management** - BMJG would assign experienced financial managers to oversee the contract's financial health, ensuring resources are allocated efficiently and effectively. Our financial management processes will be transparent, with regular reporting to DHSC on financial performance and forecasts

**Resource Allocation:** We would ensure that resource allocation occurs as per the terms of the contract and any major variances are escalated appropriately. We would provide continuous training and development for our team, and adequate workplace support to meet their needs and the evolving needs of NIHR and its stakeholders.

**Contract management:** Alongside our governance structure with NIHR and the OMT we have internal structures at BMJG designed to ensure accountability, transparency and internal governance of large contracts such as this.

**Reporting and compliance:** We will develop a robust reporting mechanism in line with Section 10 of the Specification, ensuring all reporting requirements are met in a timely and accurate manner. This includes quarterly progress reports, annual performance reviews, and financial management reports.

## **CONTINUOUS IMPROVEMENT**

We propose a comprehensive improvement approach to meet the requirements in Section 14 of the Specification and Clause 8 of the Contract. Aligned to standard BMJG practice, we will ensure continuous improvement in service delivery with clear setting of, monitoring, and reporting improvement targets, the proactive identification of cost savings and service enhancements, and effective risk management while maintaining performance standards. BMJG and all the delivery team are committed to working collaboratively with the Authority and NIHR Stakeholders to deliver services that are not only of high quality but that also offer value for money and contribute to the overarching objectives of the NIHR on improving the health and wealth of the nation. BMJG recognises and champions the principles of continuous improvement in healthcare, and recognises those values in the DHSC and organisations such as NIHR. Good performance data, an open and transparent culture, an understanding of systems thinking and the inclusion of all those involved in the service delivery are key principles we would champion in the delivery of this tender.

### **Setting, Monitoring, and Reporting Metrics for Improvement**

Strategy for Metric Setting: BMJG and NIHR will collaborate in the negotiation phase to set meaningful, outcome based KPIs for continuous improvement within this contract. Metrics will be derived from baseline data at the commencement of the contract and will focus on enhancing service quality, efficiency, and cost-effectiveness.

Reporting and Monitoring Framework: BMJG is committed to transparent and regular reporting of progress towards achieving improvement targets. We will implement a real-time monitoring system equipped with dashboards to track progress. This system will enable us to identify trends, pinpoint areas requiring attention, and facilitate prompt decision-making. Additional quarterly reports will include analysis of performance data and action plans for any areas not meeting targets; will be reviewed in quarterly Contract Management Board meetings, ensuring alignment with NIHR requirements and facilitating collaborative discussions on further improvements.

### **Proactive Identification of Cost Savings and Service Enhancements**

Stakeholder Engagement: We recognise the importance of engaging with NIHR stakeholders to identify improvement opportunities. Regular feedback mechanisms, such as surveys and focus groups, will be established to gather insights from service users, which will be instrumental in driving service enhancements.

Benchmarking and Market Analysis: BMJG will conduct regular benchmarking exercises and market analysis to ensure our services remain competitive and deliver value for money. These will include comparisons with similar services in the healthcare research sector to identify areas for cost reduction and quality improvement.

Sunsetting lower value activities: During exploratory tender discussions, we would work in close collaboration with NIHRCC to identify activities which are no longer delivering value and discontinue them. These may be internal processes or deliverables but stopping them will free capacity to provide greater impact and better collaboration.

### **Effective Risk Management Without Compromising Performance Standards**

Risk Identification and Assessment: Our risk management strategy involves the early identification and assessment of potential risks to service delivery. This proactive approach enables us to implement mitigation strategies promptly, ensuring that performance standards are not compromised. Key participants in this process include the Director and Heads of Public Partnerships and Impact and Data, who will oversee and guide risk assessment activities.

Continuous Risk Monitoring: BMJG will continuously monitor the risk landscape throughout the contract duration, adapting our strategies as necessary to address emerging risks. We will do this through the use of a risk register, which will be regularly updated and reviewed during risk management meetings with the Authority. The Contract Management Board, including the BMJG CEO and other senior leaders, will review and address risks quarterly to ensure comprehensive oversight.

Performance Standards Compliance: Our risk management approach ensures that all services delivered meet the performance standards set out in the contract. This includes adherence to quality, security, and data protection standards, ensuring that service delivery is not only efficient and cost-effective but also secure and compliant with regulatory requirements. The Strategic Management Board and Operational Delivery Teams will work in tandem to maintain high performance standards, with regular reporting and KPI reviews integrated into our governance framework.

## **PARTNERSHIP WORKING**

BMJG brings a long legacy in working with health and care research organisations across the UK and worldwide and we aim to leverage this network and expertise to foster collaborative efforts that amplify research impact, inclusivity, and innovation for this NIHR programme. Our approach prioritises shared goals, and transparency, aligning with NIHR's collaborative approach to engage a wide range of stakeholders including patients, the public, and organisations involved in health research and governance.

BMJG is committed to contributing to an integrated, impactful research ecosystem that supports NIHR's mission. We have an existing strong partnership; delivering Technology Assessment Reviews (TARs), partnering on innovative ways to get research into practice such as [NIHR Alerts](#) project, co-publication across our journals, and partnering on engagement via the BMJ Research Forum.

### **Our approach to establishing effective new partnerships for PP and MI**

**Foundation on shared goals and values across NIHR and stakeholders:** At the heart of our strategy is the principle of building partnerships grounded in shared goals and values, directly aligning with NIHR's commitment to improving the health and wealth of the nation through research. By collaborating with stakeholder groups such as NHS bodies, academic institutions, and patient advocacy organisations, we aim to foster a unified approach towards enhancing patient outcomes and public health. This is reflective of NIHR's strategic aim to support health and care research that leads to improved patient care, demonstrating our deep understanding of NIHR's priorities and our commitment to contributing constructively to them.

**Inclusive stakeholder engagement:** Recognising the importance of a diverse and inclusive approach, our stakeholder engagement strategy is meticulously designed to encompass a broad spectrum of voices within the health and care research ecosystem. This includes engaging with patients and the public through representative groups such as INVOLVE, healthcare professionals across NHS trusts, and academic researchers from universities conducting NIHR-funded research. We will also include mechanisms to identify and engage new partners by leveraging existing networks and outreach efforts. Our engagement efforts aim to include those from underrepresented communities by partnering with organisations like the Race Equality Foundation, ensuring research is inclusive and reflective of the population it serves. This approach not only aligns with NIHR's dedication to involving patients and the public in research but also enhances the relevance and applicability of health research outcomes across diverse population groups.

**Co-design and Collaborative Frameworks:** Implementing co-design frameworks, we intend to work closely with key stakeholders, such as Research Delivery Networks (RDNs) and Biomedical Research Centres (BRCs), to develop research projects and initiatives collaboratively. For example, engaging with BRCs to identify research priorities within specific therapeutic areas can help ensure that our collaborative research efforts are closely aligned with national health priorities and NIHR's strategic focus areas. By involving healthcare practitioners from NHS Trusts in the design of research studies, we can ensure that the research is grounded in clinical reality, increasing the likelihood of its findings being implemented in practice. In addition, we will establish clear mechanisms for identifying and integrating new partners across the wider health and care ecosystem, ensuring that all relevant voices are included in the collaborative process. This approach underpins our commitment to NIHR's principle



of collaboration, emphasising the importance of working together with a wide range of partners to achieve shared goals and maximise the impact of health research.

### **Enhancing partnership working within NIHR - Capacity Building and Support**

**Tailored Programmes:** We would develop capacity-building programs tailored to the needs of various stakeholder groups within the NIHR framework. For instance, we plan to offer specialised training sessions on patient and public involvement (PPI) in research for researchers and institutions. These sessions would be grounded in the principles laid out in the UK Standards for Public Involvement in Research.

**Mentorship and Peer Learning:** We would facilitate mentorship schemes that pair new NIHR research teams with experienced investigators from NIHR's Biomedical Research Centres or Applied Research Collaborations. This initiative is designed to promote knowledge transfer and capacity building in essential research areas.

**Resource Sharing:** We would create a digital library of resources, including successful NIHR partnership case studies, policy updates, and evidence-based best practices in health and care research. This library would support the NIHR community in staying current and engaged with the field's latest developments.

### **Establish a Partner Community of Practice across PP and MI**

**Development and Implementation:** We plan to create a unified 'one-stop-shop' platform for engaging diverse NIHR stakeholders, including patients, public contributors, academic researchers, and healthcare practitioners. This platform will feature secure discussion forums, project management tools, and live chat functions to facilitate collaboration on projects like NIHR-funded studies and initiatives.

**Accessibility and Training:** We would provide targeted training and resources to ensure that these platforms are accessible to all stakeholders, including those from underrepresented groups. This approach reflects NIHR's commitment to inclusivity in research, as highlighted in "Best Research for Best Health: The Next Chapter."

**Feedback Loop:** We would establish mechanisms for continuous feedback on the use and functionality of these platforms, engaging stakeholder groups such as the NIHR Public Advisory Groups and Clinical Study Groups. This ensures the tools meet the evolving needs of the research community.

### **Regular Review and Adaptive Strategies**

**Continuous Evaluation:** We would implement a structured evaluation framework to regularly assess the effectiveness of our partnership activities. This framework would incorporate metrics such as the number of collaborative NIHR grant applications submitted, feedback from PPI contributors, and the outcomes of partnership-led research projects.

**Adaptive Planning:** Using outcomes from our evaluations, we would adapt our partnership strategies to ensure they align with NIHR's strategic priorities, such as addressing health inequalities and accelerating the translation of research into practice. This may involve revising our approaches to better support NIHR's Strategic Framework for Involvement, Participation, and Engagement.

**Stakeholder Involvement:** We plan to involve a broad range of NIHR stakeholders in the review and adaptation process. This includes representatives from NIHR's School for Public Health Research and Health Technology Assessment Programme, ensuring that our partnership strategies are informed by a diverse spectrum of perspectives and expertise.

### **Maximising the impact of our partnership for NIHR**

**Inclusive partnership frameworks that reflect EDI:** We would develop and implement frameworks for our partnerships that prioritise equality, diversity, and inclusion (EDI), ensuring that all voices, particularly those from underrepresented and marginalised communities, are heard and valued in health and care research. This commitment would be reflected in our strategies for engaging with patients, the public, and representative groups. We would actively seek partnerships with organisations and experts

specialising in EDI to ensure that our strategies and initiatives are informed by the latest research and best practices in the field.

**Monitoring, Evaluation, and Learning:** Partnership dashboards for insights and improvements: We would use our existing CRM system to monitor key performance indicators for our partnership strategies to aid reporting, better align with NIHR's strategic goals.

**Stakeholder Feedback Mechanisms:** Integrating regular feedback from all stakeholders, including patients, the public, and research communities, to gauge the effectiveness and impact of the partnerships continuously.

**Periodic Impact Evaluations:** Conducting comprehensive impact evaluations at regular intervals to assess the contributions of partnerships towards health and care research advancements, policy influence, and improvements in public health outcomes.

**Working as an integral part of NIHRCC - working collaboratively within NIHRCC and across NIHRCC & RDNCC as a co-ordinated, joined-up programme**

We aim to develop a framework for knowledge mobilisation and dissemination within NIHR that is completely embedded in every part of the NIHR's work, and again building capacity through capability improvement rather than headcount. This underpins all the work, we would focus on ensuring that these mechanisms worked well and joint working was embedded structurally and culturally in the organisation. The "business partner" model of roles will be key to delivering this in each area, and efforts to ensure that roles in the new structure were complementary rather than competing with any existing NIHR roles would be a key part of pre-contract negotiations.

## **COMMUNICATION STRATEGY**

### **Bringing expertise from one of the world's leading research communicators**

BMJG is a global brand with a strong reputation for independence and trustworthiness. Our extensive experience in communication, dissemination and knowledge sharing will enable us to raise awareness and understanding of NIHR's health and care research among the public and policymakers worldwide. As a global organisation, we have developed insight, reach and relationships with governments, hospitals, medical education institutions, patient bodies and professional organisations around the world.

BMJG has won awards for our ability to convey our impact and distil complex information into clear and compelling communications that drive engagement. We have expertise in creating purpose-driven content displaying impact. In our [Impact Report](#), we have demonstrated the real-world impact of BMJG's work through a compelling range of stories, case studies and data-driven examples.

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### **Public partnership and maximising impact engagement informed by deep strategic knowledge**

BMJG will develop a well-defined communication strategy that will enable us, in partnership with the NIHR, to raise awareness and understanding of health and care research, and the real-world impact of NIHR's work among the public and policymakers worldwide.

Our comms strategy will be created in collaboration with NIHR teams, the details of which will be defined during the inception phase. Each objective and deliverable will have a defined process and KPIs. Within the plan, it will be clear which communication channels will be used, the frequency and the timings of

each element, and how we plan to measure our success. We will work in conjunction with NIHR teams to ensure consistency, alignment and adoption of best practices.

**A joined-up approach aligned to NIHRCC communications:** BMJG strategies will work across all Activities listed in AQ1 and may involve the following elements:

- **Audience insight**
  - To understand our communities' needs and motivations, and thus make informed decisions.
  - Insights can be gathered from various avenues, such as Google Analytics, Adwords, Email engagement, Social Listening and in-person activities
  - The team will share insight across the NIHR teams and put in place channels for dissemination and review.
- **Omni-channel approach**
  - Campaigns will be conducted via multiple channels - email, social media, video, websites, and offline - to ensure maximum impact
- **Thought Leadership & PR**
  - To create a global leadership position in healthcare improvement and outcomes from NIHR-funded research, by establishing engagement with key opinion leaders in the research communities. This may involve establishing speaker slots at relevant events and interviews.
  - Work in partnership with NIHR and our media panel and newsroom to add new names and areas of speciality interest which will enhance this activity and encourage speaking opportunities.
  - Media coverage through a variety of channels, including editorials within relevant publications, joint press releases, white papers, podcasts, and social media exposure.
  - To create a combination of individual research stories which can be communicated via short engaging videos, as well as one combined video to disseminate research impact findings to a wider audience.
- **Collaboration with NIHR**
  - To amplify activities from NIHR across our BMJG channels and provide assets to use via NIHR channels
  - To establish and maintain best practice, we will deploy a collaborative approach with strategies and communication channels
  - To take on board the views and communication used throughout the programme, for example by enhancing and replicating the language used during webinars by experts in our communication via social media and other channels.

**Planning:** The communications team will be fully briefed on all the deliverables and timeframes to allow sufficient time to create supporting assets that will enhance dissemination. With each deliverable, we will embed a process to ensure there are clear approval steps, compliance with tone of voice, brand guidelines and deadlines are adhered to. We will utilise our campaign management tool Asana (mentioned below) to ensure visibility to all required stakeholders. In addition, we will ensure the plans are part of the programme briefing and overall project plans.

**Standard operating procedures:** BMJG will put in place SOPs which ensure compliance with the regulation or operational practices and document tasks across the programme. Examples of these may include GDPR compliance, social media terms of reference, and crisis management protocols. BMJG will stay abreast of new updates to channels, technologies and technical requirements (e.g. Data protection) and respond accordingly. Recently, we have been implementing strategies to counter Google changes to cookie consent. We are also part of a number of industry groups which provide us with insight and examples of best practices.

**Measurement and improvement:** BMJG will work in partnership with NIHR to create clear goals based on previous campaign data, market trends and channel benchmarks. We will create baseline metrics for engagement scores and expectations. BMJG will adopt an approach of continuous improvement, whereby we evaluate and measure the effectiveness and engagement of our campaigns and adapt accordingly. Where relevant, digital marketing activities and engagement with our websites can be

tracked using Google Analytics. We will also apply social listening to measure awareness amongst our audiences and media monitoring to track PR activity.

### **Bringing the latest technologies to drive communication and measure impact**

We will leverage the latest technologies to enhance our communication efforts:

- **Social media management:** Using tools like Sprout Social for integrated social media campaigns.
- **Email marketing:** Employing Adestra and Salesforce for targeted email campaigns and automated follow-ups.
- **Video creation:** Utilising Wistia to produce and manage high-quality video content, including webinars and short research summaries.
- **Webinars and virtual events:** Platforms like Gotowebinar and Zoom will facilitate large-scale virtual engagements.
- **Analytics and feedback:** Tools like Google Analytics and social listening platforms will provide real-time data to continuously refine our strategies and measure impact.

### **A comprehensive and integrated approach**

BMJG will work collaboratively with NIHR to develop and implement a comprehensive communication strategy. Our plan will include clear objectives, deliverables, KPIs, and a detailed timeline, ensuring alignment with NIHR's overall goals. We will establish SOPs for compliance, including GDPR and crisis management protocols, and continuously improve our approach based on feedback and performance metrics.

By bringing together our global expertise, innovative technologies, and a deep understanding of the health and care ecosystem, BMJG is well-positioned to enhance NIHR's communication efforts, driving greater awareness, understanding, and impact of health and care research.

## **TRANSITION AND IMPLEMENTATION PLAN**

Working with many large delivery contracts and joint ventures over the years BMJG has an experienced team with the learning and skills to transition in a contract of this size and complexity. This implementation plan below is structured on our current understanding and we expect to tailor this during the discussion and inception period. Underpinning our approach is a commitment to seamless transition while taking the opportunity to enhance operational efficiencies and improvements.

### **Key activities and timeline for transition in period**

<i>Category</i>	<b>Phasing</b>	<b>Authority</b>	<b>Activities</b>
<b><i>1. Project initiation and planning</i></b>	Within four weeks of the Effective Date	Joint	Set the foundation for the project, establishing a detailed plan that incorporates the full scope of services, resource allocation, and timelines, ensuring alignment with BMJG's experience in managing complex healthcare information projects and NIHR's strategic goals

<b>2: Stakeholder Engagement and Communication Plan Development</b>	Within eight weeks of the Effective Date	Joint	Ensure all stakeholders are identified, engaged, and informed throughout the transition process, leveraging BMJG's expertise in stakeholder management within the healthcare research community. Start to compile a list of stakeholder representatives for advisor committees and groups.
<b>3: Review and Transition of Current Operations</b>	By 31 March 2025	Joint, incumbent	Critical for understanding and effectively managing the handover of existing services, utilising BMJG's experience in integrating and optimising healthcare research and publication services. Particularly the existing IT, websites and staff listed in Attachment 2 of the tender documentation.
<b>4: Infrastructure and Technology Setup</b>	2 months before the start date	Joint	Ensures the technological infrastructure is robust, secure, and capable of supporting the delivery of services, drawing on BMJG's capability in deploying and managing healthcare data and information systems
<b>5: Training and Development Program for Transitioned and New Staff</b>	1 month before the start date	Joint	Prepares both existing and new staff for their roles in the new service delivery framework, capitalising on BMJG's expertise in education and training within the healthcare research sector
<b>6: Finalisation and Testing of Service Delivery Processes</b>	2 weeks before the start date	Joint	Ensures that all processes, systems, and services are fully functional, tested, and ready for live operation, leveraging BMJG's rigorous standards for quality in research dissemination
<b>7: Operational Service Commencement</b>	April 2025	Joint	Marks the official start of the new contract delivery phase, with BMJG and NIHR collaboratively ensuring a seamless transition and the continuation of high-quality services
<b>8: Post Implementation Review</b>	Within 1 month following the start date	Joint	Assesses the effectiveness of the transition process and identifies areas for continuous improvement, drawing on BMJG's commitment to excellence and innovation in healthcare research support services

#### **Further detail on transition in stages**

##### **1. Project Initiation and Planning**

- Initiate the transition project by conducting a thorough operational review to assess NIHR's current service delivery mechanisms.
- Develop a comprehensive project plan detailing timelines, resource allocations, and a risk management framework, ensuring alignment with Key Project Dates from Section 7 of the Specification.

## **2. Stakeholder Engagement and Communication Plan Development**

- Create and implement a stakeholder engagement strategy to ensure clear and effective communication between BMJG, NIHR, and other relevant parties.
- Identify key stakeholders across both organisations and outline a communication plan that includes regular updates, feedback mechanisms, and milestone celebrations.
- Develop a robust feedback loop within the communication strategy to facilitate transparency and adjust strategies as needed.

## **3. Review and Transition of Current Operations**

- Systematically review NIHR's existing operations to identify best practices and areas for integration with BMJG's operational frameworks.
- Collaborate with the current service provider to facilitate a detailed knowledge transfer, focusing on operational nuances and insights.
- Update and refine operational guidelines and protocols to align with both NIHR's objectives and BMJG's operational standards, focusing on process efficiency and compliance.

## **4. Infrastructure and Technology Setup**

- Assess and integrate NIHR's IT and data management systems with BMJG's infrastructure, prioritising data security, regulatory compliance, and operational efficiency.
- Perform a detailed analysis of NIHR's current IT infrastructure to identify necessary enhancements and integration points with BMJG's systems.

## **5. Training and Development Program for Transitioned and New Staff**

- Develop and execute a targeted training program to enhance the skills and readiness of both existing NIHR personnel and new members of the BMJG team.
- Identify essential skill gaps and create training initiatives focused on operational excellence, customer service, and technological proficiency.
- Promote an organisational culture of continuous learning, ensuring all staff members are equipped to meet evolving operational demands and service delivery standards.

## **6. Finalization and Testing of Service Delivery Processes**

- Complete the integration and optimization of service delivery processes, ensuring they meet high standards of efficiency, quality, and regulatory compliance.
- Establish a comprehensive testing regimen for all critical systems and processes, with protocols to address any identified issues.

## **7. Go-Live and Operational Service Commencement**

- Implement a phased approach to operational launch, starting with non-critical functions to ensure system stability and readiness for full-scale service delivery.
- Strategically roll out services according to a predefined plan that minimises operational disruption and maximises user satisfaction.
- Set up a comprehensive support system to rapidly address any issues or challenges encountered during the initial go-live phase.

## **8. Post-Implementation Review and Continuous Improvement Planning**

- Initiate a continuous improvement protocol following the successful launch, incorporating regular performance assessments, stakeholder feedback, and responsiveness to healthcare research advancements.

## **9. Conduct a detailed evaluation of the transition and implementation phases to identify successes and areas for improvement**

- Establish an ongoing evaluation and enhancement strategy to ensure the service delivery model remains agile, effective, and aligned with NIHR's strategic goals

- The transition would be led by the Operational Transition Team (of which most members would transition into the Operational Management Team (OMT) on the Commencement Date and overseen by the Contract Management Board

## CONTRACT TRANSFER AND EXIT STRATEGY

As the BMJG, our commitment to delivering high-quality, impactful health and care research services is matched by our approach for a seamless and comprehensive exit strategy. This strategy ensures the seamless transfer of knowledge, skills, and services back to NIHR or an incoming provider upon contract completion. This plan is designed in accordance with Schedule 25 of the contract and aligns with our long-standing principles of ensuring BMJG partner projects continue to enjoy success even after our exit.

### Key activities and timeline for transition out period

Stage	Activities	Responsibility	Timeline
<b>1. Preparation</b>	<ul style="list-style-type: none"> <li>- Finalise and share transition plan with all stakeholders</li> <li>- Confirm list of key contacts for transition process</li> </ul>	Both BMJG and New Provider	6-12 months before contract end
<b>2. Knowledge Transfer</b>	<ul style="list-style-type: none"> <li>- Document processes and lessons learned</li> <li>- Conduct training sessions and workshops for Authority/New Provider staff</li> </ul>	BMJG	Ongoing, intensifies 3-6 months before contract end
<b>3. Documentation Handover</b>	<ul style="list-style-type: none"> <li>- Compile and hand over operational manuals, service protocols, and performance reports</li> <li>- Ensure documentation is updated and comprehensive</li> </ul>	BMJG	2-3 months before contract end
<b>4. Legal and Compliance Review</b>	<ul style="list-style-type: none"> <li>- Review and ensure compliance with data protection, confidentiality, and other legal obligations</li> <li>- Secure necessary approvals for transfer of sensitive data</li> </ul>	Both BMJG and New Provider	3-6 months before contract end
<b>5. Communication Plan</b>	<ul style="list-style-type: none"> <li>- Implement stakeholder engagement strategy</li> <li>- Schedule and conduct regular update meetings</li> </ul>	Both BMJG and New Provider	Throughout transition period
<b>6. Risk Management</b>	<ul style="list-style-type: none"> <li>- Identify potential risks to service continuity</li> <li>- Develop and implement mitigation strategies</li> </ul>	Both BMJG and New Provider	Throughout transition period
<b>7. Final Review and Handover</b>	<ul style="list-style-type: none"> <li>- Conduct a final review of the transition process</li> <li>- Officially transfer services and responsibilities to the Authority/New Provider</li> </ul>	Both BMJG and New Provider	Last month of contract
<b>8. Post-transition Support</b>	<ul style="list-style-type: none"> <li>- Provide agreed-upon post-transition support, if necessary</li> <li>- Address any outstanding issues or questions</li> </ul>	BMJG	1-3 months post-contract end

## **Further detail on transition out stages**

### **1. Preparation**

Develop a comprehensive transition plan: BMJG, in collaboration with NIHR and any incoming providers, will detail steps, timelines, roles, and feedback mechanisms in the transition plan to ensure alignment and comprehensive coverage.

Share the transition plan with NIHR and stakeholders: BMJG will present the plan to NIHR and all relevant parties, facilitating discussions to address concerns and align expectations.

Confirm and distribute a list of key contacts: BMJG will provide NIHR with contact details for our project managers, IT support, HR, and legal teams to streamline communication.

Schedule initial meetings with NIHR: BMJG will arrange kickoff meetings to discuss the transition plan in detail, setting a collaborative tone for the process.

### **2. Knowledge Transfer**

Document operational procedures for NIHR: BMJG will use accessible language and visual aids to ensure clarity and ease of understanding for NIHR staff and the incoming provider.

Organise training sessions for NIHR and the new provider: Tailored content will be developed to meet the specific needs of NIHR and the incoming provider, ensuring a thorough understanding of processes.

Create a knowledge repository accessible to NIHR: A digital platform will be used to store all relevant information, ensuring NIHR and the incoming provider have easy access to resources.

Schedule follow-up sessions with NIHR: Regular review sessions will be planned to address any queries and reinforce understanding.

### **3. Documentation Handover**

Compiling all relevant documents for NIHR: BMG will ensure that all documentation accurately reflects current operational procedures and includes recent updates.

Review and update documentation for NIHR: Subject matter experts from BMJG will ensure materials are comprehensive and reflect best practices.

Organise a formal handover session with NIHR: This session will allow BMJG to walk NIHR and the incoming provider through key documents and address questions.

Provide digital copies to NIHR: Documents will be organised in shared digital folders, using clear naming conventions for NIHR's easy access.

### **4. Legal and Compliance Review**

Conduct a thorough legal and compliance review for NIHR: BMJG's legal teams will work with NIHR to address any contractual, regulatory, or compliance issues early in the transition.

Ensure compliance with relevant laws for NIHR: BMJG will specifically address legal obligations, ensuring the transition complies with all applicable regulations.

Secure necessary approvals for NIHR: Written consent for the transfer of sensitive information will be obtained, ensuring compliance.

Document legal obligations for the incoming provider: BMJG will outline any legal responsibilities for NIHR and the incoming provider, ensuring clarity on obligations.

### **5. Communication Plan Implementation**

Implement a detailed communication plan for NIHR: BMJG will outline how updates will be communicated to NIHR, using various channels for thorough engagement.

Schedule regular update meetings with NIHR: A routine schedule will be established to keep NIHR informed of the transition's progress and facilitate feedback.

Leverage diverse communication tools for NIHR: Newsletters, webinars, and emails will be used to keep NIHR and other stakeholders informed and engaged.

Establish a feedback loop with NIHR: Mechanisms will be created for NIHR to provide feedback, ask questions, and suggest improvements throughout the transition.



## **6. Risk Management**

Identify potential risks for NIHR: BMJG will conduct a risk assessment focusing on operational, legal, and financial aspects relevant to NIHR.

Develop mitigation strategies for NIHR: For each risk identified, specific strategies will be created to mitigate potential impacts on NIHR.

Conduct regular risk assessments with NIHR: These assessments will identify new risks and evaluate the effectiveness of mitigation strategies.

Create a contingency plan for NIHR: Detailed plans will ensure continuity of critical services for NIHR in case of unforeseen disruptions.

## **7. Final Review and Handover**

Conduct a comprehensive review for NIHR: BMJG will use checklists to ensure all transition activities are completed satisfactorily for NIHR.

Organise a formal handover meeting with NIHR: This meeting will officially acknowledge the transfer of responsibilities between BMJG, NIHR, and the incoming provider.

Document the handover process for NIHR: A detailed record of the handover, including any pending tasks, will be provided to NIHR.

Confirm completion with a formal sign-off from NIHR: Written confirmation will be obtained to confirm NIHR's satisfaction with the transition process.

## **8. Post-transition Support**

Agree on post-transition support scope for NIHR: BMJG will define the duration and scope of support to assist NIHR and the incoming provider after the handover.

Provide contact information for ongoing support to NIHR: Dedicated liaison contacts will be provided for quick resolution of any post-transition issues.

Schedule follow-up meetings with NIHR: Periodic check-ins will be arranged to discuss the operation's status post-transition and address any concerns.

Document significant learnings for NIHR: Feedback and lessons learned during the transition will be recorded and shared with NIHR to inform future contracts and transitions.

### **Our specific approach to transfer of knowledge and skills on exit**

#### **Knowledge Management and Documentation:**

- Documentation of processes, methodologies, and best practices developed during the contract term
- Development and maintenance of a central knowledge repository accessible to the NIHR and incoming providers

#### **Training and Capacity Building:**

- Delivery of tailored training sessions for NIHR staff and the incoming provider's team, focusing on operational procedures, technology platforms, and stakeholder engagement strategies
- Provision of training materials and resources to support ongoing learning and development

#### **Stakeholder Engagement and Communication:**

- Continuous engagement with NIHR and relevant stakeholders to ensure transparency and alignment during the knowledge transfer phase
- Regular updates and briefing sessions to keep all parties informed of the transfer process

### **Our specific approach to staff management on exit**

**Transparent and Supportive Communication** - We will provide early, clear, and ongoing communication to staff about the contract's end, facilitating open forums and individual meetings to address concerns and discuss future opportunities. This includes exploring potential roles within the BMJG and providing detailed updates on any changes.

**Comprehensive Transition Support** - Our strategy encompasses career counselling, resume and interview preparation, and targeted training programs to enhance employability. We're committed to supporting staff emotionally through counselling services, focusing on well-being during this period of transition.

**Legal Compliance and Cooperation** - We'll strictly adhere to all legal and contractual obligations, including TUPE regulations, ensuring staff rights are protected during the transfer process. Collaboration with future providers will be prioritised to facilitate a smooth staff transition, advocating for their fair treatment and potential employment continuity.

### **Committed to the bigger picture of excellence in UK research**

BMJG is fully committed to executing a structured and effective exit plan that not only meets the requirements of Schedule 25 but also ensures the sustainable impact of the services provided under this contract. We hope to maintain and continue to grow our relationship with NIHR even if this contract comes to an end. Through collaborative planning, stakeholder collaboration, and a focus on service continuity, we aim to facilitate a seamless transition that supports the ongoing success of NIHR's objectives. Our approach aims to show our dedication to NIHR's focus on Impact, Excellence, Inclusion, Collaboration and Effectiveness in health and care research, laying a solid foundation for the future provider and continued advancements in the field.

### **Social Value**

**Theme 5: Wellbeing - Policy outcome: Improve community integration [MAC8.1: Demonstrate collaboration with users and communities in the co-design and delivery of the contract to support strong integrated communities]**

BMJ Publishing Group (BMJG), a wholly owned subsidiary of the British Medical Association (BMA - the professional body for doctors in the UK), is a mission-driven organisation rather than a profit-driven one. Our central vision and everything we do is to create a 'healthier world' by making a real difference to health outcomes for all communities, aligning closely with NIHR's goals.

Our commitment to these principles is reflected in our efforts to collaboratively co-design and deliver projects that significantly enhance community wellbeing within our local vicinity in London but also among all the communities where BMJG operates worldwide. We work with over 11,000 institutions, many community-based healthcare groups and nonprofits focused on improving outcomes for communities. As part of the BMA, we have access to medical professionals and communities, setting a strong foundation for integrated community health projects.

### **A long history of integrating co-design and community engagement at BMJG**

- The BMJ (our flagship journal) was the first major medical journal to appoint a 'Patient Editor' and the first to establish a [Patient Advisory Panel](#) in 2014 - established to hold the journal to account for delivering on the strategic objectives and ensure we represent their communities. It was the first-ever medical journal to receive the 'Patients Included' award for its strategy to work together as partners to improve healthcare.
- We also ask authors to complete a [patient and public involvement \(PPI\) statement](#) to document the involvement of patients and the public in their work
- All our major events include a 'Local Programme Advisory Committee' involving representatives of local charities and representative community organisations. For example, our [Glasgow Forum](#) included representatives from [YoungScot](#) and [Health and Social Care Alliance Scotland](#).
- Across our events we provide funding and bursaries for local patients and people to join us: As an example, our [International Forum on Quality in Safety in Healthcare](#) held in Newham in East London this April supported 64 local patients and members of the public to attend and contribute in sessions including providing support through bursaries, travel reimbursement and pre-event support and guidance

- We work alongside health and social care community groups to build programmes and events to raise awareness and build collaborations on local issues, such as these BMJG events in April 2024 -
  - [Golborne community in West London showcase collaborative healthcare, including how community members have been included in the co-creation, design, and production of local healthcare services](#)
  - [Tour of Bromley by Bow Health Centre: integrating services for local residents in East London](#)
  - [East London NHS Foundation Trust: Homeless health and engaging with local voluntary and charitable organisations to improve population health](#)
- BMJG also has curated a series of 29 papers on the '[Increasing the impact of health research through co-production of knowledge](#)' and '[Building Healthy Communities](#)' to help inform health in communities and share knowledge

### **Collaboration, codesign and delivery of this contract to support strong communities**

Central to BMJG's strategy in delivering this NIHR contract is improving community integration and maximising research impact through the application of co-design principles, involving collaborative design processes with users and communities, including:

**1. Engage and focus on communities in the design of deliverables for NIHR** - As outlined in AQ1 BMJG will bring together stakeholders representing community groups (for example, existing BMJG partners like Diabetes UK and Alzheimer's Research), service users either engaged directly or through bodies like Healthwatch England, local authority representatives, carers, leading research institutions and NHS professionals. We commit to engaging these reference groups across all relevant deliverables to understand the needs and experiences of all community stakeholders, and we'll use this insight to shape policies, strategies, and operations of this contract. By actively involving the community in this process, from conception to dissemination, we aim to ensure the contract is relevant, accessible, and impactful for local communities both directly and indirectly through partner organisations. BMJG will undertake a detailed demographic analysis of the local communities we aim to engage with. This will include understanding the socio-economic, cultural, and health profiles of these communities to tailor our interventions appropriately. By mapping local health disparities and priorities, we will ensure that our initiatives address the most pressing issues faced by these communities.

**2. Develop and support community partnerships across UK research** - Our planned 'Access Initiative' (AQ1; 3.6) will establish networks that facilitate the engagement and involvement of diverse communities in research. This involves coordination activities that promote inclusion and diversity and bring together research funders, relevant governmental bodies (such as Public Health England), local authorities, and patient advocacy groups (like Cancer Research UK) as a community of practice around public partnerships. One key deliverable is creating and maintaining an up-to-date accessible directory of key contacts at local community organisations who can be approached by NIHR researchers to support public partnerships and local community engagement. We will provide training and support to community organisations to build their capacity for effective participation in health research. Additionally, we will establish mentorship programs pairing experienced researchers with community representatives to facilitate knowledge exchange and capacity building.

**3. Build capacity in community partnerships and capture learning** - As in AQ1, BMJG will offer peer-to-peer support, guidance, and training for public contributors and researchers to engage with communities. Learning modules that incorporate co-design with communities include - Understanding EDI in Health Research; Inclusive Leadership in Health Research; Designing and Conducting Inclusive Research PP - Foundations of Public Partnerships in Health Research; Navigating Legal and Ethical Considerations in Public Partnerships; Effective Communication and Stakeholder Engagement; Project Management and Collaboration Tools for Health Research Partnerships; Sustainable Partnership Development and Funding Strategies. These modules will be co-designed with community representatives to ensure relevance and effectiveness. Additionally, by capturing impact and learning, BMJG can generate and influence partnership connectivity and knowledge exchange beyond NIHR, advancing public partnerships in research.

**4. Promote equality, diversity, and inclusion through our co-design process with communities** - BMJG will prioritise EDI in all aspects of the tender delivery including targeted outreach programmes to underrepresented communities through collaborations with organisations like MIND, which BMJG has already worked with on outreach activities, ensuring that diverse voices are heard within NIHR's work, and integrating EDI goals into the research cycle. We will also involve our employee-led staff networks focusing on Gender, Race and Cultural Diversity, Sexual Orientation, Mental Health and Well-being, and Parents and Carers.

**5. Maximise community engagement through new technologies and platforms** - BMJG's expertise in publishing and disseminating research findings will be key in leading and coordinating dissemination and knowledge mobilisation activities across communities for NIHR. Producing innovative dissemination products and building research dissemination capacity within the community will also be instrumental.

**6. Directly involve patients and communities in our activities** - As an example, community representatives would form part of our 'Programme Advisory Committee' for the NIHR Research Forum to shape the agenda, and participate as speakers and panels. Community representatives will co-lead sessions ensuring their perspectives are integral to discussions. Places will be made available for community attendees and a budget has been assigned for bursaries to cover travel costs.

**Reporting and metrics** - To evaluate and demonstrate the impact of our community integration efforts, BMJG will take a dual approach of both quantitative metrics and qualitative insights.

- Quantitatively, we will measure our success through KPI metrics such as the number of co-design sessions held, the diversity of participants in these sessions, and the tangible outputs or changes implemented as a result of these collaborative efforts.
- Qualitatively, we will gather and analyse feedback from community participants and users involved in the co-design process, document case studies of co-designed initiatives, and assess the impact of these collaborations on community strength and integration. We will also implement a continuous improvement process where the metrics and feedback collected are regularly reviewed and used to refine and adjust our engagement strategies. This will include quarterly review meetings with community representatives to discuss findings and develop action plans for addressing any identified gaps or challenges.

**BMJG - Theme 5: Wellbeing - Policy outcome: Improve community integration [MAC8.2: Influence staff, suppliers, customers and communities through the delivery of the contract to support strong, integrated communities]**

BMJG aims to foster stronger, more integrated communities by leveraging our influence across staff, suppliers, customers, and the broader community, grounded in our vision of a healthier world. Through strategic initiatives in the delivery of this NIHR contract such as local supplier engagement, employee volunteer programs, and digital inclusion efforts, we aim to enhance community well-being, address health inequities, and support sustainable development. Our approach combines evidence-based research dissemination, collaborative partnerships, and community co-design, ensuring our activities are inclusive, impactful, and aligned with the needs of the communities we serve.

#### **Working with suppliers to enhance community wellbeing**

- **Supporting local economies:** We run large conferences and events for over 6,400 attendees per year and have a policy of prioritising local suppliers to support communities and reduce carbon footprint.
- **Donating supplies to community groups:** We also donate excess food and supplies to local charities, for example after our 2,550 person London Forum in 2024 we worked with [Bonny Downs Community Association](#) to distribute food to local people in need

#### **Supporting staff who support our local community**

- In 2023, BMJG staff donated 14 crates worth of food and hygiene products to our local Euston Foodbank, representing a total of almost 400kg. BMJG matched this to give a financial donation of £2800.
- We host a BMJG 'Work Experience Programme' each summer - originally through local schools but now expanded to a virtual programme internationally

- Partner with MOSAIC, a charity supporting LGBT+ youth, through a number of joint activities, including a LGBT+ positive parenting workshop
- Employee Volunteering Programme: BMJG encourages and supports employee participation in community service activities, allocating two days paid time off for volunteering. Our staff engage in various initiatives, from health education workshops to supporting local schools and charities, contributing directly to community wellbeing.
- Mentoring students from disadvantaged backgrounds: In addition, in 2023, BMJG staff contributed 70 hours of coaching through a partnership with the charity [Future Frontiers](#) to support year-10 students from disadvantaged backgrounds, to help them plan their post-GCSE path

### **Additional planned measures as part of this contract**

BMJ has established various measures and plans to enhance our influence on promoting community integration. Our approach is grounded in engagement, co-design, education, collaboration, and volunteering.

#### **1. Influence on staff**

- **Professional development and engagement:** Through induction and regular engagement events we aim to demonstrate to new staff as part of this NIHR programme the importance of local communities to our vision at BMJG of a 'healthier world'. By enhancing their understanding, we aim to encourage and empower them to contribute more effectively to our community-focused objectives.
- **Volunteering and community activities:** We will encourage and facilitate staff participation in volunteering opportunities in their two days of paid time off for volunteering. As well as contributing to the community, it also helps staff feel more connected to our social mission, fostering a culture of social responsibility.

#### **2. Influence on suppliers**

- **Sustainable and ethical procurement:** As part of this NIHR programme, we will prioritise working with suppliers who demonstrate strong social values and contribute positively to their communities. This includes small and local businesses, as well as those with clear commitments to social and environmental standards.
- **Collaboration for community benefit:** Similar to how existing BMJG suppliers frequently support our community objectives, encouraging them to participate in community-supportive activities.

#### **3. Influence on stakeholders**

- **Dissemination of NIHR resources:** A core focus of our NIHR programme is providing organisations working with communities access to high-quality, evidence-based research that can empower them to make informed strategic decisions and work with them to shape future research. For example, our special BMJG collection of research on '[Building Healthy Communities](#)' is one previous initiative with this focus
- **Bridging the digital divide:** While a core focus of our approach is new digital platforms, we aim to ensure that our virtual programs and resources are accessible to all, thereby promoting digital inclusion and enabling all communities to fully participate in and benefit from our initiatives.

#### **4. Influence on communities**

- **Partnerships with local organisations:** Collaborate with local healthcare providers, educational institutions, and community organisations to identify and address specific community health needs. These partnerships can amplify the impact of our efforts and ensure they are culturally and contextually relevant.
- **Support for public health and wellbeing:** Through our content and initiatives, support public health campaigns on critical issues affecting communities, such as mental health, obesity, and chronic disease prevention. This includes leveraging our platforms to raise awareness and provide credible information.

**Continuous improvement** - We will assess community engagement through our programme surveys, focus groups, and feedback mechanisms across all stakeholder groups, including staff, suppliers, customers, and community partners, to gather insights and assess the impact of our initiatives. This iterative process will allow us to continuously refine our impact on communities.

**Reporting and metrics** - To transparently evaluate and demonstrate the impact of our community integration efforts, BMJG will employ a dual approach encompassing both quantitative metrics and qualitative insights -

- Quantitatively, we will track metrics such as community engagement hours (as specified in the social evaluation criteria), the number of community projects supported, and the increase in utilisation of local suppliers, alongside health outcomes where applicable, to provide a clear, data-driven picture of our contributions.
- Qualitatively, we will collect stories of impact, feedback from community partners, and case studies of specific initiatives to capture the nuanced effects of our work on community well-being and cohesion.

This evaluation framework will not only allow us to report on our successes and areas for improvement but also engage with our communities and stakeholders in a meaningful dialogue about the real value and impact of our initiatives, ensuring our efforts are both effective and reflective of the communities' needs.

**BMJG - Theme 3: Fighting Climate Change - Policy Outcome: Effective stewardship of the environment [MAC 4.1 Deliver additional environmental benefits in the performance of the contract including working towards net zero greenhouse gas emissions]**

BMJG acknowledges the critical importance of environmental stewardship and is dedicated to combating climate change through sustainable practices. Our goal is to achieve carbon neutrality across all operations by 2040. Our approach integrates comprehensive sustainability efforts, guided by our Sustainability Group. This cross-functional team, under the CFO's leadership, is tasked with delivering a robust sustainability program, reflecting our commitment to global sustainability and environmental responsibility. Our current activities include -

- **Leadership in climate advocacy:** BMJG proudly co-founded the [UK Health Alliance on Climate Change](#) and actively supports its 10 commitments. Hosting the Alliance at our London offices underscores our leadership role in climate advocacy within health.
- **Commitment to the Sustainable Development Goals (SDGs):** We are committed to SDGs 1, 3, 8, and 13, ensuring our operations and publications advance these goals. Our adherence to the [UN SDGs Publisher Compact](#) further solidifies this commitment.
- **Carbon footprint mapping:** Our extensive program for mapping carbon footprints, especially in business travel, is tailored to include specific actions for this NIHR contract, enabling targeted sustainability measures
- **Sustainability training:** All staff, including those dedicated to the NIHR contract, will receive comprehensive sustainability training as part of their induction
- **Reducing print carbon footprint:** Our collaboration with suppliers aims to significantly reduce the carbon footprint of printed materials, using eco-friendly paper and logistics
- **Digital sustainability:** joining [DImpact](#) reflects our dedication to minimising our digital carbon footprint, ensuring our digital platforms are developed with sustainability in mind
- **Innovative resources for climate action:** BMJG produces a number of resources to support other organisations on climate change, such as our [Net Zero Clinical Care Conference](#) with NHS England and our special collection on '[Innovations that can reduce the impact of healthcare on the environment](#)' and our annual climate issue of The BMJ '[Community Power: Tackling the Climate Crisis](#)' prior to COP

#### **Additional planned measures as part of this contract**

- **Initial sustainability assessment and KPI setting:** During the inception period, our Sustainability and Environmental Stewardship Team (as in AQ1) will work to develop and implement strategies to promote environmental sustainability within the project activities
- **Annual sustainability assessments:** We commit to annual reviews of our sustainability practices, aiming for continuous improvement and alignment with our net zero goal



- **Promote collaborative efforts for environmental benefits:** This includes encouraging supplier sustainability standards and implementing green procurement policies to encourage the use of eco-friendly products and services.
- **Adopt green procurement policies:** Our procurement policies will give priority to environmentally friendly products and services and we will collaborate with suppliers to discover innovative solutions that support our net zero ambitions by 2040
- **Transparent reporting:** We will integrate metrics from this project into our annual sustainability review, providing transparency and accountability. Qualitative case reports will highlight innovative practices and outcomes, contributing to our sustainability narrative and shared learning.

### **Reporting and metrics**

(1) **Annual sustainability progress reporting:** BMJG will publish an annual sustainability report detailing progress towards our net zero goal, including specific metrics from the NIHR contract. This will encompass carbon footprint reductions, KPI achievements, and supplier sustainability assessments.

(2) **Case studies on environmental impact:** We will also develop and share case studies highlighting successful sustainability initiatives within this contract. These narratives will showcase innovative practices and the environmental benefits achieved, and foster a culture of continuous improvement and shared learning.

## **Schedule 9**

### **(COMMERCIALLY SENSITIVE INFORMATION)**

- 1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 2 Where possible, the Parties have sought to identify when any relevant information will cease to fall into the category of information to which this Schedule applies in the table below (please see the column "Duration of Confidentiality").
- 3 Without prejudice to the Authority's obligation to disclose information in accordance with FOIA or Clause 19 (*Confidentiality*), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

#### **Commercially Sensitive Information**

<b><u>No.</u></b>	<b>Date</b>	<b>Item(s)</b>	<b>Duration of Confidentiality</b>
1.	10 April 2024	The Supplier's pricing and the pricing schedule submitted by the Supplier as part of the Supplier Solution.	In perpetuity
2.			
3.			
4.			
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### **Schedule 10**

#### **(NOTIFIED KEY SUB-CONTRACTORS)**

- 1 In accordance with Clause 15.11 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-contractors listed in the table below.
- 2 The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

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

## **Schedule 11**

(THIRD PARTY CONTRACTS)

- 1 The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
- 2 The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

[illegible]

## **Schedule 12**

### **(SOFTWARE)**

#### **1 THE SOFTWARE**

- 1.1 The Software below is licensed to the Authority in accordance with Clause 16 (*Intellectual Property Rights*) and Schedule 32 (*Intellectual Property Rights*).
- 1.2 The Parties agree that they will update this Schedule regularly, and in any event no less than every six (6) Months from the Effective Date, to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

## 2 SUPPLIER SOFTWARE

The Supplier Software includes the following items:

[illegible]

### 3 **THIRD PARTY SOFTWARE**

The Third Party Software shall include the following items:

<b>Third Party Software</b>	<b>Supplier</b>	<b>Purpose</b>	<b>Number of Licences</b>	<b>Restrictions</b>	<b>Number of Copies</b>	<b>Type (COTS or Non-COTS)</b>	<b>Term/Expiry</b>
As at the Effective Date, there is no third party software to be listed here.							

## **Schedule 13**

### **(IMPLEMENTATION PLAN AND TRANSITION)**

#### **1 INTRODUCTION**

##### **1.1 This Schedule:**

- 1.1.1 defines the process for the development of the Outline Implementation Plan to form the Detailed Implementation Plan and the implementation of the Detailed Implementation Plan;
- 1.1.2 sets out provisions in respect of the Transition Oversight Board; and
- 1.1.3 sets out the process for agreeing the Key Performance Indicators.

#### **2 DEVELOPMENT AND APPROVAL OF THE DETAILED IMPLEMENTATION PLAN**

- 2.1 The Parties shall agree the Detailed Implementation Plan in accordance with the process set out in this Paragraph 2.
- 2.2 The Supplier shall submit a draft of the Detailed Implementation Plan based on the Outline Implementation Plan to the Authority for approval within twenty (20) Working Days of the Effective Date.
- 2.3 The Supplier shall ensure that the draft Detailed Implementation Plan:
  - 2.3.1 incorporates all of the activities and dates set out in the Outline Implementation Plan;
  - 2.3.2 includes (as a minimum) the Supplier's proposed timescales in respect of each of the following activities:
    - (i) the completion of each design document;
    - (ii) the completion of the build phase; and
    - (iii) training and roll-out activities;
  - 2.3.3 clearly outlines all the steps required to complete any activity to be achieved prior to the Operational Service Commencement Date, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
  - 2.3.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
  - 2.3.5 is produced using a software tool as specified, or agreed by the Authority.
- 2.4 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 2.1, the Authority shall have the right:
  - 2.4.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:

- (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
  - (ii) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
  - (iii) any other work in progress in relation to the Detailed Implementation Plan; and
- 2.4.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan including specifying that any dates for completion of activities in the Detailed Implementation Plan be considered Key Project Dates.
- 2.5 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:
  - 2.5.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
  - 2.5.2 notify the Supplier in writing that it Approves or rejects the draft Detailed Implementation Plan no later than twenty (20) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.
- 2.6 If the Authority rejects the draft Detailed Implementation Plan:
  - 2.6.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - 2.6.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.4 and this Paragraph 2.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 2.7 If the Authority Approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval and be inserted into Annex 1 of this Schedule and the Supplier will carry out the transition and implementation of the Services in accordance with the Detailed Implementation Plan and shall complete all such activity by 31 March 2025.

### **3 UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN**

- 3.1 Following the approval of the Detailed Implementation Plan by the Authority:
  - 3.1.1 the Supplier shall attend a meeting of the Transition Oversight Board on a monthly basis (the dates, times and format of such meetings to be communicated in advance by the Authority acting reasonably) and shall report at such meetings on the progress made against the Detailed

Implementation Plan and may suggest any changes to the Detailed Implementation Plan that the Supplier deems reasonably necessary;

- 3.1.2 the Authority shall consider any changes proposed by the Supplier under Paragraph 3.1.1 and notify the Supplier within three (3) Working Days of the relevant Transition Oversight Board meeting if it wishes the Supplier to update the Detailed Implementation Plan to include the Supplier's proposed changes;
  - 3.1.3 where the Authority does not accept the changes proposed by the Supplier, the Authority shall provide reasons further to which, if the Authority deems it appropriate, the Supplier may make further proposals;
  - 3.1.4 if the Parties fail to reach agreement on any updates or changes to the Detailed Implementation Plan, either Party may refer the matter to the Dispute Resolution Procedure; and
  - 3.1.5 if the Authority agrees to any changes to the Detailed Implementation Plan proposed by the Supplier, the Supplier shall update the Detailed Implementation Plan and the updated Detailed Implementation Plan shall be the Detailed Implementation Plan for the purposes of this Contract.
- 3.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- 3.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
  - 3.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 29 (*Authority Cause*).
- 3.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been Approved in writing by the Authority.

#### **4 TRANSITION OVERSIGHT BOARD**

- 4.1 The Transition Oversight Board shall be established by the Authority for the purposes of overseeing the transition of the Services. The members of the Transition Oversight Board will be representatives of the Authority and the composition of the Transition Oversight Board will be notified to the Supplier within ten (10) Working Days after the Effective Date.
- 4.2 Without prejudice to Clause 6.6 (*Implementation Plan and Delays*), the Transition Oversight Board shall be responsible for the oversight of transition of the services provided by the Former Supplier to the Supplier and the Supplier's implementation of the Services in accordance with the Implementation Plan and shall:
  - 4.2.1 monitor and discuss the development and Approval of the Implementation Plan in accordance with this Schedule;



- 4.2.2 consider the Annual Strategic and Operational Plan for the first Financial Year;
  - 4.2.3 monitor and discuss the Supplier's progress against the Implementation Plan; and
  - 4.2.4 monitor and discuss the Supplier's obligations under Clause 6.2 (*Quality Plans*).
- 4.3 The Supplier's performance against the Implementation Plan shall be monitored at meetings of the Transition Oversight Board. In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than three (3) Working Days in advance of each meeting of the Transition Oversight Board.
- 4.4 Without prejudice to Paragraph 4.3 above, the Supplier shall co-operate with any reasonable directions of the Authority, which may include attending meetings and co-operating with the Former Supplier.
- 4.5 On or around the end of the Implementation Period, the Authority shall notify the Supplier as to the dissolution of the Transition Oversight Board.

## **5 AGREEMENT OF KEY PERFORMANCE INDICATORS**

- 5.1 During the Implementation Period, the Parties shall agree the Performance Indicators (including any Performance Indicators in respect of Social Value) to be included in Annex 1 to Part A of Schedule 3 (*Performance Measurement and Monitoring*) to replace the Outline Performance Indicators by following the process set out in the rest of this Paragraph 5.
- 5.2 The Authority shall consider the performance indicators as submitted by the Supplier with the Supplier Solution ("**Outline Performance Indicators**") and notify the Supplier of any adjustments which, in the reasonable opinion of the Authority need to be made to the Outline Performance Indicators to align with the Authority Requirements and to ensure delivery of the Services in accordance with this Contract.
- 5.3 Within ten (10) Working Days of receipt by the Supplier of notification under Paragraph 5.2 above, the Parties shall meet at a mutually agreed time to discuss the Authority's proposed adjustments to the Outline Performance Indicators. At such meeting, the Parties, acting reasonably and in good faith, shall agree and finalise any adjustments necessary to the Outline Performance Indicators. The Authority's decision in relation to agreeing the Outline Performance Indicators shall be final.
- 5.4 Once the Outline Performance Indicators are agreed under Paragraph 5.3 above, the Outline Performance Indicators shall be the Key Performance Indicators for the purposes of this Contract and shall replace the Outline Performance Indicators and be inserted in Annex 1 to Part A of Schedule 3 (*Performance Measurement and Monitoring*).

## **6 GOVERNMENT REVIEWS**

- 6.1 The Supplier acknowledges that the Services may be subject to Government review at key stages of the project. The Supplier shall cooperate with any bodies

undertaking such review and shall allow for such reasonable assistance as may be required for this purpose within the Charges.

## **ANNEX 1: OUTLINE IMPLEMENTATION PLAN**

<b>Category</b>	<b>Phasing</b>	<b>Authority</b>	<b>Activities</b>
<b><i>1. Project initiation and planning</i></b>	Within four weeks of the Effective Date	Joint	Set the foundation for the project, establishing a detailed plan that incorporates the full scope of services, resource allocation, and timelines, ensuring alignment with BMJG's experience in managing complex healthcare information projects and NIHR's strategic goals
<b><i>2: Stakeholder Engagement and Communication Plan Development</i></b>	Within eight weeks of the Effective Date	Joint	Ensure all stakeholders are identified, engaged, and informed throughout the transition process, leveraging BMJG's expertise in stakeholder management within the healthcare research community. Start to compile a list of stakeholder representatives for advisor committees and groups.
<b><i>3: Review and Transition of Current Operations</i></b>	By 31 March 2025	Joint, incumbent	Critical for understanding and effectively managing the handover of existing services, utilising BMJG's experience in integrating and optimising healthcare research and publication services. Particularly the existing IT, websites and staff listed in Attachment 2.
<b><i>4: Infrastructure and Technology Setup</i></b>	2 months before the start date	Joint	Ensures the technological infrastructure is robust, secure, and capable of supporting the delivery of services, drawing on BMJG's capability in deploying and managing healthcare data and information systems

<b>5: Training and Development Program for Transitioned and New Staff</b>	1 month before the start date	Joint	Prepares both existing and new staff for their roles in the new service delivery framework, capitalising on BMJG's expertise in education and training within the healthcare research sector
<b>6: Finalisation and Testing of Service Delivery Processes</b>	2 weeks before the start date	Joint	Ensures that all processes, systems, and services are fully functional, tested, and ready for live operation, leveraging BMJG's rigorous standards for quality in research dissemination
<b>7: Operational Service Commencement</b>	April 2025	Joint	Marks the official start of the new contract delivery phase, with BMJG and NIHR collaboratively ensuring a seamless transition and the continuation of high-quality services
<b>8: Post Implementation Review</b>	Within 1 month following the start date	Joint	Assesses the effectiveness of the transition process and identifies areas for continuous improvement, drawing on BMJG's commitment to excellence and innovation in healthcare research support services

**Schedule 14 NOT USED**

## **Schedule 15**

### **(CHARGES AND INVOICING)**

#### **1 GENERAL PROVISIONS**

1.1 This Schedule details the:

- 1.1.1 Service Charges;
- 1.1.2 invoicing procedure; and
- 1.1.3 procedure applicable to any adjustments of the Service Charges.

1.2 The following terms have the following meanings in this Schedule 15:

**“Costs”** means the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:

- (a) the cost to the Supplier or the Sub-contractor (as the context requires) of engaging the Supplier Personnel including:
  - (i) base salary paid to the Supplier personnel;
  - (ii) employer's national insurance contributions;
  - (iii) pension contributions;
  - (iv) car allowances;
  - (v) any other contractual employment benefits;
  - (vi) staff training;
  - (vii) work place accommodation;
  - (viii) workplace IT equipment and tools reasonably necessary to provide the Services (but not including items included within limb (b) below); and
  - (ix) reasonable recruitment costs as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and which would be treated as capital costs according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Assets;
- (c) operational costs which are not included within limb (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;

but excluding:

- 1.2.1 any Overhead;
- 1.2.2 financing or similar costs;
- 1.2.3 maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- 1.2.4 taxation;
- 1.2.5 fines and penalties; and
- 1.2.6 non-cash items (including depreciation, amortisation, impairments and movements in provisions);

**“Overhead”** means those amounts which are intended to recover a proportion of the Supplier’s or the Sub-contractor’s (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Personnel and accordingly included within limb (a) of the definition of “Costs”; and

**“Transition Charges”** means the Charges payable by the Authority to the Supplier in respect of the Implementation Services.

## **2 CHARGES**

- 2.1 The Service Charges payable in respect of the Services and the principles for calculating the AES Charges are each set out in Annex 1 to this Schedule. The Supplier acknowledges and agrees that (save to the extent otherwise provided in paragraphs 5 and 6 of this Schedule 15), the Service Charges and, once agreed by the Parties, any AES Charges cannot be increased.
- 2.2 The Transition Charges payable by the Authority to the Supplier in respect of the Implementation Services and details of when the Supplier may invoice the Authority in respect of the Transition Charges are set out in Annex 2.

## **3 COSTS AND EXPENSES**

- 3.1 Save to the extent otherwise provided in paragraphs 5 and 6 of this Schedule 15, the Service Charges include and shall include all Costs and expenses relating to the Services and/or the Supplier’s performance of its obligations under this Contract and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges.

## **4 INVOICING PROCEDURE**

- 4.1 The Authority shall pay the Supplier in arrears all undisputed sums properly due and payable to the Supplier under this Schedule 15 in cleared funds within thirty (30) days after the Authority’s receipt of a Valid Invoice for the same, which:
  - 4.1.1 if in respect of:

- (i) the Service Charges, may only be submitted by the Supplier to the Authority after the Service Period, in respect of which such sums are being claimed by the Supplier, has ended and for the purposes of this Contract no sum or sums payable in respect of that Service Period shall become due and owing until such Service Period has ended and such Valid Invoice has been submitted in accordance with this paragraph 4; and
- (ii) the Transition Charges, may only be submitted in accordance with the timings set out in Annex 2; and

4.1.2 shall be submitted by the Supplier to the Authority in respect of that Service Period within thirty (30) Working Days after the final calendar day of that Service Period to the address specified in paragraph 4.3 of this Schedule 15 and in accordance with the provisions of this Contract.

4.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Authority may specify in writing):

4.2.1 contains:

- (i) any unique purchase order reference number provided by the Authority;
- (ii) the date of invoice;
- (iii) the correct reference for this Contract;
- (iv) the relevant Service Period in respect of which such invoice is submitted;
- (v) a detailed breakdown and description of the Services to which the Service Charges invoiced relate;
- (vi) details of any adjustment(s) made in compliance with the provisions of this Schedule where such adjustment(s) apply or applies to the Service Charges detailed on the invoice;
- (vii) the Service Charges and, if applicable, any AES Charges that are being invoiced for the relevant Service Period;
- (viii) any amount for which the Authority is entitled to withhold payment which are Service Credits and which amount shall not be included in the total Charges shown on the invoice;
- (ix) any amount which the Authority has previously withheld in accordance with paragraph h above and which the Authority has notified the Supplier that the Supplier may include such amount on its invoice;
- (x) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries; and



- (xi) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and

4.2.2 shows separately:

- (i) the VAT added to the due and payable Service Charges in accordance with Clause 10.4 (VAT); and
- (ii) the tax point date relating to the rate of VAT shown,

and is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a Valid Invoice.

4.3 The Supplier shall submit invoices directly to the following address:

DHSC Accounts Payable,  
39 Victoria Street,  
London SW1H 0EW,

email: [AccountsPayable@dhsc.gov.uk](mailto:AccountsPayable@dhsc.gov.uk), Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000) or a substitute nominated in writing.

## **5 ADJUSTMENT OF CONTRACT CHARGES**

5.1 The Contract Charges in respect of the Services and any AES Charges (once agreed by the Parties)) may only be varied:

5.1.1 due to a Specific Change in Law, in relation to which the Parties agree that a change is required to all or part of the Charges in accordance with Clause 13.3 (*Change in Law*); or

5.1.2 where the Parties agree to a change in the Charges in accordance with Schedule 22 (*Change Control Procedure*).

5.2 Where any changes to the Charges are agreed further to paragraph 5.1 above, the Parties shall:

5.2.1 implement any agreed Change in accordance with the timings set out in the relevant Change Authorisation Note; and

5.2.2 amend the Charges shown in Annex 1 to this Schedule 15 to the extent necessary to reflect such changes.

## **6 GAINSHARE**

6.1 The Parties shall deal with any Cost Savings in accordance with the Change Control Procedure and this paragraph 6.

6.2 The Costs Savings shall be split between the Authority and the Supplier as follows:

6.2.1 twenty percent (20%) of the Cost Savings shall be for the Authority realised by way of a deduction from the Service Charges in the Supplier's invoice(s) as detailed in the relevant Change; and

- 6.2.2 eighty percent (80%) of the Cost Savings shall be for the Supplier which it shall reinvest in the delivery of the Services in accordance with paragraph 6.4 below.
- 6.3 Notwithstanding paragraph 6.2.1 above, the Authority may wish to reinvest up to 100% of its share of the Cost Savings in the delivery of the Services. If the Authority elects to do so, it shall notify the Supplier prior to agreeing a Change under the Change Control Procedure and the Supplier shall reinvest such Cost Savings in the delivery of the Services in accordance with paragraph 6.4 below.
- 6.4 Where paragraph 6.3 above applies, the Supplier shall provide the Authority with a draft reinvestment plan for approval prior to agreeing a Change under the Change Control Procedure. Within thirty (30) Working Days of receipt by the Authority of the draft reinvestment plan, the Parties shall, acting reasonably and in good faith, discuss and agree the reinvestment plan including any relevant timescales ("**Agreed Reinvestment Plan**"). The Supplier shall use its best endeavours to implement the Agreed Reinvestment Plan within the agreed timescales. Where the Parties cannot agree the draft reinvestment plan then either Party may submit the Dispute to the Dispute Resolution Procedure.
- 6.5 In the event of early termination or upon expiry of the Contract, the Supplier shall be entitled to retain any residual Cost Savings save that, where the Authority elects to reinvest its share pursuant to paragraph 6.3 above, the applicable residual Cost Saving shall be distributed in the ratio set out in paragraph 6.2 above. The Supplier shall deduct the amount due to the Authority from the final invoice to the Authority and if the Authority's share of the residual Cost Savings exceeds the final invoice amount, the Supplier shall issue a credit note to the Authority in respect of the same.
- 6.6 Notwithstanding the provisions of paragraph 6.5, the Supplier shall use its best endeavours to ensure that any Cost Savings are reinvested in the delivery of the Agreed Reinvestment Plan. Any failure by the Supplier to implement an Agreed Reinvestment Plan will constitute a Default.

## **7 Payments to the Authority**

- 7.1 All payment(s) properly due and payable by the Supplier under this Contract to the Authority shall be made within thirty (30) days after the Supplier's receipt of the Authority's invoice for such amount(s), unless otherwise specified in this Contract, in cleared funds, to such bank or building society account as the Authority may from time to time direct in writing.
- 7.2 The Authority shall submit invoices directly to the following address:

Redacted in  
accordance with

Gen 42 and/or Gen 43 of the  
BMJ Group  
BMA House  
Tavistock Square  
London WC1H 9JP

Redacted in accordance with  
Gen 42 and/or Gen 43 of the

## **ANNEX 1 - SERVICE CHARGES AND AES CHARGES**

### **1 GENERAL**

- 1.1 The Charges applicable to the Supplier's delivery of the Services are set out below in paragraph 2.
- 1.2 The Charges applicable in respect of the Supplier's required continued provision of the Services under Schedule 25 (*Exit Management*) shall be such amounts as calculated in accordance with paragraph 9 of Schedule 25 (*Exit Management*).

### **2 SERVICES CHARGE**

- 2.1 The amount to be paid by the Authority in respect of the Services shall be:
- 2.1.1 such fixed amount in respect of the Payment Period related to that amount as is specified in the table immediately below this paragraph 2.1;  
or
- 2.1.2 where an adjustment applies in respect of that Service Period in accordance with paragraph 5.1 of the main body of this Schedule 15 and/or paragraph 2.2 of this Annex 1, as is specified in the table immediately below this paragraph 2.1 as so adjusted.

Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)



Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)



Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)



- 2.2 Where this Contract is terminated by either Party on a day other than the last day of any Service Period specified in the table set out in paragraph 2 of this Annex 1, the relevant amount specified in that table in respect of that Payment Period shall be pro-rated based on the number of days in that Payment Period for which the Services are provided against the total number of days in that Payment Period.

### **3 AUTHORITY EMERGENT SERVICES**

- 3.1 If the Authority gives notice pursuant to Clause 5.10 (*Authority Emergent Services*) that it requires the Supplier to provide any Authority Emergent Services, the Authority Emergent Services Charges in respect of those Authority Emergent Services shall be based on any one or more of the following pricing mechanism:
- 3.1.1 “fixed price”;
  - 3.1.2 “time and materials”;
  - 3.1.3 “capped price”; and/or
  - 3.1.4 “risk and reward”.
- 3.2 The payment mechanism and profile shall be decided by the Authority at its sole and absolute discretion when providing notice to the Supplier under Paragraph 3.1 above).

## ANNEX 2 - TRANSITION CHARGES

Redacted in			
accordance with Sec			
40 and/or Sec 43 of			
the Freedom of			
Information Act			
(2000)			

Payments in respect of the Implementation Services will be made on a monthly basis, in arrears and to the maximum capped amount (10% of Year 1 costs), on submission of an itemised invoice detailing activity for the period in accordance with paragraph 4.2 of this Schedule 15 (*Charges and Invoicing*) as applicable.

## **Schedule 16**

### **(PAYMENTS ON TERMINATION)**

#### **Schedule 16: Payments on Termination**

##### **1 Definitions**

1.1 In this Schedule, the following definitions shall apply:

**“Applicable Supplier Personnel”**

any Supplier Personnel who:

(a) at the Termination Date:

are employees of the Supplier or Parent Undertaking;

are Dedicated Supplier Personnel;

have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and

are dismissed or given notice of dismissal by the Supplier within:

forty (40) Working Days of the Termination Date; or

such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and

have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and

the Supplier can demonstrate to the satisfaction of the Authority:

are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;

are genuinely being dismissed for reasons of redundancy; and

have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

**“Dedicated Supplier Personnel”**

all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been



materially involved in the provision of the Services or any part of the Services;

**“Redundancy Costs”**

the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:

- (a) any statutory redundancy payment; and
- (b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to their transfer to the Supplier under the Employment Regulations;

**“Third Party Contract”**

a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 11 (*Third Party Contracts*);

**“Unamortised Investments”**

any sums which are not Unrecovered Costs and which the Supplier can demonstrate and provide evidence that it has invested solely in respect of the delivery and performance of the Contract and which, due to termination of the Contract, the Supplier will be unable to amortise;

**“Unrecovered Costs”**

the Costs incurred by the Supplier in the performance of this Contract (as summarised in the Financial Model) to the extent that the same remain at the date of termination to be recovered through Charges that but for the termination of this Contract would have been payable by the Authority after the date of Termination in accordance with Schedule 15 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model.

**2     Termination Payment**

2.1     The Termination Payment payable pursuant to Clause 32.4 (*Payments by the Authority*) shall be an amount equal to the aggregate of the Redundancy Costs, the Unrecovered Costs and Unamortised Investments..

2.2     The Termination Payment shall not be payable where the Authority elects to exercise its right to terminate at the end of the fifth (5<sup>th</sup>) Contract Year under Clause 4.2.

### **3     Redundancy Costs**

- 3.1     The Authority shall not be liable under this Schedule for any costs associated with Applicable Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.
- 3.2     Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of thirty thousand pounds (£30,000) per relevant member of the Supplier Personnel.

### **4     Full and Final Settlement**

- 4.1     Any Termination Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 31.1.1 (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 31.3.1 (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

### **5     Invoicing for the Payments on Termination**

- 5.1     All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 15 (*Charges and Invoicing*).

### **6     Set Off**

- 6.1     The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

### **7     Mitigation**

- 7.1     The Supplier agrees to use all reasonable endeavours to minimise and mitigate Unrecovered Costs, Redundancy Costs and Unamortised Investments by:
- 7.1.1     the appropriation of Assets, employees and resources for other purposes;
  - 7.1.2     at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and
  - 7.1.3     in relation to Third Party Contracts and Sub-contracts that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted and using all reasonable endeavours to minimise any cancellation or termination charges.
- 7.2     If Assets, employees and resources can be used by the Supplier for other purposes, there shall be an equitable reduction in the amounts for Unrecovered Costs, Redundancy Costs and Unamortised Investment Costs payable by the Authority. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the

relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 23 (*Dispute Resolution Procedure*).

**Schedule 17 – NOT USED**

## **Schedule 18**

### **(FINANCIAL DISTRESS)**

#### **1 Definitions**

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

<b>"Applicable Financial Indicators"</b>	means the financial indicators from Part C of Annex 2 which are to apply to the Monitored Suppliers as set out in Part B of Annex 3;
<b>"Credit Rating Threshold"</b>	the minimum credit rating level for each entity in the FDE Group as set out in Part A of Annex 2;
<b>"Credit Reference Agencies"</b>	the credit reference agencies listed in Part B of Annex 1;
<b>"Credit Score Notification Trigger"</b>	the minimum size of any downgrade in a credit score, set out in Part B of Annex 2, which triggers a Credit Score Notification Trigger Event;
<b>"Credit Score Notification Trigger Event"</b>	any downgrade of a credit score which is equal to or greater than the Credit Score Notification Trigger;
<b>"Credit Score Threshold"</b>	the minimum credit score level for each entity in the FDE Group as set out in Part B of Annex 2;
<b>"Financial Distress Service Continuity Plan"</b>	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Authority would need to put in place to ensure performance and delivery of the Deliverables in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;
<b>"Financial Indicators"</b>	in respect of the Supplier, Key Sub-contractors and the guarantor of any Guarantee under Clause 4.3, means each of the financial indicators set out at Part C of Annex 2; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
<b>"Financial Target Thresholds"</b>	means the target thresholds for each of the Financial Indicators set out at Part C of Annex 2;
<b>"Primary Metric"</b>	credit score pursuant to Paragraph 4.3

<b>"Monitored Supplier"</b>	those entities specified in Part B of Annex 3; and
<b>"Rating Agencies"</b>	the rating agencies listed in Part A of Annex 1.

## **2 When this Schedule applies**

- 2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.
- 2.2 The terms of this Schedule shall survive under this Contract until the termination or expiry of this Contract.

## **3 Credit Ratings**

- 3.1 The Supplier warrants and represents to the Authority that as at the Effective Date the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part A of Annex 2.
- 3.2 The Supplier shall:
  - 3.2.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies; and
  - 3.2.2 promptly (and in any event within five (5) Working Days) notify the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group.
- 3.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit rating is the Primary Metric, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have given a credit rating level for that FDE Group entity which is below the applicable Credit Rating Threshold.

## **4 Credit Scores**

- 4.1 The Supplier warrants and represents to the Authority that as at the Effective Date the credit scores issued for each entity in the FDE Group by each of the Credit Reference Agencies are as set out in Part B of Annex 2.
- 4.2 The Supplier shall:
  - 4.2.1 regularly monitor the credit scores of each entity in the FDE Group with the Credit Reference Agencies; and
  - 4.2.2 promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any Credit Score Notification Trigger Event for any entity in the FDE Group (and in any event within five (5) Working Days).
- 4.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit score is the

Primary Metric, the credit score of an FDE Group entity shall be deemed to have dropped below the applicable Credit Score Threshold if any of the Credit Reference Agencies have given a credit score for that FDE Group entity which is below the applicable Credit Score Threshold.

## **5 Financial Indicators**

**5.1** The Supplier shall monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Part C of Annex 2 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the accounting reference date

**5.2** Subject to the calculation methodology set out at Annex 4 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Appendix I: *Standard Financial Ratios of Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021* (as amended, supplemented or replaced from time to time) which as at the Effective Date can be found at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/987132/Assessing\\_and\\_monitoring\\_the\\_economic\\_and\\_financial\\_standing\\_of\\_suppliers\\_guidance\\_note\\_May\\_2021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf)

**5.3** Each report submitted by the Supplier pursuant to Paragraph 5.1 shall:

- 5.3.1 be a single report with separate sections for each of the FDE Group entities;
- 5.3.2 contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
- 5.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- 5.3.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- 5.3.5 include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

**5.4** For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:

- 5.4.1 a report submitted by the Supplier pursuant to Paragraph 5.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for both of Financial Indicators numbers 2 and 3 set out in the table Part C of Annex 2 of this Schedule;

- 5.4.2 a report submitted by the Supplier pursuant to Paragraph 5.1 does not comply with the requirements set out in Paragraph 5.3; or
- 5.4.3 the Supplier does not deliver a report pursuant to Paragraph 5.3 in accordance with the applicable monitoring and reporting frequency.

## **6 What happens if there is a Financial Distress Event**

- 6.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within ten (10) Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.
- 6.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Authority becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 6.3 to 6.6.
- 6.3 The Authority may request a Guarantee in accordance with Clause 4.3.
- 6.4 The Supplier shall (and shall procure that each Additional FDE Group Member shall):
  - 6.4.1 at the request of the Authority meet the Authority as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of this Contract and delivery of the Services in accordance this Contract; and
  - 6.4.2 where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 6.4.1) that the Financial Distress Event could impact on the continued performance of this Contract and delivery of the Services in accordance with this Contract:
    - (i) submit to the Authority for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event);
    - (ii) use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to the Authority; and
    - (iii) provide such financial information relating to FDE Group entity as the Authority may reasonably require.
- 6.5 If the Authority does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Authority within five (5) Working Days of the rejection of the first or subsequent (as the case may be)



drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:

- 6.5.1 Approved;
  - 6.5.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within twenty-eight (28) days of the date of the notice); or
  - 6.5.3 finally rejected by the Authority.
- 6.6 Following Approval of the Financial Distress Service Continuity Plan by the Authority, the Supplier shall:
- 6.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance this Contract and delivery of the Services in accordance with this Contract;
  - 6.6.2 provide a written report of the results of each review and assessment carried out under Paragraph 6.6.1 to the Authority;
  - 6.6.3 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 6.6.1, submit an updated Financial Distress Service Continuity Plan to the Authority for its Approval, and the provisions of Paragraphs 6.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
  - 6.6.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).
- 6.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 6.6.

## **7 When the Authority can terminate for financial distress**

- 7.1 The Authority shall be entitled to terminate this Contract for Material Default if:
- 7.1.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 6.1;
  - 7.1.2 the Supplier fails to comply with any part of Paragraph 6.4;
  - 7.1.3 subject to Paragraph 7.2, the Authority finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.5.3;
  - 7.1.4 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within twenty-eight (28) days of the date of the notice of referral pursuant to Paragraph 6.5.2;

7.1.5 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 6.5.2; and/or

7.1.6 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.6.4,

and the consequences of termination in Clause 32 shall apply.

7.2 A Material Default may only occur under Paragraph 7.1.3 after the expiry of the first five (5) Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Authority first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

**8 What happens if the Supplier's Primary Metric is still good**

Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 6, if, following the occurrence of a Financial Distress Event, the Supplier evidences to the Authority's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:

8.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 6.4 to 6.6; and

8.2 the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 6.4.2(iii)).

## **ANNEX 1: RATING AGENCIES AND CREDIT REFERENCE AGENCIES**

### **Part A: Rating Agencies**

Dun & Bradstreet

### **Part B: Credit Reference Agencies**

Dun & Bradstreet

Company Watch

## **ANNEX 2: CREDIT RATINGS, CREDIT SCORES AND FINANCIAL INDICATORS**

### **Part A: Credit Rating**

<b>Entity</b>	<b>Credit rating (long term)</b>	<b>Credit Rating Threshold</b>
Supplier	1	Anything other than “1”
[Guarantor – if any]		

### **Part B: Credit Score**

<b>Entity</b>	<b>Credit score</b>	<b>Credit Score Notification Trigger</b>	<b>Credit Score Threshold</b>
Supplier		Any downgrade in a credit score which gives a credit score of <50	50
[Guarantor – if any]			

### **Part C: Financial Indicators**

<b>Financial Indicator</b>	<b>Calculation</b>	<b>Financial Target Threshold:</b>	<b>Monitoring and Reporting Frequency</b>
<b>1. Turnover Ratio</b>	<i>Annual revenue / Annual Contract Value</i>	Low risk: >2.0 times Medium risk: 1.5 – 2.0 times High risk <1.5 times	<i>As per Paragraph 5.1 of this Schedule.</i>
<b>2 Net Debt to EBITDA Ratio</b>	<i>Net Debt to EBITDA ratio = Net Debt / EBITDA</i>	Low risk: <2.5 times Medium risk: 2.5 – 3.5 times High risk >3.5 times	<i>As per Paragraph 5.1 of this Schedule.</i>

Financial Indicator	Calculation	Financial Target Threshold:	Monitoring and Reporting Frequency
<b>3</b>  <b>Net Interest Paid Cover</b>	<i>Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid</i>	Low risk: >4.0 times  Medium risk: 2.5 – 4.0 times  High risk <2.5 times	<i>As per Paragraph 5.1 of this Schedule.</i>
<b>4</b>  <b>Acid Ratio</b>	<i>Acid Ratio = (Current Assets – Inventories) / Current Liabilities</i>	Low risk: >0.8 times  Medium risk: 0.7-0.8 times  High risk <0.7 times	<i>As per Paragraph 5.1 of this Schedule.</i>
<b>5</b>  <b>Net Asset value</b>	<i>Net Asset Value = Net Assets</i>	> £0	<i>As per Paragraph 5.1 of this Schedule.</i>

### **ANNEX 3 – ADDITIONAL FDE GROUP MEMBERS AND MONITORED SUPPLIERS**

#### **Part A: Additional FDE Group Members**

1 [Guarantor – if any].

#### **Part B: Monitored Suppliers**

<b>Entity Name</b>	<b>Company Number</b>	<b>Applicable Financial Indicators</b> <b>(these are the Financial Indicators from the</b> <b>table in Part 0 of Annex 2 which are to apply</b> <b>to the Monitored Suppliers)</b>
There are none at the Effective Date.		

## **Schedule 19**

### **(FINANCIAL REPORTS AND AUDIT RIGHTS)**

#### **1 DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

<b>“Annual Contract Report”</b>	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Audit Agents”</b>	<ul style="list-style-type: none"><li>(a) the Authority’s internal and external auditors;</li><li>(b) the Authority’s statutory or regulatory auditors;</li><li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li><li>(d) HM Treasury or the Cabinet Office;</li><li>(e) any party formally appointed by the Authority to carry out Audit or similar review functions; and</li><li>(f) successors or assigns of any of the above;</li></ul>
<b>“Contract Amendment Report”</b>	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Final Reconciliation Report”</b>	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>“Financial Model”</b>	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently Approved by the Authority in accordance with Paragraph 2 of Part B;
<b>“Financial Reports”</b>	the Contract Inception Report and the reports listed in the Table in Paragraph 1.1 of Part B;
<b>“Financial Representative”</b>	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;

**“Financial  
Transparency  
Objectives”**

has the meaning given in Paragraph 1 of Part A;

**“Material Change”**

a Change which:

- (a) materially changes the profile of the Charges; or
- (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:
  - (i) five per cent (5%) or more; or
  - (ii) one million pounds (£1,000,000) or more;

**“Onerous Contract”**

a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;

**“Onerous Contract  
Report”**

a report provided by the Supplier pursuant to Paragraph 3 of Part A;

**“Open Book Data”**

complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
  - (i) the unit costs and quantity of consumables and bought-in services;
  - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list



	of agreed rates against each manpower grade;
	(iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin;
	(c) Overheads;
	(d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
	(e) the Supplier Profit achieved over the Term and on an annual basis;
	(f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
	(g) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
	(h) the actual Costs profile for each Service Period; and
<b>Quarterly Contract Report</b>	the quarterly contract report to be provided by the Supplier pursuant to Paragraph 1 of Part B
<b>Supplier Profit</b>	in relation to any period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms for that period; and
<b>Supplier Profit Margin</b>	in relation to any period, the Supplier Profit for that period divided by the total Charges over the same period and expressed as a percentage.

## **PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA**

### **1 FINANCIAL TRANSPARENCY OBJECTIVES**

- 1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

#### **1.1.1 Understanding the Charges**

- (i) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin; and
- (ii) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

#### **1.1.2 Agreeing the impact of Change**

- (i) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges; and
- (ii) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

#### **1.1.3 Continuous improvement**

- (i) for the Parties to challenge each other with ideas for efficiency and improvements; and

to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "Financial Transparency Objectives").

### **2 OPEN BOOK DATA**

- 2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges (including any Cost Savings) are calculated.

- 2.2 During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:

2.2.1 maintain and retain the Open Book Data; and

2.2.2 disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

### **3      ONEROUS CONTRACTS**

- 3.1      If the Supplier publicly designates this Contract as an Onerous Contract (including where the Supplier has identified this Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (and in any event, no later than two (2) months following the publication of the designation) a draft Onerous Contract Report which includes the following:
- 3.1.1      an initial root cause analysis of the issues and circumstances which may have contributed to this Contract being designated as an Onerous Contract;
  - 3.1.2      an initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of this Contract as an Onerous Contract;
  - 3.1.3      the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
  - 3.1.4      details of any other options which could be put in place to remove the designation of this Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2      Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Contract Management Board, such final form report to be agreed no later than on (1) month following the Authority's receipt of the draft Onerous Contract Report.
- 3.3      The Contract Management Board shall meet within fourteen (14) Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers Team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4      The Supplier acknowledges and agrees that the report is submitted to the Authority and Contract Management Board on an information only basis and the Authority and Contract Management Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

## **PART B – FINANCIAL REPORTS**

### **1 Provision of the Financial Reports**

#### **1.1 The Supplier shall provide**

- 1.1.1 the Contract Inception Report on or before the Effective Date; and
- 1.1.2 during the Term the following financial reports to the Authority, in the frequency specified below:

<b>Financial Report</b>	<b>When to be provided</b>
Contract Amendment Report	Within one (1) month of a Material Change being agreed between the Supplier and the Authority
Quarterly Contract Report	Within one (1) month of the end of each Quarter
Annual Contract Report	Within one (1) month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within six (6) months after the end of the Term

- 1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Contract. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
- 1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 1.4 Each Financial Report shall:
  - 1.4.1 be completed by the Supplier using reasonable skill and care;
  - 1.4.2 incorporate and use the same defined terms as are used in this Contract;
  - 1.4.3 quote all monetary values in pounds sterling;
  - 1.4.4 quote all Costs as exclusive of any VAT; and
  - 1.4.5 quote all Costs and Charges based on current prices.
- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:

- 1.5.1 being accurate and not misleading;
  - 1.5.2 having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
  - 1.5.3 being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
  - 1.5.4 compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
- 1.6.1 prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
  - 1.6.2 to the extent permitted by Law, ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
  - 1.6.3 to the extent permitted by Law, ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and
  - 1.6.4 not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of eighteen (18) months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- 1.8.1 the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
  - 1.8.2 the forecast Charges for the remainder of the Term,
- the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Contract.

## **2 Financial Model**

- 2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
- 2.1.1 the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
  - 2.1.2 the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and

to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and

2.1.3 the Authority shall either within ten (10) Working Days of the meeting referred to in Paragraph 2.1.1 notify the Supplier that:

(a) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within ten (10) Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, Approve or reject such Financial Report; or

(b) the Authority has Approved the relevant Financial Report.

2.2 Following Approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1.3, that version shall become, with effect from the date of such approval, the current Approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within thirty (30) Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 23 (*Dispute Resolution Procedure*).

### **3 Discussion of Quarterly Contract Reports and Final Reconciliation Report**

3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within ten (10) Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

### **4 Key Sub-contractors**

4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

4.2.1 be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and

4.2.2 on written request by the Authority, provide the Authority or procure that the Authority is provided with:

- (a) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
- (b) further explanation of, and supporting information in relation to, any audit reports provided.

## **PART C: AUDIT RIGHTS**

### **1 AUDIT RIGHTS**

1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of eighteen (18) months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Contract, including for the following purposes:

- 1.1.1 to verify the integrity and content of any Financial Report;
- 1.1.2 to verify the accuracy of the Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to such Charges and payments);
- 1.1.3 to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- 1.1.4 to verify the Open Book Data;
- 1.1.5 to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law;
- 1.1.6 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- 1.1.7 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the guarantor if a Guarantee has been provided pursuant to Clause 4.3, and/or any Key Sub-contractors or their ability to perform the Services;
- 1.1.8 to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- 1.1.9 to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- 1.1.10 to carry out the Authority's internal and statutory Audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- 1.1.11 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- 1.1.12 to verify the accuracy and completeness of any Management Information delivered or required by this Contract;



- 1.1.13 to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
  - 1.1.14 to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
  - 1.1.15 to review the accuracy and completeness of the Registers;
  - 1.1.16 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
  - 1.1.17 to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
  - 1.1.18 to review the Supplier's compliance with the Standards;
  - 1.1.19 to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
  - 1.1.20 to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Authority may not conduct an Audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

## **2 CONDUCT OF AUDITS**

- 2.1 The Authority shall during each Audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each Audit, including:
- 2.2.1 all information requested by the Authority within the permitted scope of the Audit;
  - 2.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - 2.2.3 access to the Supplier System; and
  - 2.2.4 access to Supplier Personnel.

- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least fifteen (15) Working Days' notice of its intention to conduct an Audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the Audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the Audit.

### **3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an Audit either itself or through its Audit Agents, the Authority may require in writing that an Audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant Audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- 3.2.1 the resultant Audit reports; and
  - 3.2.2 all relevant members of the Supplier's internal audit team for the purpose of understanding such Audit reports.

### **4 RESPONSE TO AUDITS**

- 4.1 If an Audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
- 4.1.1 the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
  - 4.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
  - 4.1.3 the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
    - (i) the amount overpaid;
    - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
    - (iii) the reasonable costs incurred by the Authority in undertaking the Audit,

provided always that the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

- 4.1.4 the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority

**Schedule 20- NOT USED**

## **Schedule 21**

### **(GOVERNANCE)**

#### **1 DEFINITIONS**

1.1 In this Schedule the following definitions shall apply:

<b>Accountable Officer</b>	has the meaning given in Paragraph 2.3;
<b>Annual Strategic and Operational Plan</b>	the annual strategic and operational plan developed in accordance with Paragraph 6;
<b>Board Member</b>	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 to this Schedule and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
<b>Board</b>	the Contract Management Board and, if relevant, the Transition Oversight Board and <b>Board</b> shall mean either of them as necessary;
<b>Contract Management Board</b>	the body described in paragraph 4 of this Schedule;
<b>Contract Management Board</b>	the meetings to be held Quarterly as set out in Annex 1;
<b>Contract Managers</b>	the individuals appointed as such by the Authority and the Supplier in accordance with paragraph 2.2 of this Schedule; and
<b>NIHR Stakeholder</b>	any person or organisation (or groups thereof) with an interest or concern in the NHS, health and care, health research or the NIHR generally.

#### **2 MANAGEMENT OF THE SERVICES**

##### **Accountability**

2.1 The Supplier shall be directly accountable to the Department of Health and Social Care Deputy Director – Head of Research Systems and ultimately, via the Authority's Director of Science, Research and Evidence Directorate, to the Department of Health and Social Care – the Secretary of State for Health and Social Care.

##### **Contract Managers**

2.2 Prior to the Operational Service Commencement Date, the Supplier shall appoint its Contract Manager and inform the Authority of the name and contact details of such individual. Until the Supplier has appointed such individual as Contract Manager, Redacted shall act as an interim Contract Manager and the Authority shall appoint any person as its Contract Manager for the purposes of this Contract, through whom the Services shall be managed day-to-day in accordance with this Schedule. In addition to any Board

meetings, the Supplier shall attend meetings with the Authority upon reasonable notice from the Authority's Contract Manager to review progress and discuss the Services.

### **Accountable Officer**

- 2.3 The Supplier hereby appoints **Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act (2000)**, to act as an accountable officer responsible for the strategic management of this Contract and to be responsible for quality assurance of the Services provided by the Supplier ("**Accountable Officer**"). The Accountable Officer shall attend Board meetings at the request of the Authority. The Supplier may at any time after the Effective Date propose a change in the identity of the Accountable Officer.
- 2.4 During any period when the Accountable Officer is unable through illness, incapacity, holidays or any other reason to carry out or exercise their functions under this Contract, the Accountable Officer may delegate their functions to another person by giving the Deputy Director and Head of Research Systems, Science, Research and Evidence Directorate, the Department of Health and Social Care, written notice of the identity of such person.

### **Resources**

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

### **Mutual trust and co-operation**

- 2.6 Without prejudice to the Authority's rights of Approval (as set out in this Schedule or elsewhere in the Contract) and termination under this Contract), both Parties shall work together in accordance with the provisions of this Schedule and in a spirit of mutual trust and co-operation such that the aims, objectives and specific provisions of this Contract can be fully realised.

### **Behaviours**

- 2.7 The Authority shall be committed to:
- 2.7.1 proactively helping to resolve issues and mitigate risks;
  - 2.7.2 responding to feedback from the Supplier, and taking action on problem areas effectively;
  - 2.7.3 demonstrating consistent willingness to build long term and sustainable working relationships with the Supplier;
  - 2.7.4 consulting the Supplier, and working jointly, to address challenges involved with the delivery of the Services;
  - 2.7.5 demonstrating transparency where appropriate;
  - 2.7.6 sharing and interacting in an open and forward looking manner; communicating concisely, consistently and, in the Authority's opinion, in a reasonable manner appropriate for Supplier Personnel;

- 2.7.7 proactivity in raising likely changes in approach arising from Law and Standards;
  - 2.7.8 articulating requirements efficiently; and
  - 2.7.9 providing adequate and detailed documentation that describes its needs, expectations, and requirements in a timely manner to enable the Supplier to conduct its work, with a delivery timetable that is described adequately.
- 2.8 Without prejudice to any express obligations on the Supplier elsewhere in the Contract, the Supplier shall be committed to:
- 2.8.1 giving early warnings to the Authority when it becomes aware of any matter that could affect the achievement of any aims, objectives and specific provisions of this Contract;
  - 2.8.2 proactively resolving issues and mitigating risk;
  - 2.8.3 proactively sharing knowledge with the Authority;
  - 2.8.4 being responsive and adaptive to the Authority's language and style;
  - 2.8.5 working in a collaborative and supportive way with the Authority and other suppliers, whilst communicating in a well-considered, consistent, concise straightforward and appropriate way for a wide range of NIHR Stakeholders;
  - 2.8.6 co-operating with the Authority and NIHR Stakeholders in obtaining and providing information which they need in connection with the Services;
  - 2.8.7 being customer focused, business aware and creative;
  - 2.8.8 prioritising value over cost, tailoring provision of the Services to feedback and change requests; and
  - 2.8.9 demonstrating innovative behaviours, generating ideas and concepts for areas of work; getting involved in productive discussions about ideas and innovations.

### **3 BOARDS**

#### **Establishment and structure of the Boards**

- 3.1 The Boards shall be established by the Authority for the purposes of this Contract and both the Supplier and the Authority shall be represented on each Board.
- 3.2 In relation to any Board, with the exception of the Transition Oversight Board, the:
  - 3.2.1 Authority's Board Members;
  - 3.2.2 Supplier's Board Members;
  - 3.2.3 frequency that the Board shall meet (unless otherwise agreed between the Parties);
  - 3.2.4 location of the Board's meetings; and

- 3.2.5       planned start date by which the Board shall be established,  
shall be as set out in Annex 1 to this Schedule.
- 3.3       In respect of the Transition Oversight Board, the Parties shall comply with the provisions of Schedule 13 (*Implementation Plan and Transition*).
- 3.4       In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing, it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

### **Board meetings**

- 3.5       Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- 3.5.1       a delegate attends the relevant Board meeting in their place who (wherever possible) is properly briefed and prepared; and
- 3.5.2       they are debriefed by such delegate after the Board Meeting.
- 3.6       A chairperson shall be appointed by the Authority for each Board as identified in Annex 1 to this Schedule. The chairperson shall be responsible for:
- 3.6.1       chairing the Board meetings;
- 3.6.2       monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings; and
- 3.6.3       facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.7       The Supplier shall, in respect of any Board Meeting which is not a Transition Oversight Board meeting:
- 3.7.1       schedule Board meetings by agreement with the chairperson;
- 3.7.2       set and prepare the agenda for Board meetings for approval by the chairperson;
- 3.7.3       record the minutes for Board meetings for approval by the chairperson within seven (7) Working Days after Board meetings and once approval is obtained, disseminate electronically to all Board meeting participants within two (2) Working Days of such approval; and
- 3.7.4       prepare and circulate the agenda and all meeting papers to every Board Member and any other Board meeting participants no later than ten (10) Working Days before each Board meeting.



- 3.8 Board meetings shall be quorate as long as at least two representatives from each Party are present but the Authority reserves the right to specify in advance a different quorum requirement depending on the nature of the meeting.
- 3.9 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

#### **4 ROLE OF THE CONTRACT MANAGEMENT BOARD**

- 4.1 The Contract Management Board shall be responsible for reviewing the management and delivery of the Services and shall:
- 4.1.1 deal with the prioritisation of resources and confirm the appointment of Contract Managers on behalf of the Parties in accordance with paragraph 2.2 of this Schedule;
  - 4.1.2 review performance of the Services against the Performance Indicators and agree corrective actions as set out in this Contract as required;
  - 4.1.3 (without limitation to 4.1.2 immediately above) monitor the Supplier's performance against any and all targets, and its delivery of any and all deliverables, agreed as part of the latest Annual Strategic and Operational Plan;
  - 4.1.4 monitor and oversee any Rectification Plan Processes;
  - 4.1.5 review the financial management and performance of the Supplier and ensure adequate preventative measures are in place at all times to minimise the risk of fraud; and
  - 4.1.6 review the relationship management arrangements to ensure the continued smooth operation of the Contract.
- 4.2 The Contract Management Board shall hold the Contract Management Board Meetings in accordance with the frequency set out in Annex 1.
- 4.3 The Contract Management Board shall meet in May of every Contract Year for the annual review meeting ("**Annual Review Meeting**"), which shall be attended by the Contract Management Board members and any other persons considered by the Authority necessary for the review.
- 4.4 During each Annual Review Meeting the Contract Management Board shall review the performance of the Supplier over the previous Financial Year which, as a minimum, shall include consideration of:
- 4.4.1 the framing and content of the performance data that is to be published. For the avoidance of doubt, the Authority shall have sole and absolute discretion over the framing and content of the performance data that is to be published; and
  - 4.4.2 progress in the implementation of the Supplier Solution.

- 4.5 During the fourth (4<sup>th</sup>) Annual Review Meeting the Authority shall formally review such aspects of the Supplier's delivery of the Contract and the Authority Requirements (including any changes to the Authority Requirements that are potentially necessary) as the Authority considers reasonably necessary to enable the Authority to decide if it wants to exercise its right to terminate in accordance with Clause 4.2. Further to such Annual Review Meeting, the Authority shall be under no obligation to inform the Supplier of its decision concerning its right to terminate under Clause 4.2 and shall issue any notice of termination in accordance Clause 4.2.
- 4.6 The Contract Management Board meeting in January shall consider the draft Strategic and Operational Plan for the following Financial Year.
- 4.7 The Authority shall give at least twenty (20) Working Days' notice of each Contract Management Board meeting, unless the Authority determines in its reasonable opinion that an urgent Contract Management Board meeting is required. If an urgent Contract Management Board is required, the Authority shall give a shorter notice and the Supplier's obligations under paragraph 3.7 above shall be adjusted accordingly solely in respect of such Contract Management Board Meeting by the Authority and notified to the Supplier at the time of giving such notice. The notice shall include the date, time and location of the meeting.

## **5 CONTRACT MANAGEMENT MECHANISMS**

- 5.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
- 5.2.1 the identification and management of risks;
  - 5.2.2 the identification and management of issues; and
  - 5.2.3 monitoring and controlling project plans.

## **6 ANNUAL STRATEGIC AND OPERATIONAL PLAN**

- 6.1 The Supplier shall submit to the Authority for Approval (the decision of the Authority to Approve or not shall be at the Authority's sole and absolute discretion) a draft Annual Strategic and Operational Plan for the first Financial Year no later than twenty (20) Working Days prior to the Operational Service Commencement Date which shall be the commencement date for such Annual Strategic and Operational Plan.
- 6.2 Following the Operational Service Commencement Date the Supplier shall submit to the Authority for Approval (at the Authority's sole and absolute discretion) a draft Annual Strategic and Operational Plan for each successive Financial Year within twenty (20) Working Days before each of the January Contract Management Board Meetings.
- 6.3 The Supplier shall ensure that the draft Annual Strategic and Operational Plan:
- 6.3.1 includes:
    - (i) a specification of key projects and the outcomes and outputs to be delivered;

- (ii) a delivery plan based on tasks and deliverables;
- (iii) a description of the Supplier's methods to avoid any and all Performance Failures; and
- (iv) financial performance and planning proposals for any ongoing Authority Emergent Service(s).

6.4 Following receipt of a draft Annual Strategic and Operational Plan from the Supplier submitted pursuant to paragraph 6.1 and 6.2 of this Schedule, the Authority shall:

6.4.1 review and comment on the draft Annual Strategic and Operational Plan as soon as reasonably practicable; and

6.4.2 notify the Supplier in writing that it Approves or rejects the draft Annual Strategic and Operational Plan no later than five (5) Working Days after the date the draft Annual Strategic and Operational Plan is discussed during the Contract Management Board Meeting referred to in paragraph 4.6 of this Schedule.

6.5 If the Authority rejects the draft Annual Strategic and Operational Plan:

6.5.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

6.5.2 the Supplier shall then revise the draft Annual Strategic and Operational Plan (taking reasonable account of the Authority's comments) and shall re-submit a draft Annual Strategic and Operational Plan to the Authority for the Authority's Approval within ten (10) Working Days of the Authority's notice of rejection. The Authority shall then review and comment on the revised draft Annual Strategic and Operational Plan and notify the Supplier in writing that it approves or rejects it within ten (10) Working Days from receipt. The provisions of this Paragraph 6 shall apply again to any resubmitted draft Annual Strategic and Operational Plan, provided that either Party may at any time refer any disputed matters for resolution in accordance with the Dispute Resolution Procedure.

## **7 REPORTING**

7.1 The Supplier shall provide the reports as detailed in the table below to the Authority in accordance with the delivery dates set out:

<b>Name</b>	<b>Content</b>	<b>Delivery Date</b>
1. Quarterly reports on the performance of the against the Contract	<p>The Performance Monitoring Report and any and all other information and data highlighting the Supplier's performance against the Performance Indicators.</p> <p>Any other management information reasonably requested by the</p>	Ten (10) Working Days before each of Contract Management Board Meetings which take place in July, October and January.

	Authority from time to time.	
2. Annual report on the performance of the against the Contract	<p>The Performance Monitoring Report and any and all information and data highlighting the Supplier's performance against the Performance Indicators.</p> <p>Any other management information reasonably requested by the Authority from time to time.</p>	Ten (10) Working Days before the Annual Review Meeting in May
3. Annual reports on the Insurances	As specified by the Authority	Upon request by the Authority
4. Security reports	As specified by the Authority	Upon request by the Authority
5. Supply Chain Transparency Reports	In the form specified in Annex 2 to this Schedule	In accordance with Clause 15.27
6. Financial reports	As set out in Part B of Schedule 19 ( <i>Financial Reports and Audit Rights</i> )	As set out in Part B of Schedule 19 ( <i>Financial Reports and Audit Rights</i> )

7.2 The Authority shall inform the Supplier of which of the above reports are to be considered Transparency Reports for the purpose of this Contract.

### **ANNEX 1 - Contract Management Board Representation and Structure**

Authority Members of Contract Management Board	Redacted in accordance with Sec 40 and/or Sec 43 of the Freedom of Information Act
Supplier Members of Contract Management Board	Redacted in CEO, BMJ Group (to be appointed prior to Operational Service Commencement Date)  Redacted in , Director of Partnership Development (acting member until appointment of Redacted in )
Chairperson	Redacted in
Start Date for Contract Management Board meetings	1 <sup>st</sup> Working Day in July 2025
Frequency of Contract Management Board meetings	<b>Quarterly Meetings:</b> July, October, January in each Contract Year after the Operational Service Commencement Date and any additional meetings as reasonably required by the Authority.  <b>Annual Review Meeting:</b> May (covers whole Financial Year PLUS last quarter of previous Financial Year)
Location of Contract Management Board meetings	Virtual

## Annex 2

### Supply Chain Transparency Information Template

See Clause 15.27 for Supplier obligations in respect of this Template.

	Financial Year 20[ ]			
	Under this Contract		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	£[ ]	[ ]	£[ ]	[ ]

## **Schedule 22**

### **(CHANGE CONTROL PROCEDURE)**

#### **1 Change Control Procedure**

- 1.1 Subject to the other provisions of this Schedule and the provisions of Schedule 15 (*Charges and Invoicing*), either Party may request a Change, provided that such Change does not infringe the Public Contract Regulations 2015 ("Regulations") or (where the Regulations are replaced) any legislation replacing the Regulations and, save where the Parties otherwise agree, does not relate to the introduction and implementation of one or more Authority Emergent Services,
- 1.2 The Parties acknowledge and agree that the introduction, consideration and implementation of any Authority Emergent Service(s) shall be made in accordance with (and subject to) Clauses 5.10 and 5.12 and (unless the Parties otherwise agree) without reference to the processes set out in this Schedule except that a Change Authorisation Note shall be completed and signed by the Parties to include the relevant Authority Emergent Service as forming part of the Contract.
- 1.3 A Party may request a Change by completing and sending a Change Request Form as set out in Annex 1 of this Schedule to the other Party giving sufficient information for the receiving Party to assess the extent of the proposed Change and any additional cost that may be incurred.
- 1.4 If the Authority requires the Supplier to carry out an impact assessment of the proposed Change on the Services (the "Impact Assessment"), the Authority may note this on the Change Request Form if the Authority is seeking the proposed Change or may give notice to the Supplier upon receipt of a Change Request Form issued by the Supplier. In either case, the Supplier shall prepare and submit to the Authority an estimate of the costs of carrying out the Impact Assessment ("Impact Assessment Costs") for the Authority's approval. If the Authority notifies the Supplier that the Impact Assessment Costs are Approved by the Authority (either upon receipt or, subject to paragraph 1.11 below, further to negotiations with the Supplier), the Supplier shall, promptly and in good faith complete the Impact Assessment and shall include sufficient detail to enable the Authority to fully consider the impact of the proposed Change, including:
  - 1.4.1 details of the impact of the proposed Change on the Services, any affected Performance Indicators, plans and timetables previously agreed by the Parties under this Contract and on the Supplier's ability to meet its other obligations under this Contract;
  - 1.4.2 full visibility and breakdown of any cost of implementing the proposed Change, including any relevant supporting evidence, which is reasonably necessary for the Authority to substantiate and verify the proposed costs (including any relevant Open Book Data);
  - 1.4.3 details of the ongoing costs required by the proposed Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

- 1.4.4 a timetable for the implementation, together with any proposals for the testing of the proposed Change; and
  - 1.4.5 such other information as the Authority may reasonably request in (or in response to) the Change request or an Impact Assessment.
- 1.5 The Parties may agree to adjust the time limits specified in the Change Request Form to allow for the preparation of the Impact Assessment.
- 1.6 The Party in receipt of the Change Request Form shall respond to the request within the time limits specified in the Change Request Form. Such time limits shall be reasonable and ultimately may be amended at the discretion of the Authority having regard to the nature of the Services and the proposed Change.
- 1.7 In the event that:
  - 1.7.1 the Supplier is unable to agree to or provide the proposed Change; and/or
  - 1.7.2 the Parties are unable to agree a change to the Charges that may be included in a request for or response to a request for a proposed Change,the Authority may:
  - 1.7.3 agree to disregard the potential Change and the Supplier's performance of this Contract shall continue without such proposed Change; or
  - 1.7.4 terminate this Contract with immediate effect, except where the Supplier has already fulfilled part or all of the Services in accordance with this Contract or where the Supplier can show evidence of substantial work being carried out to provide the Services under this Contract, and in such a case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure.
- 1.8 If the Parties agree the Change:
  - 1.8.1 the Parties shall complete and execute a Change Authorisation Note in the form set out in Annex 2;
  - 1.8.2 once the Change Authorisation Note is executed by the authorised signatory of each Party, the Change shall be considered to form part of the Contract and the Parties shall be bound by such Change, as though such Change was stated in this Contract.
  - 1.8.3 the Supplier shall implement such Change.
- 1.9 Until a Change Authorisation Note has been signed in accordance with Paragraph 1.7 above, then:
  - 1.9.1 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 Contract as if the proposed Change did not apply; and



- 1.9.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Change, shall be without prejudice to each Party's other rights under this Contract.
- 1.10 Subject to Paragraph 1.11:
  - 1.10.1 the costs of preparing each request for a Change shall be borne by the Party issuing the Change Request Form; and
  - 1.10.2 the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party issuing the Change Request Form provided that if the Authority has issued the Change Request Form, 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 (and the Authority may seek evidence from the Supplier where the Supplier states that it is not able to achieve this); and
    - (ii) such costs exceed those in the Impact Assessment Estimate referred to in paragraph 1.4 above.
- 1.11 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.
- 1.12 If the Parties are unable to agree the Impact Assessment Costs, either Party may refer the matter to the Dispute Resolution Procedure.

**ANNEX 1 – CHANGE REQUEST FORM**

Change Request No.:	Title:		
Contract:		Date by which response required:	
Action:		Party requesting change:	
Raised by:			
Area(s) impacted (optional field):			
Assigned for Impact Assessment by (optional field):			
Assigned for Impact Assessment to (optional field):			
Supplier reference no.:			
Full description of requested Change (including proposed changes to the wording of the Contract):			
Reasons for and benefits and disadvantages of requested Change:			
Date by which Change must be implemented:			
Impact on Charges (if known):			
Signature of Party requesting change (must be authorised signatory):			
Date of request:			

## **ANNEX 2 - CHANGE AUTHORISATION NOTE**

Change Request No:

.....

### **BETWEEN:**

**The Secretary of State for Health and Social Care (the Authority)**

and

**BMJ Publishing Group Limited (the Supplier)**

- 1 This Contract is varied as follows and shall take effect on the date signed by both Parties:

[Guidance Note: Insert details of the Change with reference to relevant Change Request Note and including any further aspects of the Change agreed by the Parties not included in the Change Request Note (e.g. changes to Contract provisions).]

- 2 Words and expressions in this Change Authorisation Note shall have the meanings given to them in this Contract.

- 3 This Contract, including any previous Changes, shall remain effective and unaltered except as amended by this Change Authorisation Note.

4

Signed by an authorised signatory for and on behalf of the Authority:

Signature .....

Date .....

Name (in Capitals) .....

Address .....

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

Signature .....

Date .....

Name (in Capitals) .....

Address .....

.....

## **Schedule 23**

### **(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, located at 1 Patternoster Lane. St Paul's, London, EC4M 7BQ;
<b>Counter Notice</b>	has the meaning given to it in Paragraph 7.2 of this Schedule;
<b>Expert</b>	the person appointed by the Parties in accordance with Paragraph 6.2 of this Schedule;
<b>Mediation Notice</b>	has the meaning given to it in Paragraph 4.2 of this Schedule; and
<b>Mediator</b>	the independent third party appointed in accordance with Paragraph 5.2 of this Schedule.

#### **2 DISPUTE NOTICES**

2.1 If a Dispute arises then:

- 2.1.1 the Authority's Representative and the Supplier's Representative shall attempt in good faith to resolve the Dispute; and
- 2.1.2 if such attempts are not successful within a reasonable period, not being longer than twenty (20) Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice shall set out:

- 2.2.1 the material particulars of the Dispute;
- 2.2.2 the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
- 2.2.3 if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable as set out in Paragraph 3 of this Schedule, the reason why.

2.3 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.

2.4 Subject to Paragraph 4.2 of this Schedule, the Parties shall seek to resolve Disputes:

- 2.4.1 first by commercial negotiation (as prescribed in Paragraph 4 of this Schedule);

- 2.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5 of this Schedule); and
  - 2.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 7 of this Schedule) or litigation (in accordance with Clause 44 of this Contract (Governing Law and Jurisdiction)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6 of this Schedule) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6 of this Schedule.

### **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 five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
  - 3.2.1 in Paragraph 4.2.3 of this Schedule, ten (10) Working Days;
  - 3.2.2 in Paragraph 5.2 of this Schedule, ten (10) Working Days;
  - 3.2.3 in Paragraph 6.2 of this Schedule, five (5) Working Days; and
  - 3.2.4 in Paragraph 7.2 of this Schedule, ten (10) Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within two (2) Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than five (5) Working Days before the end of the period of time specified in the applicable Paragraphs (or two (2) Working Days in the case of Paragraph 3.2). 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 NEGOTIATIONS**

- 4.1 Following the service of a Dispute Notice, the Authority and the Supplier shall use reasonable endeavours to resolve the Dispute as soon as possible, by commercial negotiation between the Authority's [Director of Science, Research and Evidence Directorate] and the Supplier's [Accountable Officer].
- 4.2 If:

- 4.2.1 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;
- 4.2.2 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 of this Schedule; or
- 4.2.3 the Parties have not settled the Dispute in accordance with Paragraph 4.1 of this Schedule within thirty (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 of this Schedule (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 a Mediator within twenty (20) Working Days from and including the service of the Mediation Notice, then either Party may apply to CEDR to nominate the Mediator.
- 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 financial 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 ten (10) Working Days of the relevant request made under Paragraph 6.1, or if the person appointed is unable or unwilling to act, the Expert shall be appointed:
  - 6.2.1 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);

6.2.2 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

6.2.3 if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:

(i) an appropriate body agreed between the Parties; or

(ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 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:

6.3.1 they shall act as an expert and not as an arbitrator and shall act fairly and impartially;

6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;

6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make their determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

6.3.5 the process shall be conducted in private and shall be confidential; and

6.3.6 the Expert shall determine how and by whom the costs of the determination, including their 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 of this Schedule.

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 fifteen (15) Working Days following receipt of such notice to serve a reply (a **Counter Notice**) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts in accordance with Clause 44 of this Contract (*Governing Law and*

*Jurisdiction*). The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.

7.3 If the Authority serves a Counter Notice, then:

7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or

7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts in accordance with Clause 44 of this Contract (*Governing Law and Jurisdiction*), the Dispute shall be so referred to the courts and the Supplier shall not commence arbitration proceedings.

7.4 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 7.2 of this Schedule, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 of this Schedule or commence court proceedings in the courts in accordance with Clause 44 of this Contract (*Governing Law and Jurisdiction*) 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 7.3:

7.5.1 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 7.57.5.5 to 7.57.5.7 of this Schedule);

7.5.2 the arbitration shall be administered by the LCIA;

7.5.3 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 Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

7.5.4 if the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

7.5.5 the chair of the arbitral tribunal shall be British;

7.5.6 the arbitration proceedings shall take place in London and in the English language; and

7.5.7 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:

8.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party's Intellectual Property Rights; and/or



- 8.1.2 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.

**Schedule 24- – NOT USED**

## **Schedule 25**

### **(EXIT MANAGEMENT)**

#### **Schedule 25: Exit Management**

##### **1 Definitions**

1.1 In this Schedule, the following definitions shall apply:

<b>“Emergency Exit”</b>	any termination of this Contract which is a:  (a) termination of the whole or part of this Contract in accordance with Clause 31 ( <i>Termination Rights</i> ), except where the period of notice given under that Clause is greater than or equal to six (6) months;  (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 ( <i>Termination Rights</i> ); or  (c) wrongful termination or repudiation of this Contract by either Party;
<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 Contract;
<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 Contract which occurs:  (a) pursuant to Clause 31 ( <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 six (6) months;

(b) as a result of the expiry of the Contract as set out in Clause 4.1; or

(c) pursuant to Clause 4.2 under which the Authority may terminate this Contract at the end of the fifth (5<sup>th</sup>) Contract Year;

**“Transferable Assets”** those of the Exclusive Assets which are capable of legal transfer to the Authority;

**“Transferable Contracts”** 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;

**“Transferring Contracts** has the meaning given in Paragraph 7.2.3.

## **2 Obligations During the Term to Facilitate Exit**

2.1 During the Term, the Supplier shall:

2.1.1 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;

2.1.2 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;

2.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and

- 2.1.4 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 Contract.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within three (3) months of the Effective Date. The 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 Contract and all matters connected with this Schedule and each Party's compliance with it.

### **3 Obligations to Assist on Re-tendering of Services**

- 3.1 On reasonable notice at any point during the Term, the 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:
- 3.1.1 details of the Service(s);
  - 3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
  - 3.1.3 an inventory of Authority Data in the Supplier's possession or control;
  - 3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
  - 3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
  - 3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
  - 3.1.7 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:

3.3.1 notify the Authority within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and

3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within ten (10) Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs if the Authority requests more than four updates in any six (6) Month period.

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

3.5.1 prepare an informed offer for those Services; and

3.5.2 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 ten (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, by 17:00 (London time) on 1 July 2025, deliver to the Authority an Exit Plan which:

5.1.1 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 Contract;

5.1.2 complies with the requirements set out in Paragraph 5.3; and

5.1.3 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 twenty (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:

- 5.3.1 how the Exit Information is obtained;
- 5.3.2 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;
- 5.3.3 a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
- 5.3.4 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
- 5.3.5 the management structure to be employed during the Termination Assistance Period;
- 5.3.6 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;
- 5.3.7 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);
- 5.3.8 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);
- 5.3.9 a timetable and critical issues for providing the Termination Services;
- 5.3.10 how the Termination Services would be provided (if required) during the Termination Assistance Period;
- 5.3.11 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 28 (*Staff Transfer*); and
- 5.3.12 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 fourteen (14) days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within twenty (20) Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that twenty (20) Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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

- 5.6 Within twenty (20) Working Days after service of a Termination Notice by either Party or six (6) months prior to the expiry of this Contract, the 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 twenty (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 four (4) months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than one (1) month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Services are required;
  - 6.1.2 the nature of the Termination Services required; and
  - 6.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than twenty-four (24) months after the expiry or earlier termination of this Contract.
- 6.2 The Authority shall have:



- 6.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend the Termination Assistance period beyond the date which is thirty (30) months after expiry of the Initial Term or any Extension Period or earlier termination of this Contract ;and provided that it shall notify the Supplier to such effect no later than twenty (20) Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- 6.2.2 the right to terminate its requirement for Termination Services by serving not less than twenty (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:
  - 6.3.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
  - 6.3.2 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 Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
  - 6.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority;
  - 6.3.4 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
  - 6.3.5 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 6.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 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:
- 6.7.1 cease to use the Authority Data;
  - 6.7.2 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);
  - 6.7.3 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;
  - 6.7.4 return to the Authority such of the following as is in the Supplier's possession or control:
    - (i) any parts of the IT Environment and any other equipment which belongs to the Authority; and
    - (ii) any items that have been on-charged to the Authority, such as consumables;
  - 6.7.5 vacate any Authority Premises unless access is required to continue to deliver the Services;
  - 6.7.6 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to twelve (12) months after the Partial Termination, expiry or termination of this Contract to:
    - (i) such information relating to the Services as remains in the possession or control of the 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 6.7.6(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.

- 6.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier under this Contract shall be terminated with effect from the Partial Termination, termination or expiry (as the case may be) of this Contract ("**Expiry Date**"), save to the extent that such licences, leases and/or authorisations need to be retained by the Supplier for the purposes of providing (where a Termination Assistance Notice shall have been issued in accordance with Paragraph 6.1 and the Termination Assistance Period is scheduled to end after the Expiry Date) any Service(s) and/or Termination Assistance after the Expiry Date or for statutory compliance purposes, in which case the Supplier shall notify the Authority prior to the Expiry Date of its requirements and the Parties shall meet to discuss and (acting reasonably) agree alternative arrangements proportionate to those requirements and on clear terms, which shall be documented and shared between the Parties prior to the Expiry Date.

6.10 If:

- 6.10.1 a Termination Assistance Notice is issued by the Authority in accordance with Paragraph 6.1 above;
- 6.10.2 the Termination Assistance Period is scheduled to end after the Expiry Date; and
- 6.10.3 the Supplier is required by the Authority in the Termination Assistance Notice to continue providing any or all of the Services on and after the Expiry Date for the remainder of the Termination Assistance Period or such lesser period after the Expiry Date as the Authority requires in the Termination Assistance Notice,

the Supplier shall (unless the Parties agree otherwise in writing and subject to the Authority's right to terminate its requirement for the Termination Services under paragraph 6.2) be entitled to be paid, and the Authority shall pay to the Supplier, in arrears, subject to the Supplier submitting to the Authority a Valid Invoice for the same:

- 6.10.4 for each full ninety (90) calendar day period on and after the Expiry Date, during which such services are so delivered in accordance with the provisions of this Contract, an amount equal to the aggregate of the Charges applicable in respect of those services in the penultimate Service Period immediately preceding the Expiry Date; and
- 6.10.5 for any period being less than ninety (90) days on or after the Expiry Date, during which such services are so delivered in accordance with the provisions of this Contract, an amount equal to  $A \times B$ , where:

A = the aggregate of the Charges applicable to those services in the penultimate Service Period preceding the Expiry Date; and

B = the number of calendar days in that period divided by ninety (90).

## **7      Assets, Sub-contracts and Software**

7.1      Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:

7.1.1      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;

7.1.2      (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or

7.1.3      terminate, enter into or vary any licence for software in connection with the Services.

7.2      Within twenty (20) Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3.5, the Authority shall provide written notice to the Supplier setting out:

7.2.1      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**");

7.2.2      which, if any, of:

(i)      the Exclusive Assets that are not Transferable Assets; and

(ii)      the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

7.2.3      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**"),

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. Where requested by the Supplier, the Authority and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.

7.3      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:

7.3.1      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

- 7.3.2 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 Contract, 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.
- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2.2 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:
  - 7.5.1 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
  - 7.5.2 procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 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.
- 7.7 The Authority shall:
  - 7.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
  - 7.7.2 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.
- 7.8 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.
- 7.9 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:
  - 7.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
  - 7.9.2 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 Schedule 32 (*Intellectual Property Rights*).

## **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 28 (*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 twelve (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 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:
  - 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
  - 10.1.2 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
  - 10.1.3 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 TERMINATION ASSISTANCE**

### **1 SCOPE OF THE TERMINATION ASSISTANCE**

- 1.1 The Termination Assistance to be provided by the Supplier shall include such of the following services as the Authority may specify:
- 1.1.1 ceasing all non-critical Software changes (except where agreed in writing with the Authority);
  - 1.1.2 notifying the Sub-Contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
  - 1.1.3 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;
  - 1.1.4 delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the twelve (12) Month period immediately prior to the commencement of the Termination Services;
  - 1.1.5 providing details of work volumes and staffing requirements over the twelve (12) Month period immediately prior to the commencement of the Termination Services;
  - 1.1.6 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;
  - 1.1.7 providing the Authority with any problem logs which have not previously been provided to the Authority;
  - 1.1.8 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of twelve (12) Months after the Termination Assistance Period;
  - 1.1.9 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;
  - 1.1.10 reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
  - 1.1.11 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;

- 1.1.12 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;
- 1.1.13 agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
- 1.1.14 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;
- 1.1.15 agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.1.16 delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's or (if more than one) Replacement Suppliers' operations staff (on appropriate media) as reasonably requested by the Authority;
- 1.1.17 assisting with the loading, testing and implementation of the production databases;
- 1.1.18 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- 1.1.19 providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- 1.1.20 answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- 1.1.21 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;
- 1.1.22 providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) Months afterwards for the purpose of the smooth transfer of the 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

1.1.23 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;
- (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; and
- (iv) allowing the Authority and/or the Replacement to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Authority and the Replacement Supplier with any applicable security and/or health and safety restrictions),

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

1.2 The Supplier shall:

- 1.2.1 provide a documented plan relating to the training matters referred to in paragraph 1.1.14 of this Annex 1 for agreement by the Authority at the time of termination or expiry of this Contract;
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to paragraph 1.1.15 of this Annex 1, providing skills and expertise of a suitable standard; and
- 1.2.3 fully co-operate in the execution of the Authority Data migration plan agreed pursuant to paragraph 1.1.21 of this Annex 1, providing skills and expertise of a reasonably acceptable standard.

1.3 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.

1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to paragraph 1.1.23 of this Annex 1 shall include:

- 1.4.1 copies of up-to-date procedures and operations manuals;
- 1.4.2 product information;
- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier or (if more than one) Replacement Suppliers;
- 1.4.4 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;
- 1.4.5 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;
- 1.4.6 details of physical and logical security processes and tools which will be available to the Authority; and
- 1.4.7 any relevant interface information,

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

- 1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the 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:
  - 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this paragraph 1.5 of this Annex 1 shall:
  - 1.5.2 sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
  - 1.5.3 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
  - 1.5.4 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[ ] (the “Effective Date”).

**BETWEEN:**

- (1) [NAME OF AUTHORITY] (the “Authority”) [acting on behalf of the Crown] of [insert Authority’s address]; and
- (2) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty’s registered address] (the “Counterparty”),

together the “Parties” and each a “Party”.

**BACKGROUND**

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

**IT IS AGREED:**

**1 Definitions and Interpretation**

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

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

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

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

“**Conflicted Personnel**” means any Representatives of:

- (a) the Counterparty;
- (b) any of the Counterparty’s Affiliates; and/or
- (c) any Subcontractors,

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

**“Contract”** means any pre-existing or previous contract between the Authority and:

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

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

**“Control”** means the beneficial ownership of more than fifty per cent (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;

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

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

**“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 (and shall include an Invitation to Negotiate);

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

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

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

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

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

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

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

**“Representative”** means a person’s officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and, where the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the ITT Process;

**“Subcontractor”** means an existing or proposed subcontractor of:

(a) the Counterparty; and/or

(b) any of the Counterparty’s Affiliates,

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

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

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

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority, the Counterparty, any of the Counterparty’s Affiliates and/or any Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Authority, the Counterparty, any of its Affiliates and/or any Subcontractors (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.

- 1.6 Reference to Clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “**subsidiary undertaking**” and “**wholly owned subsidiary**” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds thirty per cent (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 Parties agree to be bound by the terms of this Agreement.

### **Conflicts of Interest**

- 2.2 The Counterparty:
- 2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives and the duties owed to the Authority under any Contract or pursuant to an open and transparent ITT Process; and
- 2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Authority under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.
- 2.3 Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:



- 2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;
- 2.3.2 providing to the Authority promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Authority promptly upon any change to it;
- 2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:
  - (i) about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
  - (ii) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process,  
  
becoming available to the Bid Team where the Authority has not made generally available that information to Other Bidders;
- 2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors in a form to be Approved by the Authority;
- 2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;
- 2.3.7 providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
- 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;
- 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.3.10 complying with any other action as the Authority, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

#### **Notification of Conflicts of Interest**

2.4 The Counterparty shall:

- 2.4.1 notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;

- 2.4.2 submit in writing to the Authority full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising ("**Proposed Avoidance Measures**"); and
- 2.4.3 seek the Authority's approval to the Proposed Avoidance Measures which the Authority shall have the right to grant, grant conditionally or deny (if the Authority rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).
- 2.5 The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.2 and 2.3 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.2 and 2.3.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

#### **Exclusion from the ITT Process**

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

#### **Bid Costs**

- 2.10 In no event shall the Authority be liable for any bid costs incurred by:
  - 2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or
  - 2.10.2 any Third Party,as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Subcontractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Subcontractors or Representatives, or any Third Party is or are excluded from the ITT Process.

#### **Specific Remedies**

- 2.11 The Counterparty acknowledges and agrees that:
- 2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and
  - 2.11.2 in the event of a breach of any of the obligations in Clause 2 which cannot be effectively remedied the Authority shall have the right to terminate both this Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.

### **3 Sole Responsibility**

- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives 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 The Counterparty shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- 5.2.1 any Crown Body; or
  - 5.2.2 to a body other than a Crown Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
  - 5.2.3 the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a Crown 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 or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **7 Transparency**

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

## **8 Notices**

- 8.1 Any notices sent under this Agreement must be in writing.
- 8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

	Counterparty	Authority
Contact		
Address		
Email		

- 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 the period of [*insert number*] (~~(x)~~) [*years*] from the Effective Date] OR [for the period of the duration of the Procurement Process].

## **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:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

## **Schedule 26**

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

#### **Part A: Service Continuity Plan**

##### **1 Definitions**

1.1 In this Schedule, the following definitions shall apply:

<b>“Business Continuity Plan”</b>	has the meaning given in Paragraph 2.2.1(ii);
<b>“Business Continuity Services”</b>	has the meaning given in Paragraph 4.2.2;
<b>“Disaster”</b>	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 thirty (30) calendar days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
<b>“Disaster Recovery Plan”</b>	has the meaning given in Paragraph 2.2.1(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 2.2.1(iv).
<b>“Related Service Provider”</b>	any person who provides services to the Authority in relation to this Contract from time to time, as may be notified to the Supplier from time to time and which persons include as at the Effective Date other suppliers to NIHR including hosts of other Coordinating Centres;
<b>“Review Report”</b>	has the meaning given in Paragraph 7.2; and
<b>“Service Continuity Plan”</b>	the plan prepared pursuant to Paragraph 2 which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan.

##### **2 Service Continuity Plan**

2.1 No later than the day before the Operational Service Commencement 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:

- 2.1.1 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
  - 2.1.2 the recovery of the Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall:
  - 2.2.1 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
  - 2.2.2 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:
  - 2.3.1 review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
  - 2.3.2 notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than twenty (20) Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft Service Continuity Plan:
  - 2.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - 2.4.2 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 twenty (20) Working Days of the date of the Authority’s notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft 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:

- 3.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- 3.1.2 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;
- 3.1.3 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;
- 3.1.4 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;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via 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;
- 3.1.6 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;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;



- 3.1.11 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
  - 3.1.12 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:
  - 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
  - 3.2.2 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;
  - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
  - 3.2.4 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 Contract.

#### **4 Service Continuity Plan: Part B – Business Continuity**

##### **Principles and Contents**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
  - 4.1.1 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
  - 4.1.2 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:
  - 4.2.1 address the various possible levels of failures of or disruptions to the Services;

- 4.2.2 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”);
- 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- 4.2.4 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:
  - 5.3.1 the technical design and build specification of the Disaster Recovery System;
  - 5.3.2 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;

- 5.3.3 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;
- 5.3.4 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.3.6 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:
  - 6.2.1 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;
  - 6.2.2 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;
  - 6.2.3 plans to manage and mitigate identified risks;
  - 6.2.4 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;
  - 6.2.5 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
  - 6.2.6 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):

- 7.1.1 on a regular basis and as a minimum once every twelve (12) months;
  - 7.1.2 within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
  - 7.1.3 within fourteen (14) days of a Financial Distress Event; and
  - 7.1.4 where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1.1 to 7.1.3 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 twenty (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:
- 7.2.1 the findings of the review;
  - 7.2.2 any changes in the risk profile associated with the Services; and
  - 7.2.3 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:
- 7.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
  - 7.3.2 notify the Supplier in writing that it Approves or rejects the Review Report and the Supplier's Proposals no later than twenty (20) Working Days after the date on which they are first delivered to the Authority.
- 7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:

- 7.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - 7.4.2 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 twenty (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 twenty (20) Working Days of the conclusion of each test, provide to the Authority a report setting out:
  - 8.5.1 the outcome of the test;

- 8.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and
  - 8.5.3 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 Contract.
- 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:
  - 9.2.1 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
  - 9.2.2 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**

### **1      Service Status and Supplier Status**

1.1      This Contract is not a Critical Service Contract.

## **Schedule 27**

### **(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 Contract (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 Contract (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.
- 1.3 Subject to Paragraphs 1.5 and 2.2 of this Schedule, 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 of this Schedule, 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 of this Schedule:
  - 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
  - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
  - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
  - 1.4.4 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 Contract, if:
  - 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3 of this Schedule;



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

## **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 of this Schedule 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:
  - 3.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
  - 3.1.2 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.

## **Schedule 28**

### **(STAFF TRANSFER)**

#### **1 DEFINITIONS**

1.1 In this Schedule the following definitions shall apply:

<b>Admission Agreement</b>	either or both of the CSPA Admission Agreement (as defined in Annex E1: CSPA) as the context requires;
<b>Fair Deal Employees</b>	as defined in Part E of this Schedule
<b>Former Supplier</b>	means a supplier supplying services to the Authority before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>Notified Sub-Contractor</b>	means a Sub-Contractor identified in Annex 2 of this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
<b>New Fair Deal</b>	<p>means the revised Fair Deal position set out in the HM Treasury guidance: "<i>Fair Deal for staff pensions: staff transfer from central government</i>" issued in October 2013 including</p> <p>any amendments to that document immediately prior to the Relevant Transfer Date; and</p> <p>any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;</p>
<b>Principles of Good Employment Practice</b>	<p>means the guidance published by the Cabinet Office and found at</p> <p><a href="http://www.gov.uk/government/publications/principles-of-good-employment-practice">www.gov.uk/government/publications/principles-of-good-employment-practice</a></p>
<b>Relevant Transfer Date</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part E and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;

<b>Service Transfer</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier and/or Parent Undertaking 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>	means, 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 the information required in Annex E2: Staffing Information, in that format and with the identities of individuals anonymised where possible, together with employee liability information specified in regulation 11(2) and 11(3) and if applicable 11(4) of the Employment Regulations and such other information as the Authority may reasonably require. The Authority may acting reasonably make changes to the format or information requested in Annex E2: Staffing Information from time to time;
<b>Statutory Schemes</b>	means the CSPA or NHSPS as defined in the Annexes to E of this Schedule;
<b>Supplier's Final Personnel List</b>	means a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date; and
<b>Supplier's Provisional Personnel List</b>	means a list prepared and updated by the Supplier of all Supplier Personnel, who are engaged in or wholly or mainly 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.

## **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 and the Parent Undertaking shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, the Replacement Supplier or (if more than one) Replacement Suppliers or Replacement Sub-Contractor, as the case may be.
- 2.2 For the avoidance of doubt, the Parent Undertaking shall be a Third Party Beneficiary in accordance with clause 41.1 of the Core Terms and the Authority hereby consents to the Parent Undertaking enforcing or taking any step to enforce any Third Party Provision in this Schedule without any further requirement to seek the Authority's prior written consent in accordance with clause 41.3 of the Core Terms.

## **PART A**

Transferring Authority Employees at commencement of the provision of Services

**[NOT USED]**

## **PART B**

### **Transferring Former Supplier Employees at commencement of the provision of Services**

#### **1 RELEVANT TRANSFERS**

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

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disappplied through the operation of regulation 10 of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-Contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions, and all such sums due as a result of any Transferring Former Supplier Employees' participation in any public sector pension scheme in accordance with New Fair Deal and the Pensions Annex to Part B of the staff transfer schedule in the outgoing contract between the Authority and the Former Supplier which in any case are attributable in whole or in part in respect of the period ending on (and including) the Relevant Transfer Date) and the Supplier and any Sub-contractor shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

#### **2 FORMER SUPPLIER INDEMNITIES**

2.1 Subject to paragraph 2.2 of Part B of this Schedule, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-Contractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Former Supplier arising on or before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

- (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
- (ii) any custom or practice with a trade union or staff association in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

- 2.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Former Supplier to comply with any legal obligation to such trade union, body or person arising on or before the Relevant Transfer Date
- 2.1.4 Any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
  - (ii) in relation to any employee, who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Authority, and/or Supplier and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Relevant Transfer Date;
- 2.1.5 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (and including) the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Authority, and/or Supplier and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.1.7 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority, and/or Supplier or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in paragraph 2.1 of Part B of this Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or

- 2.2.2 arising from the failure by the Supplier and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from the Former Supplier to the Supplier and/or any Notified Sub-Contractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in paragraph 2.3.2 of Part B of this Schedule is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the fifteen (15) Working Day period specified in paragraph 2.3.2 of Part B of this Schedule:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraphs 2.3 to 2.5 (inclusive) of Part B of this Schedule and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.5 of Part B of this Schedule provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in paragraph 2.6 of Part B of this Schedule:
- 2.7.1 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 Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in paragraph 2.3.1 of Part B of this Schedule is made by the Supplier and/or any Notified Sub-Contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within six (6) Months of the Relevant Transfer Date.

2.8 If any such person as is described in paragraph 2.3 of Part B of this Schedule is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-Contractor within the time scales set out in paragraphs 2.3 to 2.5 of Part B of this Schedule, such person shall be treated as having transferred to the Supplier or Notified Sub-Contractor and the Supplier shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

### **3 SUPPLIER INDEMNITIES AND OBLIGATIONS**

3.1 Subject to paragraph 3.2 of Part B of this Schedule, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities in respect of any Transferring Former Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;

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

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

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

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

3.1.4 any proposal by the Supplier or a Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring



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

- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Sub-Contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing.
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising after the Relevant Transfer Date;
- 3.1.7 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 Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date; and
- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 3.2 The indemnities in paragraph 3.1 of Part B of this Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all

the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

#### **4 INFORMATION**

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

#### **5 PRINCIPLES OF GOOD EMPLOYMENT PRACTICE**

- 5.1 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2013;
  - 5.1.2 HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 2013;
  - 5.1.3 HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
  - 5.1.4 The New Fair Deal,
- or any statement of practice, paper or other guidance that replaces any of the foregoing.
- 5.2 The Supplier acknowledges, in respect of those Transferring Authority Employees who were eligible for compensation under the terms of Civil Service Compensation Scheme ("CSCS") immediately prior to transfer, that the right to benefits calculated in accordance with the terms of the CSCS will transfer under the Employment Regulations. The Supplier acknowledges and accepts that for any employee who was eligible for compensation under or in accordance with the terms of the CSCS, the right to compensation, is a right to compensation in accordance with the terms of the CSCS applicable at the time at which the employee becomes entitled to such compensation (including voluntary or compulsory redundancy). Suppliers are advised to check the Civil Service Pensions website for the current CSCS terms.
- 5.3 Any changes necessary to this Contract as a result of changes to or any replacement of any statement of practice, paper or other guidance that replaces any of the documentation referred to in paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

## **6      PROCUREMENT OBLIGATIONS**

- 6.1      Notwithstanding any other provisions of this Part B of this Schedule, where in this Part B 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.

## **7      PENSIONS**

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

## **PART C**

### **NO TRANSFER OF EMPLOYEES EXPECTED AT COMMENCEMENT OF THE PROVISION 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, then:
- 1.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
- 1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within fifteen (15) Working Days of the notification by the 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 1.2.2 of Part C of this Schedule 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 fifteen (15) Working Day period specified in paragraph 1.2.2 of Part C:
- 1.4.1 no such offer of employment has been made;
- 1.4.2 such offer has been made but not accepted; or
- 1.4.3 the situation has not otherwise been resolved,
- the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

#### **2 INDEMNITIES**

- 2.1 Subject to the Supplier and/or the relevant Sub-Contractor acting in accordance with the provisions of paragraphs 1.2 to 1.4 of Part C of this Schedule and in accordance with all applicable employment procedures set out in applicable Law and subject also to paragraph 2.4 of Part C of this Schedule, the Authority shall:

- 2.1.1 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 of Part C of this Schedule made pursuant to the provisions of paragraph 1.4 of Part C of this Schedule provided that the Supplier takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- 2.1.2 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 made pursuant to the provisions of paragraph 1.4 of Part C of this Schedule 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 of Part C of this Schedule 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 fifteen (15) Working Day period referred to in paragraph 1.4 of Part C of this Schedule 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 of Part C of this Schedule, 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 of Part C of this Schedule:
- 2.4.1 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
- 2.4.2 shall apply only where the notification referred to in paragraph 1.2 of Part C of this Schedule is made by the Supplier and/or any Sub-Contractor to

the Authority and, if applicable, Former Supplier within six (6) Months of the Effective Date.

### **3      PROCUREMENT OBLIGATIONS**

Where in Part C of this Schedule 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**

### **Employment Exit Provisions**

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

- 1.1 The Supplier agrees that within twenty (20) Working Days after the earliest of:
- 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
  - 1.1.2 receipt of the giving of notice of early termination or any partial termination of this Contract;
  - 1.1.3 the date which is twenty four (24) Months before the end of the Term; and
  - 1.1.4 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 six (6) Month period),
- it shall provide in a suitably anonymised format to comply with the DPA the Supplier's Provisional Personnel List together with the Staffing Information in relation to the Supplier's Provisional Personnel List and it shall provide an updated Supplier's Provisional Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least twenty (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(s) and/or any Replacement Sub-Contractor(s):
- 1.2.1 the Supplier's Final Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
  - 1.2.2 the Staffing Information in relation to the Supplier's Final 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 of Part D of this Schedule for the purpose of informing any prospective Replacement Supplier(s) and/or Replacement Sub-Contractor(s).
- 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 of Part D of this Schedule 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 of Part D of this Schedule, 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 Personnel List and shall not without the Approval of the Authority (not to be unreasonably withheld or delayed):
- 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Personnel List other than where any replacement is of

equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

- 1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional 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, each or any Replacement Supplier(s) and each or any Replacement Sub-Contractor(s) 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 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, within twenty (20) Working Days to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- 1.6.1 the numbers of Supplier Personnel engaged in providing the Services;
- 1.6.2 the percentage of time spent by each Supplier Personnel engaged in providing the Services;
- 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part E (Pensions) of this Schedule 28 (Staff Transfer) as appropriate; and
- 1.6.4 a description of the nature of the work undertaken by each Supplier Personnel 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(s) and/or any Replacement Sub-Contractor(s) to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date, including providing sufficient information in advance of the Service Transfer Date, to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of



the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-Contractor shall provide, the Authority or, at the direction of the Authority, to each or any Replacement Supplier(s) and/or each or any Replacement Sub-Contractor(s) (as appropriate), in respect of each person on the Supplier's Final Personnel List who is a Transferring Supplier Employee:

- 1.7.1 the most recent Month's copy pay slip data;
  - 1.7.2 details of cumulative pay for tax and pension purposes;
  - 1.7.3 details of cumulative tax paid;
  - 1.7.4 tax code;
  - 1.7.5 details of any voluntary deductions from pay;
  - 1.7.6 bank/building society account details for payroll purposes;
  - 1.7.7 a copy of any personnel file and/or any other record regarding the service of the Transferring Supplier Employee; and
  - 1.7.8 a complete copy of the information required to meet the minimum record keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998.
- 1.8 From the date of the earliest event referred to in paragraph 1.1 of Part D of this Schedule, the Supplier agrees that following a request from the Authority, it shall and shall procure that each Sub-Contractor shall use reasonable endeavours to comply with any reasonable request to align and assign Supplier Personnel to any future delivery model proposed by the Authority for Replacement Services within 30 Working Days or such longer timescale as may be agreed.
- 1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.9 shall be agreed in accordance with the Change Control Procedure.

## **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 Contract or otherwise) resulting in the Services being undertaken by one or more Replacement Supplier(s) and/or one or more Replacement Sub-Contractor(s). Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations 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 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between a 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 (but excluding) 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 which in any case are attributable in whole or in part to the period ending on (and excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Supplier(s) and/or Replacement Sub-Contractor(s).

2.3 Subject to paragraph 2.4 of Part D of this Schedule, 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:

- 2.3.1 any act or omission of the Supplier or any Sub-Contractor in respect of any Transferring Supplier Employee (or, where applicable any employee representative as defined in the Employment Regulations) whether occurring before, on or after the Service Transfer Date;
- 2.3.2 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 Employee(s) which the Supplier or any Sub-Contractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employee(s) 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 before, but excluding, the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (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 before but excluding the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or a 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;

- 2.3.5 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 (but excluding) the Service Transfer Date;
  - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee for whom it is alleged the Authority and/or any Replacement Supplier and/or any Replacement Sub-Contractor may be liable by virtue of this Contract and/or the Employment Regulations; and
  - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any 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 a Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnities in paragraphs 2.3 of Part D of this Schedule shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of any 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:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date; or
  - 2.4.2 arising from the Replacement Supplier's failure and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not a Transferring Supplier Employee claims, or it is determined in relation to any person who is not a Transferring Supplier Employee, that his/her contract of employment has been transferred from the Supplier or any Sub-Contractor to a Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations, then:
- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
  - 2.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement 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 each 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 fifteen (15) Working Day period specified in paragraph 2.5.2 of Part D of this Schedule has elapsed:
- 2.7.1 no such offer of employment has been made;
- 2.7.2 such offer has been made but not accepted; or
- 2.7.3 the situation has not otherwise been resolved,
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraphs 2.5 to 2.7 of Part D of this Schedule and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify such Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 2.7 of Part D of this Schedule 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 of Part D of this Schedule:
- 2.9.1 shall not apply to:
- (i) any claim for:
- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or
- (ii) 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
- 2.9.2 shall apply only where the notification referred to in paragraph 2.5.1 of this Part D of this Schedule is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) Months of the Service Transfer Date.

- 2.10 If any such person as is described in paragraph 2.5 of Part D of this Schedule 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 of Part D of this Schedule, such person shall be treated as a Transferring Supplier Employee.
- 2.11 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and each 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 each 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.
- 2.12 Subject to paragraph 2.13 of Part D of this Schedule, the Authority shall procure that each Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-Contractor it has contracted with and its sub-contractors against any Employee Liabilities arising from or as a result of:
- 2.12.1 any act or omission of the Replacement Supplier and/or Replacement Sub-Contractor in respect of each Transferring Supplier Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee);
  - 2.12.2 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; and/or
    - (ii) any custom or practice in respect of any Transferring Supplier Employees which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;
  - 2.12.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the 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;
  - 2.12.4 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 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 who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.12.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.12.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (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 or after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the 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 on or after the Service Transfer Date;
- 2.12.7 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 in respect of the period from (and including) the Service Transfer Date; and
- 2.12.8 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 Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.13 The indemnities in paragraph 2.12 of this Part D of this Schedule 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 Relevant 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.

## PART E

### PENSION PROVISIONS

#### 1 DEFINITIONS

- 1.1 In this Part E, the following the following words have the following meanings and shall be deemed to include the definitions set out in the Annexes to this Part E:

<b>“Actuary”</b>	a Fellow of the Institute and Faculty of Actuaries;
<b>“Best Value Direction”</b>	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
<b>“Broadly Comparable”</b>	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and/or</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department,</p> <p>and “Broad Comparability” shall be construed accordingly;</p>
<b>“CSPS”</b>	the schemes as defined in Annex 1 to this Part E;
<b>“Direction Letter/Determination”</b>	has the meaning in Annex 2 to this Part E;
<b>“Fair Deal Eligible Employees”</b>	means each of the CSPS Eligible Employees (as defined in Annex 1 to this Part E) and/or the NHSPS Eligible Employees (as defined in Annex 2 to this Part E) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 9 or 10 of this Part E);
<b>“Fair Deal Employees”</b>	<p>any of:</p> <p>(a) Transferring Authority Employees;</p> <p>(b) Transferring Former Supplier Employees; and/or</p> <p>(c) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not</p>

terminated in accordance with the provisions of Paragraphs 2.5 of Parts A or B or Paragraph 1.4 of Part C;

- (d) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor)

who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with Paragraph 9 of this Part E as notified by the Authority;

**“Fund Actuary”** a Fund Actuary as defined in Annex 3 to this Part E;

**“NHSPS”** the schemes as defined in Annex D2 to this Part E; and

**“New Fair Deal”** the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for Staff Pensions: Staff Transfer from Central Government”* issued in October 2013 including:

any amendments to that document immediately prior to the Relevant Transfer Date; and

any similar pension protection in accordance with the subsequent Annex 1-3 inclusive as notified to the Supplier by the Authority.

## **1 Participation**

- 1.1 In respect of all or any Fair Deal Employees each of Annex 1: CSPS and/or Annex 2: NHSPS shall apply, as appropriate.
- 1.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 1.3 The Supplier undertakes:
- 1.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- 1.3.2 subject to Paragraph 5 of Annex 3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.



- 1.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Service Commencement Date, this E and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Service Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Authority.

## **2 Provision of Information**

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

## **3 Indemnities**

- 3.1 The Supplier shall indemnify and keep indemnified the Authority, any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
- 3.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part E, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination;
  - 3.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 9 or 10 of this Part E;
  - 3.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
    - (i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of

employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;

- (ii) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part E before the date of termination or expiry of this Contract; and/or

3.1.4 arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

3.2 The indemnities in this E and its Annexes:

3.2.1 shall survive termination of this Contract; and

3.2.2 shall not be affected by the caps on liability contained in Clause 23 (*Limitations on Liability*).

## **4 Disputes**

4.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the Authority and/or the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part E and its Annexes shall in the absence of agreement between the Authority and/or the Supplier be referred to an independent Actuary:

4.1.1 who will act as an expert and not as an arbitrator;

4.1.2 whose decision will be final and binding on the Authority and/or the Supplier; and

4.1.3 whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.

4.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

## **5 Third Party Rights**

5.1 The Parties agree Clause 41 (*Third Party Rights*) does not apply and that the CRTPA applies to this Part E to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part E, in his or her or its own right under section 1(1) of the CRTPA.

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

## **6 Breach**

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

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

## **7 Transfer to Another Employer/Sub-contractors**

- 7.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Eligible Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall or shall procure that any relevant Sub-contractor shall:
  - 7.1.1 notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);
  - 7.1.2 consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and
  - 7.1.3 procure that the employer to which the Fair Deal Eligible Employees are transferred (the "New Employer") complies with the provisions of this Part E and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Eligible Employees so transferred to the New Employer.

## **8 Pension Issues on Expiry or Termination**

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

## **9 Broadly Comparable Pension Scheme on Relevant Transfer Date**

- 9.1 If the terms of any of Paragraphs 4 of Annex E2: NHSPS applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

- 9.2 Such Broadly Comparable pension scheme must be:
- 9.2.1 established by the Relevant Transfer Date;
  - 9.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 9.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Authority);
  - 9.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
  - 9.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).
- 9.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 9, the Supplier shall (and shall procure that any of its Sub-contractors shall):
- 9.3.1 supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 9.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
  - 9.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
  - 9.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 9 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension

scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

- 9.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 9, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract:

9.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 9.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 9.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and

9.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 9.4.1 been complied with, the Supplier shall (or shall procure that the Sub-contractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Authority shall otherwise direct. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the difference as required under this Paragraph.

## **10 Broadly Comparable Pension Scheme in Other Circumstances**

- 10.1 If the terms of any of Paragraphs 1.2 of Annex E1: CSPS and/or 5.2 of Annex E2: NHSPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

- 10.2 Such Broadly Comparable pension scheme must be:

- 10.2.1 established by the date of cessation of participation in the Statutory Scheme;
  - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
  - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Authority);
  - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Authority); and
  - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).
- 10.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):
- 10.3.1 supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
  - 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
  - 10.3.3 where required to do so by the Authority, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Authority (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
  - 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer

their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

- 10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("the Shortfall"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the Shortfall under this Paragraph.

## **11 Right of Set-Off**

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

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

- 11.2 The Authority shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Authority as result of Paragraph 11.1 above.



## **ANNEX E1: CSPA**

### **1 Definitions**

1.1 In this Annex, the following words have the following meanings:

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

### **2 Future Service Benefits**

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

2.2 If the Supplier and/or any of its Sub-contractors enters into a CSPA Admission Agreement in accordance with Paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible

Employees ceased to participate in the CSPS in accordance with the provisions of Paragraph 10 of E.

## **ANNEX E2: NHSPS**

### **1 Definitions**

1.1 In this Annex, the following words have the following meanings:

<b>“Direction Letter/Determination”</b>	an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Fair Deal Employees;
<b>“NHS Broadly Comparable Employees”</b>	<p>means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <p>their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or</p> <p>their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</p> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Authority has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.</p>
<b>“NHSPS Eligible Employees”</b>	any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.
<b>“NHSPS Fair Deal Employees”</b>	means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or

their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an “open” Direction Letter/Determination or other NHSPS “access” facility but who has never been employed directly by the Authority, an NHS Body or other body which participates automatically in the NHSPS is not an NHSPS Fair Deal Employee;

**“NHS Body”**

has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;

**“NHS Pensions”**

NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;

**“NHSPS”**

the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;

**“NHS Pension Scheme Regulations”**

as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;

**“NHS Premature Retirement Rights”**

rights to which any NHSPS Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for

Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;

**“Pension Benefits”**

any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and

**2      Membership of the NHSPS**

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Sub-contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
  - 2.2.1 all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
  - 2.2.2 the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Authority a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Sub-contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 1 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (if

any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.

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

### **3 NHS Premature Retirement Rights**

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

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

- 4.1 The Supplier shall (and procure that its Sub-contractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 9 of Part E. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2 below.

### **5 Breach and Cancellation of any Direction Letter/Determination(s)**

- 5.1 The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 10 of Part E.

### **6 Compensation**

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

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

6.1.2 a Broadly Comparable pension scheme,

the Authority may in its sole discretion permit the Supplier (or any of its Sub-contractors) to compensate the NHSPS Fair Deal Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Sub-contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The

Supplier must meet (or must procure that the relevant Sub-contractor meets) the costs of the Authority determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract under Paragraph 6 (*Breach*) of Part E of this Schedule.

## **7 Supplier Indemnities**

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

## **ANNEX 2: LIST OF NOTIFIED SUB-CONTRACTORS**

1. Parent Undertaking



## **Schedule 29**

### **(KEY PERSONNEL)**

- 1 This Schedule lists the key roles (“Key Roles”) and names of the person who the Supplier shall appoint to fill those Key Roles at the Start Date (“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
Director	To be appointed	Strategic direction; stakeholder management; budget oversight; supplier representative.	From Operational Service Commencement Date onwards	
Head of Education, Training & Events	To be appointed	Lead education; event planning; curriculum innovation	From Operational Service Commencement Date onwards	
Head of Impact and Data	To be appointed	Oversee impact analysis; reporting; data strategy; analytics implementation	From Operational Service Commencement Date onwards	
Head of Public Partnerships	To be appointed	Lead public engagement strategies; community outreach; feedback	From Operational Service Commencement Date onwards	

**Schedule 30**

**(DEED OF GUARANTEE)**

**[•]**

**- and -**

**[SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE]**

**DEED OF GUARANTEE**

## DEED OF GUARANTEE

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

### BETWEEN:

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

in favour of:

- (2) [THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE, whose principal office is at 39 Victoria Street, Westminster, London SW1H 0EU] (the **Beneficiary**).

### WHEREAS

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

## 1 DEFINITIONS AND INTERPRETATION

### 1.1 In this Deed of Guarantee:

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

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

<b>Beneficiary</b>	means [The Secretary of State for Health and Social Care];
<b>Contract</b>	means the agreement dated [ <i>insert date</i> ] made between the Authority and the Supplier;
<b>Guaranteed Agreement</b>	means Contract made between the Beneficiary and the Supplier on [ <i>insert date</i> ](contract no. [    ]);
<b>Guaranteed Obligations</b>	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

**Services** has the meaning given to it in the Contract;

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

## **2 GUARANTEE AND INDEMNITY**

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the

Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under clauses 2.1 to 2.3 (inclusive) above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

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

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

### **4 DEMANDS AND NOTICES**

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

4.1.1 [Address of the Guarantor in England and Wales]; and

4.1.2 For the attention of [insert details],

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the

terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
- 4.2.1 if delivered by hand, at the time of delivery; or
  - 4.2.2 if posted, at 10.00 a.m. on the second (2nd) Working Day after it was put into the post; or
  - 4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

## **5 BENEFICIARY'S PROTECTIONS**

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
  - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
  - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations, shall only be effective, if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

## **6 GUARANTOR INTENT**

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

## **7 RIGHTS OF SUBROGATION**

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

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

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

## **8 DEFERRAL OF RIGHTS**

- 8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
  - 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
  - 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
  - 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
  - 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
  - 8.1.5 claim any set-off or counterclaim against the Supplier.
- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

## **9 REPRESENTATIONS AND WARRANTIES**

- 9.1 The Guarantor hereby represents and warrants to the Beneficiary that:
  - 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
  - 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;



- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
  - (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
  - (iii) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

## **10 PAYMENTS AND SET-OFF**

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

## **11 GUARANTOR'S ACKNOWLEDGEMENT**

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

## **12     ASSIGNMENT**

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

## **13     SEVERANCE**

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

## **14     THIRD PARTY RIGHTS**

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

## **15     GOVERNING LAW**

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

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

- 15.5   *[The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time*

*to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]*

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

EXECUTED as a DEED by

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

Director

Director/Secretary

**Schedule 31**

### **Schedule 31**

#### **(PROCESSING PERSONAL DATA)**

- 1 This Schedule shall be completed by the Controllers.
- 2 The contact details of the Authority's Data Protection Officer are: Redacted in accordance with Sec 40
- 3 The contact details of the Supplier's Data Protection Officer are: Redacted in accordance with Sec 40 and/or
- 4 Any such further instructions shall be incorporated into this Schedule.

<b>Description</b>	<b>Details</b>
Identity of Controller for each Category of Personal Data	<p>The Parties are Joint Controllers</p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"><li>• Details of public contributors, and health and care practitioners, researchers, research funders, and decision-makers in relation to the Supplier being able to provide the services outlined in Schedule 2 ('Service Description') and Schedule 8 ('Supplier Solution') of the contract.</li></ul> <p>The Parties are Independent Controllers of Personal Data.</p> <p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"><li>• Business contact details of Supplier Personnel,</li><li>• Business contact details of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Supplier Personnel) engaged in the performance of the Authority's duties under this Contract.</li></ul>
Duration of the processing	<p>The duration of the Processing is for the period commencing on the Effective Date and ending on the expiry or earlier termination of this Contract.</p>
Nature and purposes of the processing	<p>The purposes for processing will be to deliver the events and other work that NIHR needs, utilising existing and new contacts (where not prevented by purpose limitation considerations) to deliver expert contributions across the work.</p> <p>The processing will support the overall aims. The aims are to:</p> <ul style="list-style-type: none"><li>• promote the recognition, dissemination, use, and understanding of health research</li><li>• convene groups to improve NIHR public partnerships</li><li>• maximise the impact of NIHR research, and</li></ul>

	<ul style="list-style-type: none"> <li>to uphold and reinforce NIHR's position as a leading promoter of health and care research.</li> </ul> <p>The purposes of the processing include disseminating information to individuals or for convening groups in order to improve NIHR public partnerships and maximise the impact of NIHR research.</p> <p>Personal data will be gathered through a number of means, including consulting existing data sets of experts, as well as people with experience of health and social care provision and the impacts of health and care research, such as patients, service users, their families, or other people who support those individuals.</p> <p>Where appropriate, new sources of expertise will be sought out to participate. For example, BMJ Group may contact researchers and experts that have no existing relationship. Those individuals will be provided with compliant privacy information and invited to join.</p> <p>The data will be held securely, with appropriate access controls.</p>
Type of Personal Data	<p>The types of personal data processed may vary depending on the individual and the specific task or objective being pursued. It will typically include:</p> <ul style="list-style-type: none"> <li>name</li> <li>contact details (including email address and telephone number)</li> <li>occupation, role, or field of practice</li> <li>research interests</li> <li>seniority</li> <li>organisational affiliations (such as to a university or hospital)</li> <li>professional qualifications, accreditations, and experience</li> <li>membership of professional organisations (such as industry groups)</li> <li>personal (non-professional) experience of research or healthcare</li> <li>conflicts of interest</li> <li>demographic and diversity information</li> </ul>
Categories of Data Subject	<p>Data transferred from previous supplier:</p> <ul style="list-style-type: none"> <li>Those in the public partnerships community (public contributors, researchers, PPI leads) signed up to the Learning for Involvement website.</li> <li>Public contributors and researchers signed up to the People In Research website</li> <li>Public partnerships leads mailing list - people with responsibility of PPI in NIHR infrastructure</li> <li>Reviewers of plain-English summaries for NIHR Evidence website</li> <li>Those who have signed consent forms for stories, quotes and images</li> </ul>

	<ul style="list-style-type: none"> <li>Those signed up to the mailing list for NIHR Evidence newsletter.</li> </ul> <p>Additional data associated with new services under the contract:</p> <ul style="list-style-type: none"> <li>Representatives of stakeholder organisations/cohort groups for NIHR Stakeholder Dialogue Forums, including public contributors, researchers, and health, public health and social care practitioners and decision-makers.</li> <li>Expert faculty of public contributors</li> <li>NIHR reference group members</li> <li>Members of global knowledge exchange of other funders of health and care research</li> <li>Attendees of NIHR Conference on Health Research</li> </ul>
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under law to preserve that type of data</p>	<p>Data will be transferred pursuant to Schedule 25 (Exit Management)</p> <p>For a period of seven years following the end of the Term, the Supplier shall maintain and retain the Open Book Data, pursuant to Schedule 19 (Financial Reports and Audit Rights).</p>
<p>Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract</p>	<p>United Kingdom Republic of Ireland USA India Philippines</p>
<p>Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to data) or a Personal Data Breach</p>	<p>BMJ maintains a suite of information governance policies that encompass data protection, cybersecurity, information classification, data breach and cyber-incident management processes, electronic direct marketing, and information security. These policies are supplemented with guidance and training, and are updated at least yearly, and more frequently if appropriate.</p> <p>Google and Amazon Web Services (AWS) supply much of BMJ's infrastructure</p> <p>BMJ uses Transport Layer Security, encryption at rest, encryption in transit. For the use of G-Suite products Google has provided a <a href="#">detailed list</a> of what types of encryption applies to different types of processing and types of information. BMJ uses multi-factor authentication where it is available.</p> <p>AWS provides BMJ with cloud computing services. AWS provides a detailed overview of their <a href="#">security</a> and</p>

	<p>accreditations, as well as their <a href="#">disaster recovery</a> package.</p> <p>The other suppliers that BMJ uses are bound by robust contractual terms. These include standardised clauses for BMJ as a processor, BMJ as a controller with the other party as a processor, BMJ and another organisation as joint controllers, and BMJ and another organisation as separate and independent data controllers. These are supplemented with the required provisions for legitimising the transfer of personal data internationally, where required.</p> <p>Where BMJ engages an organisation as a processor or sub-processor, clauses meeting all requirements of UK GDPR and EU GDPR Article 28 are included, as well as any supplemental safeguards as required to ensure that personal data is processed responsibly and to mitigate any residual risks.</p> <p>Where BMJ is a joint controller, it works closely with the other organisation in order to ensure that all requirements are met. As well as considering each element of the duties laid out in Article 5 of UK and EU GDPR, this includes mapping data flows, the uses and reuses of personal data, security, the completion of data protection impact assessments, data breach management processes, and any other provision as necessary to provide for the protection of personal data.</p> <p>More broadly, BMJ's Legal Team has and maintains a high degree of competence and expertise. BMJ's Data Protection Compliance Manager is CIPP/E accredited and has over ten years of experience.</p>
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## **Annex 1: Joint Controller Agreement**

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

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 1 (*Joint Controller Agreement*) in replacement of Clause 21.2-21.15 (*Where one Party is Controller and the other Party is Processor*) and 21.17-24.28 (*Independent Controllers of Personal Data*). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the Supplier:

1.2.1 is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;



- 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
  - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
  - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
  - 1.2.5 shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Supplier's privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

## **2. Undertakings of Both Parties**

- 2.1 The Supplier and the Authority each undertake that they shall:
- 2.1.1 report to the other Party every 3 months on:
    - (a) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
    - (b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
    - (c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
    - (d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
    - (e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

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

- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1.11(a) to (e); and
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 1.2 and 2.1.11.5(c) to (e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under this Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- 2.1.7 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
  - (a) are aware of and comply with their duties under this Annex 1 (*Joint Controller Agreement*) and those in respect of Confidential Information
  - (b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where that Party would not be permitted to do so;
  - (c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to

protect against a Data Loss Event having taken account of the:

- (a) nature of the data to be protected;
- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures.

2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds;

2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event;

2.1.11 not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

- (a) the destination country has been recognised as adequate by the UK government is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
- (b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable) as agreed with the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Annex 2 to Schedule 31 (*Processing Personal Data*) (as appropriate), as well as any additional measures;

(A) where the transfer is subject to UK GDPR:

- (i) the UK International Data Transfer Agreement (the "**IDTA**") as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
- (ii) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time(the

“**EU SCCs**”), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the “**Addendum**”) or such updated version of such Addendum as is published by the Information Commissioner’s Office under section 119A(1) of the DPA 2018 from time to time; and/or

(B) where the transfer is subject to EU GDPR, the EU SCCs,

(as well as any additional measures determined by the Controller being implemented by the importing party;

- (c) the Data Subject has enforceable rights and effective legal remedies;
- (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
- (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

2.2 Each Joint Controller shall use its best endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its’ obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

### 3. **Data Protection Breach**

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Data Loss Event or circumstances that are likely to give rise to a Data Loss Event, providing the other Party and its advisors with:

- 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Data Loss Event under the Data Protection Legislation;
- 3.1.2 all reasonable assistance, including:
  - (a) co-operation with the other Party and the Information Commissioner investigating the Data Loss Event and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;

- (b) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Data Loss Event;
- (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Data Loss Event;
- (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Data Loss Event, with complete information relating to the Data Loss Event, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Data Loss Event which is the fault of that Party, as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Data Loss Event, including providing the other Party, as soon as possible and within 48 hours of the Data Loss Event relating to the Data Loss Event, in particular:

- 3.2.1 the nature of the Data Loss Event;
- 3.2.2 the nature of Personal Data affected;
- 3.2.3 the categories and number of Data Subjects concerned;
- 3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- 3.2.5 measures taken or proposed to be taken to address the Data Loss Event; and
- 3.2.6 describe the likely consequences of the Data Loss Event.

#### 4. **Audit**

4.1 The Supplier shall permit:

- 4.1.1 the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 1 and the Data Protection Legislation.
- 4.1.2 the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 of the UK GDPR by the Supplier so far as relevant to the Contract, and procedures,

including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

- 4.2 The Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

5. **Impact Assessments**

5.1 **The Parties** shall:

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

6. **ICO Guidance**

The Parties agree to take account of any non-mandatory guidance issued by the Information Commissioner, and/or any relevant Central Government Body and/or any other regulatory authority. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner or any other regulatory authority.

7. **Liabilities for Data Protection Breach**

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Authority or the Supplier for a Data Loss Event ("**Financial Penalties**") then the following shall occur:

- 7.1.1 If in the view of the Information Commissioner, the Authority is responsible for the Data Loss Event, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- 7.1.2 If in the view of the Information Commissioner, the Supplier is responsible for the Data Loss Event, in that it is not a breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request

and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident; or

- 7.1.3 If no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any Financial Penalties equally if no responsibility for the Data Loss Event can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Schedule 23 (*Dispute Resolution Procedure*).
- 7.2 If either the Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Data Loss Event, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Data Loss Event shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Data Loss Event (the "**Claim Losses**"):
  - 7.3.1 if the Authority is responsible for the relevant breach, then the Authority shall be responsible for the Claim Losses;
  - 7.3.2 if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses; and
  - 7.3.3 if responsibility is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in Paragraphs 8.2-8.3 shall preclude the Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Data Loss Event, having regard to all the circumstances of the breach and the legal and financial obligations of the Authority.
- 8. **Termination**
  - 8.1 If the Supplier is in material Default under any of its obligations under this Annex 1 (*Joint Controller Agreement*), the Authority shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 31 (*Termination Rights*).
- 9. **Sub-Processing**
  - 9.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:
    - 9.1.1 carry out adequate due diligence on such third party to ensure that

it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

- 9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

## 10. **Data Retention**

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



## **Schedule 32**

### **(INTELLECTUAL PROPERTY RIGHTS)**

#### **1 INTELLECTUAL PROPERTY RIGHTS**

- 1.1 Except as expressly set out in this Contract:
- 1.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
    - (i) the Supplier Software;
    - (ii) the Third Party Software;
    - (iii) the Third Party IPRs; and
    - (iv) the Supplier Background IPRs;
  - 1.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:
    - (i) the Authority Software;
    - (ii) the Authority Data; and
    - (iii) the Authority Background IPRs;
  - 1.1.3 Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.
- 1.2 Where either Party acquires, by operation of Law, ownership of Intellectual Property Rights that is inconsistent with the allocation of ownership set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 1.4 Unless the Authority otherwise agrees in advance in writing:
- 1.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and
  - 1.4.2 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority.
- 1.5 Where the Authority agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication,

the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software under Paragraph 4 (*Open Source Publication*).

- 1.6 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 1 to this Schedule and shall keep Annex 1 updated during the Term.
- 1.7 The Supplier acknowledges that the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
  - 1.7.1 sections 55 and 56 of the Patents Act 1977;
  - 1.7.2 section 12 of the Registered Designs Act 1949; or
  - 1.7.3 Sections 240 to 243 of the Copyright, Designs and Patents Act 1988.
- 1.8 If the Supplier becomes aware at any time, including after the Term, that, in respect of any Deliverable, the Authority has not received the licences to the Supplier Software, the Third Party Software, the Third Party IPRs and the Supplier Background IPRs required by Paragraphs as required by this Schedule, the Supplier must within ten (10) Working Days notify the Authority:
  - 1.8.1 the specific Intellectual Property Right for which the Authority has not received licences; and
  - 1.8.2 the Deliverables affected.

## **2 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER**

### **Specially Written Software and Project Specific IPRs**

- 2.1 Subject to Paragraph 2.16 (*Patents*) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Paragraph 1.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including:
  - 2.1.1 the Documentation, Source Code and the Object Code of the Specially Written Software; and
  - 2.1.2 all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software;(together the "**Software Supporting Materials**").
- 2.2 The Supplier:
  - 2.2.1 shall:
    - (i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitute a modification or enhancement to Supplier Software or Third Party Software; and
    - (ii) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code

and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the acceptance by the Authority (in the form of Approval) of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and

- (iii) without prejudice to Paragraph 2.11 (*Third Party Software and Third Party IPRs*), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;

2.2.2 acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and

2.2.3 shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

#### **Supplier Software and Supplier Background IPRs**

2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 12 (*Software*) or sent to the Technical Board for review and approval granted by the Authority.

2.4 The Supplier hereby grants to the Authority:

2.4.1 subject to the provisions of Paragraph 2.16 (*Patents*) and Clause 35.11(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):

- (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Crown Body's) business or function; and
- (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Crown Body's) business or function;

2.4.2 a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 12 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent

terms to those set out in Paragraphs 2.7 (*Authority's right to sub-licence*) and 2.8 (*Authority's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and

- 2.4.3 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.
- 2.5 At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Paragraph 2.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Paragraph 2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Paragraph 2.7 (*Authority's right to sub-licence*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.4(a)(iii) (as the case may be) which, if the breach is capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.
- 2.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Paragraph 2.5, the Authority shall:
  - 2.6.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
  - 2.6.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and
  - 2.6.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

#### **Authority's right to sub-licence**

- 2.7 Subject to Paragraph 2.16 (*Patents*) the Authority may sub-licence:
  - 2.7.1 the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
    - (i) the sub-licence is on terms no broader than those granted to the Authority;

- (ii) the sub-licence authorises the third party to use the rights licensed in Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Crown Body's) business or function; and
  - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*); and
- 2.7.2 the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
  - (i) the sub-licence is on terms no broader than those granted to the Authority; and
  - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*) duly executed by the Approved Sub-Licensee.

#### **Authority's right to assign/novate licences**

- 2.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to:
  - 2.8.1 a Crown Body; or
  - 2.8.2 any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority.
- 2.9 Any change in the legal status of the Authority which means that it ceases to be a Crown Body shall not affect the validity of any licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to be a Crown Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*).
- 2.10 If a licence granted in Paragraph 2.4 (*Supplier Software and Supplier Background IPRs*) is novated under Paragraph 2.8 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.

#### **Third Party Software and Third Party IPRs**

- 2.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 12 (*Software*) or approval is granted by the Authority following a review by the Technical Board and has in each case either:

- 2.11.1 first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty-free basis to the Authority and on terms no less favourable to the Authority than those set out in Paragraphs 2.4(a) and 2.5 (*Supplier Software and Supplier Background IPRs*) and Paragraph 2.8 (*Authority's right to assign/novate licences*); or
  - 2.11.2 complied with the provisions of Paragraph 2.12.
- 2.12 If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.11(a), the Supplier shall:
  - 2.12.1 notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
  - 2.12.2 use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first Approved in writing either:
    - (i) the terms of the licence from the relevant third party; or
    - (ii) use without a licence, with reference to the acts authorised and the specific IPR involved.
- 2.13 The Supplier shall:
  - 2.13.1 notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and
  - 2.13.2 unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Paragraph 2.12(a) use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

## **Termination and Replacement Suppliers**

- 2.14 For the avoidance of doubt, the termination or expiry of this Contract, except as provided for in Paragraphs 2.5 or 2.12, shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.
- 2.15 The Supplier shall, if requested by the Authority in accordance with Schedule 25 (*Exit Management*) and at the Supplier's cost:
  - 2.15.1 grant (or procure the grant) to any Replacement Supplier of:
    - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the

Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*) duly executed by the Replacement Supplier;

- (ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or

- 2.15.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

## **Patents**

- 2.16 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.

## **3 LICENCES GRANTED BY THE AUTHORITY**

- 3.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
  - 3.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (*Confidentiality*); and
  - 3.1.2 the Supplier shall not, without the Authority's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Authority.
- 3.2 In the event of the termination or expiry of this Contract, the licence granted pursuant to Paragraph 3.1 and any sub-licence granted by the Supplier in accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
  - 3.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);

- 3.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within six (6) months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); and
- 3.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.

#### **4 OPEN SOURCE PUBLICATION**

- 4.1 The Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.
- 4.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:
  - 4.2.1 are suitable for release as Open Source and the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Authority will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Authority System;
  - 4.2.2 have been developed using reasonable endeavours to ensure that their publication by the Authority shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs;
    - (i) do not contain any Malicious Software;
    - (ii) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;
    - (iii) can be published as Open Source without breaching the rights of any third party; and
    - (iv) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Operational Service Commencement Date.
- 4.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party



that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.

- 4.4 The Supplier may within 15 days of the Operational Service Commencement Date request in writing that the Authority excludes all or part of:

4.4.1 the Project Specific IPR; or

4.4.2 Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Source Publication Material supplied to the Authority pursuant to Paragraph 4.2,

from Open Licence publication.

- 4.5 Any decision to Approve any such request from the Supplier pursuant to Paragraph 4.4 shall be at the Authority's sole discretion, not to be unreasonably withheld, delayed or conditioned.

- 4.6 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Paragraph 4.1.