HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

TERMS AND CONDITIONS

OFFICIAL - SENSITIVE - COMMERCIAL

DATED 1st September 2020

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

and

(2) ***CAPGEMINI UK PLC***

AGREEMENT
relating to

Contact Engagement Programme –
Telephony Services (Lot 1 – Core
Telephony, Carrier Services & Systems
Integration)

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THIS AGREEMENT is made on 1st September 2020

BETWEEN:

(1) ***THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS*** of 100 Parliament Street, Westminster, London SW1A 2BQ (the **"Authority"**); and

(2) ***CAPGEMINI UK PLC*****,** a company registered in England and Wales under company number 943935, whose registered office is at 1 Forge End, Woking., Surrey, GU21 6DB (the **"Supplier"**),

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

INTRODUCTION

(A) The Authority is responsible for the UK's tax administration and ensures that tax revenue is available to fund the UK's public services.

(B) On 9 August 2019 the Authority issued a Prior Information Notice in the Official Journal of the European Union (reference 2019/S 153-377208), inviting prospective suppliers to participate in a market engagement exercise.

(C) On 17/12/2019, the Authority advertised in the Official Journal of the European Union (reference 2019/S 243-597472), inviting prospective suppliers to submit proposals for the provision of customer contact telephony services, split into three lots: Core Telephony, Carrier Services & Systems Integration; Voice Automation; and Recording & Analytics. This contract is for Lot 1 - Core Telephony, Carrier Services & Systems Integration.

(D) The Supplier is a leading provider of IT services and has experience in IT customer contact solutions.

(E) 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.

(F) 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 Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.

1.2 In this Agreement, unless the context otherwise requires:

(a) the singular includes the plural and vice versa;

(b) reference to a gender includes the other gender and the neuter;

(c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;

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

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

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

(g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;

(h) unless otherwise provided and save for references in Annexes 1 and 2 of Schedule 5 (*IPR*):

(i) references to Clauses and Schedules are references to the clauses and schedules of this Agreement;

(ii) references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear;

(i) any reference to a time of day (unless expressly specified otherwise) is to London time; and

(j) references to this Agreement are references to this Agreement as amended from time to time.

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

1.4 Subject to Paragraph 1.3 of Part A (Odigo Solution) of Schedule 4.1.1 (Odigo) and Paragraph 2 of Schedule 4.1.2 (Cyara) and Schedule 4.1.3, if there is any conflict or inconsistency between the Clauses and the Schedules and/or any Annexes to the Schedules and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:

(a) the Clauses and Schedule 1 *(Definitions*);

(b) Schedules 2.1 (*Services Description*) and 2.2 (*Performance Levels*) and their Annexes;

(c) Schedule 2.8 (*Data Processing and List of Sub-processors*), if such Schedule is used;

(d) any other Schedules and their Annexes (other than Schedule 4.1 (*Supplier Solution*) and its Annexes);

(e) Schedule 4.1 (*Supplier Solution*) and its Annexes (if any); and

(f) any other document referred to in this Agreement or any other document attached to this Agreement.

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

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

2 DUE DILIGENCE

2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:

(a) the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Agreement;

(b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

(c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:

(i) the Authority Requirements;

(ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;

(iii) the operating processes and procedures and the working methods of the Authority;

(iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Authority Assets; and

(v) 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 Agreement and/or which the Supplier will require the benefit of for the provision of the Services; and

(d) 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 Agreement, 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 Agreement on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

(a) any unsuitable aspects of the Operating Environment;

(b) any misinterpretation of the Authority Requirements; and/or

(c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 The Parties shall comply with the provisions of Paragraph 5 of Part C of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

3.1 The Authority represents and warrants that:

(a) it has full capacity and authority to enter into and to perform this Agreement;

(b) this Agreement is executed by its duly authorised representative;

(c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and

(d) its obligations under this Agreement 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); and

(e) it shall comply with all applicable Law.

3.2 The Supplier represents and warrants that:

(a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;

(b) it has full capacity and authority to enter into and to perform this Agreement;

(c) this Agreement is executed by its duly authorised representative;

(d) it has all necessary consents and regulatory approvals to enter into this Agreement and perform its obligations under this Agreement;

(e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

(f) its execution, delivery and performance of its obligations under this Agreement 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;

(g) its obligations under this Agreement 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);

(h) 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 Agreement or to the extent that the Supplier has otherwise disclosed to the Authority in writing prior to the date of this Agreement;

(i) in the three years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established;

(j) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to any Occasion of Tax Non-Compliance;

(k) 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 Agreement and/or the receipt of the Services by the Authority;

(l) 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;

(m) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

(n) it is not aware of any other matters relating to itself or its Affiliates which are likely to have a material adverse effect on its ability to perform its obligations under this Agreement;

(o) 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 the Supplier has notified the Authority of any profit warnings issued in respect of the Supplier in the three years prior to the Effective Date;

(p) within the previous 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 Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occurs or subsist; and

(q) neither the Supplier nor any of its officers, employees or Sub-contractors:

(i) has been convicted of any offence involving slavery and human trafficking; and

(ii) having made reasonable enquiries and to the best of its knowledge, has not been or is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

3.3 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 Agreement) and throughout the Term 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 Agreement.

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 Agreement 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 Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B | THE SERVICES

4 TERM

4.1 This Agreement shall:

(a) come into force on the Effective Date; and

(b) unless terminated at an earlier date by operation of Law or in accordance with Clause 34 (*Termination Rights*), terminate:

(i) at the end of the Initial Term; or

(ii) if the Authority elects to extend the Initial Term in accordance with Clause 4.2 (or subsequently extends any extension thereof), at the end of the final Extension Period.

4.2 Subject to the provisions of Clause 4.3, the Authority shall have the right, at its sole discretion, to extend the Initial Term (or any Extension Period which has already been notified to the Supplier by the Authority) for further periods of 12 months (each an **"Extension Period"**) by giving to the Supplier not less than six (6) months' written notice before the end of the Initial Term (or any Extension Period which has already been notified to the Supplier by the Authority, as appropriate).

4.3 The Authority may only extend the Initial Term by a maximum of two (2) Extension Periods (so that the Term shall not, in any circumstances, when taken in total with any extension made by the Authority pursuant to this Agreement, exceed six (6) years from the first Operational Service Commencement Date).

4.4 The Supplier shall provide the Authority (upon the Authority's request) with reasonable assistance to inform the Authority's decision as to whether to exercise its option to extend the Term of this Agreement, including assistance with any benchmarking that the Authority may wish to carry out to establish whether the Services represent value for money. The Supplier also agrees to assist the Authority with ascertaining the potential impact of any proposed extension on this Agreement including potential adjustments to the Charges (if applicable).

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

5 SERVICES

Standard of Services

5.1 The Supplier shall ensure that:

(a) subject to 5.1(c) below, the Services:

(i) comply in all respects with the Services Description; and

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

(b) where:

(i) the Services to be provided from any Operational Service Commencement Date are similar to services that the Authority (or a Service Recipient or a Service Beneficiary, as appropriate) was receiving immediately prior to that Operational Service Commencement Date (such similar services being "**Preceding Services**"); and

(ii) the standard and level of service received by the Authority (or a Service Recipient or a Service Beneficiary, as appropriate) in respect of any of the Preceding Services in the 12 month period immediately prior to that 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 relevant 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 (or a Service Recipient or a Service Beneficiary, as appropriate) in respect of the Relevant Preceding Services in the twelve (12) month period immediately prior to the relevant Operational Service Commencement Date.

(c) the Interim Services shall be provided from the Interim Service Commencement Date.

5.2 The Supplier shall:

(a) perform its obligations under this Agreement, including in relation to the supply of the Services in accordance with:

(i) all applicable Law;

(ii) Good Industry Practice;

(iii) the Standards;

(iv) the Baseline Security Requirements;

(v) the Quality Plans;

(vi) the Authority IT Strategy; and

(vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.2(a)(i) to 5.2(a)(vi);

(b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money; and

(c) comply with its obligations under Schedule 11 (*Collaboration*).

5.3 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.2(a)(i) to 5.2(a)(vi), 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

5.4 The Supplier shall:

(a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Agreement;

(b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;

(c) ensure that:

(i) it shall continue to have all necessary rights in and to the 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 Agreement and/or the receipt of the Services by the Authority;

(ii) 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 2.4 (*Security Management*)) shall notify the Authority three (3) months before the release of any new Software or Upgrade;

(iii) 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;

(iv) 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

(v) 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) and will be Euro Compliant;

(d) minimise any disruption to the Services, the IT Environment and/or the Authority's or any Other Suppliers' operations when carrying out its obligations under this Agreement;

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

(f) without limitation to its obligations under Schedule 11 (*Collaboration*), co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier;

(g) 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;

(h) 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 5.4(g);

(i) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;

(j) gather, collate and provide such information and co-operation as the Authority or Other Supplier may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Agreement;

(k) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;

(l) 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 Agreement;

(m) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Supplier's obligations under this Agreement; and

(n) manage closure or termination of Services and end of life of goods to take account of the Authority disposals requirements, including recycling and scope for re-use, and all applicable Standards.

5.5 NOT USED.

5.6 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:

(a) remedy any breach of its obligations in Clauses 5.4(b) to 5.4(d) inclusive within three (3) Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);

(b) remedy any breach of its obligations in Clause 5.4(a) and Clauses 5.4(e) to 5.4(j) inclusive within twenty (20) Working Days of becoming aware of the breach or being notified of the breach by the Authority; and

(c) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Supplier to comply with its obligations under Clause 5.6(a) or Clause 5.6(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

5.7 Without prejudice to Clauses 5.4 and 5.6 (*Supplier 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 not infringe any Intellectual Property Rights and shall:

(a) be free from material design and programming errors;

(b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and

(c) deliver the required functionality and interoperability.

Continuing obligation to provide the Services

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

(a) any withholding of the Service Charges by the Authority pursuant to Clause 7.4 (*Unacceptable Performance Failure)*;

(b) the existence of an unresolved Dispute; and/or

(c) any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Agreement under Clause 34.6(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

5.9 The Authority may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Authority is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Authority from receiving services that are the same as or similar to the Optional Services from any third party.

5.10 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 Optional Services.

5.11 Following receipt of the Authority's notice pursuant to Clause 5.9:

(a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;

(b) the Supplier shall implement and Test the relevant Optional Services in accordance with a transition plan which the Parties shall agree in respect of such Optional Services (**"Optional Services Transition Plan"**);

(c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 5 of Part B of Schedule 7.1 (*Charges and Invoicing*); and

(d) the Supplier shall, from the date agreed in the Optional Services Transition Plan for the Optional Services (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 2.2 (*Performance Levels*).

Power of attorney

5.12 By way of security for the performance of its obligations under Clauses 5.4(g) and 5.4(h) (*Supplier covenants*) the Supplier 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 5.12 (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.

Authority Responsibilities

5.13 The Authority shall comply with its responsibilities set out in Schedule 3 (*Authority Responsibilities*).

Scope

5.14 The Supplier acknowledges and agrees that:

(e) its relationship with the Authority is not exclusive;

(f) the Authority may at any time during the Term contract with any third party to perform services which are the same as or similar to the Services.

Conflicts of Interest

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

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

6 QUALITY PLANS, TRANSITION, PROJECTS AND IN-FLIGHT PROJECTS

Quality Plans

6.1 The Supplier shall:

(a) no later than 20 Working Days after the Effective Date, submit to the Authority for approval a quality plan for the Transition activities specified in the Transition Plan;

(b) within 20 Working Days of the Effective Date, submit to the Authority for approval a quality plan for Services set out in Schedule 2.1 (*Services Description*),

the purpose of which are to ensure that all aspects of the Transition and 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. If the Authority does not approve a Quality Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then within ten (10) Working Days revise the Quality Plan taking those reasons into account and shall re submit the revised plan to the Authority for the Authority's approval. The Authority shall not unreasonably withhold or delay its approval of the Quality Plan.

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

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

(a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and

(b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Transition Plan and Delays

6.5 The Parties shall comply with the provisions of Schedule 6.1 (*Transition)* in relation to the agreement and maintenance of the Transition Plan.

6.6 The Supplier shall:

(a) comply with the Transition Plan; and

(b) ensure that each Milestone is Achieved on or before its Milestone Date.

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

(a) it shall:

(i) notify the Authority (and any applicable Service Recipients and/or Service Beneficiaries) in accordance with Clause 27.1 (*Rectification Plan Process*); and

(ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and

(iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and

(b) if the Delay or anticipated Delay relates to a Key Milestone, it shall:

(i) comply with the Rectification Plan Process to address the impact of the Delay or anticipated Delay; and

(ii) the provisions of Clause 28 (*Delay Payments*) shall apply.

6.8 If the Supplier becomes aware that there is, or there is reasonably likely to be, an Other Ecosystem Supplier Delay, it shall:

(a) notify the Authority as soon as practicable but in any event within two (2) Working Days of becoming aware of the Other Ecosystem Supplier Delay; and

(b) use all reasonable endeavours to eliminate or mitigate the consequences of the Other Ecosystem Supplier Delay or anticipated Other Ecosystem Supplier Delay.

Testing and Achievement of Milestones

6.9 The Parties shall comply with the provisions of Schedule 6.2 (Testing Procedures) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

6.10 No Milestone Payment shall be made by the Authority until after the Milestone Achievement Certificate has been issued.

Projects

6.11 If requested by the Authority, the Supplier shall provide any Project as agreed with the Authority in accordance with Schedule 6.3 (*Projects and Ordering*).

6A DEVELOPMENT AND IMPLEMENTATION

Overall Approach

6A.1 The parties agree that the development, implementation and transition of the Deliverables and Services (the **"DI&T Services"**) will be conducted in accordance with the provisions of this clause.

6A.2 The DI&T Services will be split into a series of projects, which as at the Effective Date are set out in Schedule 2.1 (*Services Description*).

6A.3 The Supplier shall manage projects, as directed by the Authority:

(a) in accordance with a Waterfall project management methodology; and

(b) in accordance with a recognised Agile project management methodology (such as DSDM Atern) approved by the Authority in writing in advance.

Waterfall Projects

6A.4 For each project to be managed pursuant to clause 6A.3(a), the Parties will agree the specific authority requirements, the DI&T Plan (to be developed pursuant to clauses 6A.5 to 6A.8), the specific Services to be performed, including any Specially Written Software and the Project Specific IPRs (which are in the nature of software) and/or other Deliverables to be delivered for such project, and set this out in a Project Form. The Supplier will thereafter deliver the project in accordance with the terms of the Project Form and the parties will carry out acceptance tests and otherwise comply with the provisions of Schedule 6.2 (*Test and Assurance*).

6A.5 Within 10 Working Days of the date of direction by the Authority pursuant to clause 6A.3(a), the Supplier shall propose to the Authority a plan that describes in detail how it will effect the relevant services (the **"Draft DI&T Plan"**).

6A.6 The Draft DI&T Plan shall be considered a Deliverable and will be subject to testing and acceptance in accordance with Schedule 6.2 (*Testing Procedures*).

6A.7 Once the Draft DI&T Plan has been accepted by the Authority it shall constitute the DI&T Plan.

6A.8 Unless specifically agreed in writing by the Authority, the DI&T Plan shall not alter any Milestone Date or impose any obligations on the Authority or give rise to any further dependencies or assumptions in excess of those set out in the Agreement, and any attempt to do so shall be void and deemed not incorporated into the DI&T Plan.

6A.9 If, at any time, the Supplier becomes aware that it will not (or is unlikely to) achieve acceptance of any Milestone by the Milestone Date it shall as soon as reasonably practicable notify the Authority.

6A.10 The Supplier shall, as soon as reasonably practicable and in any event not later than 10 Working Days after the issue of such notice under clause 6A.9, give the Authority full details in writing of:

(a) the reasons for the delay;

(b) the consequences of the delay; and

(c) if the Supplier claims that the delay is due to Authority Cause or Ecosystem Failure, the reason for making that claim.

6A.11 Whether the delay is due to Authority Cause or Ecosystem Failure or not, the Supplier shall use its best endeavours to eliminate or mitigate the consequences of the delay.

6A.12 Any Disputes about or arising out of delays shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, the delay.

6A.13 The Supplier shall submit a draft correction plan where:

(a) it becomes aware that it will not achieve acceptance of a Milestone by the Milestone Date and/or Deliverable by the date set out in the DI&T Plan; or

(b) it has failed to achieve acceptance of a Milestone by the Milestone Date and/or Deliverable by the date set out in the DI&T Plan, unless such failure is a direct result of Authority Cause or Ecosystem Failure, in which case the Supplier shall comply with clause 32.

6A.14 The draft correction plan shall identify the issues arising out of the delay and the steps that the Supplier proposes to take to minimise the impact of such issues, and promptly achieve acceptance of the Milestone or Deliverable in accordance with this Agreement.

6A.15 The draft correction plan shall be submitted to the Authority for its approval as soon as possible and in any event not later than 10 Working Days (or such other period as the Authority may permit and notify to the Supplier in writing) after the service of notice under clause 6A.9.

6A.16 The Authority shall not withhold its approval of a draft correction plan unreasonably. If the Authority does not approve the draft correction plan it shall inform the Supplier of its reasons promptly following its decision to withhold approval and the Supplier shall take those reasons into account in the preparation of a further draft correction plan, which shall be resubmitted to the Authority within five Working Days of the rejection of the first draft.

6A.17 The Supplier shall comply with its correction plan following its approval by the Authority.

Agile Development

6A.18 For each project to be managed pursuant to clause 6A.3(b), the Supplier will document and agree with the Authority:

(a) the team to perform the services (**"Project Team"**). The size and/or composition of the Project Team may be subject to amendment from time to time by written agreement of the parties; and

(b) the overarching aims and objectives of the project (**"Project Vision"**) having regard always to the Authority's Requirements.

6A.19 For each project to be managed pursuant to clause 6A.3(b) which involves the development of Deliverables (**"Agile Development Project"**), the Supplier shall deliver such projects and carry out related DI&T Services in accordance with this clauses 6A.18 to 6A.40 (inclusive).

Agile Development Projects - Sprints

6A.20 Each Agile Development project will be divided into an agreed number of Sprints.

Release Planning: High-level User Stories and Sub-Stories

6A.21 The Parties will use the Authority's requirements and the Project Vision (and/or other specifications as applicable) to:

(a) identify and agree User Stories defining the scope of the relevant Deliverable;

(b) identify any Authority dependencies relevant to a particular User Story and the point within such User Story when that dependency is required.

6A.22 The parties will agree and document acceptance tests and acceptance criteria relating to the relevant Deliverables and shall comply with Schedule 6.2 (*Testing Procedures*).

The parties will, at the start of each Sprint, agree acceptance tests for each User Story based on the acceptance criteria and any additional criteria applicable to a Release.

6A.23 The Supplier shall be responsible for preparing and drafting and updating User Stories, dependencies and acceptance criteria for approval by the Authority.

Release Planning: Initial Story Mapping

6A.24 For each Agile Development Project the Parties will:

(a) categorise and group User Stories by function (user activity category);

(b) allocate User Stories to a Release and validate the inclusion of User Stories in that Release; and

(c) assign an indicative priority for each User Story within a particular Release using agreed indicative categories such as "must have" or "good to have".

Release Planning: Point and Velocity Estimation

6A.25 The Supplier shall:

(a) estimate feature complexity for each requirement/User Story allocated to a Release;

(b) estimate the Velocity Measure of the Project Team in delivering a Release and the time required by the Project Team to complete such Release; and

(c) upload each requirement/User Story into Requirement Tracking Tool.

In doing so, the Supplier shall have regard to any potential input from Authority or third-party resources located in other time zones, and the impact that this may have on the timely completion of a Release's delivery.

Release Planning: Determine Release Date and Re-prioritise

6A.26 The Supplier will review and re validate the indicative User Story priorities set out at clause 6A.24(c) above. If, as a result of such review, the Supplier believes that the Release shall not be achieved within its defined time frame:

(a) if this is caused by a change made by Authority, the Supplier shall raise a Change Request; and

(b) if this is due to an underestimation of the effort required or because the Supplier has failed to achieve the anticipated Velocity Measure, the Supplier shall provide, at its cost, such additional resources as may be required to ensure that the Release achieves its defined time frame.

Alternatively, the parties may agree such changes to any User Story or User Story priorities as are reasonably required via the Change Control Procedure.

6A.27 The Authority will be entitled to reprioritise, amend, modify or remove User Stories prior to the commencement of a Release via the Change Control Procedure.

Release Planning: General

6A.28 The Supplier will inform the Authority if it believes that any User Stories are not suitable for development using an Agile project methodology.

6A.29 The Supplier will populate and maintain a project specific instance of the Requirement Tracking Tool to map the details of User Stories, progress of Sprints, and the status of the Sprint backlog.

6A.30 The instance of the Requirement Tracking Tool used will be accessible remotely by relevant Authority personnel.

6A.31 The Supplier will regularly update the Requirement Tracking Tool to provide a close to real time overview of status of the Agile Development Project, Sprint status, Sprint backlog, and the progress/status of individual User Stories.

Sprint Planning

6A.32 Each Sprint will last for between two (2) and four (4) weeks, unless otherwise agreed between the parties in writing or extended in accordance with this clause or via the Change Control Procedure.

6A.33 At the start of each Sprint, the Supplier will re estimate the feature story complexity value of each User Story and notify Authority if there are any significant increases or decreases in the complexity of the Sprint and agree which User Stories should be removed from the Sprint.

6A.34 If Authority agrees, the Parties may add or remove User Stories from a particular Release to take account of any changes in estimated complexity, or amend the scheduled Release date.

6A.35 During the course of each Sprint, the Supplier shall:

(a) develop the selected User Stories using the agreed test-driven development methodology;

(b) once developed, make any Deliverables related to that User Story available to Authority in an agreed test area and mark the User Story as completed in the Requirement Tracking Tool;

(c) test all developed User Stories, including carrying out robust regression and component testing as agreed between the parties or set out in any agreed requirements, to ensure that they function correctly and fulfil the relevant acceptance criteria; and

(d) submit completed User Stories to Authority for final review and approval,

in each case using all reasonable endeavours to successfully develop and complete all User Stories allocated to a Release by the completion of the relevant Release.

The Supplier shall promptly notify Authority if it believes any amendments to the scope or content of a Sprint is required to achieve the Release, including adding, removing and amending User Stories within a Sprint, and the Parties may agree such changes to a Sprint as they believe to be necessary via the Change Control Procedure.

6A.36 If the Parties agree to remove a User Story or User Stories from any particular Sprint or Sprints after such Sprint has commenced:

(a) and the request is made by Authority, then the Velocity Measure for that Sprint shall be adjusted as though the Supplier had developed such User Stories in the course of that Sprint; and

(b) and the request is made by the Supplier and agreed to by Authority, then the Velocity Measure for that Sprint shall be adjusted to take account of the fact that the Supplier has failed to develop such User Stories in the course of that Sprint.

6A.37 For the purposes of clauses 6A.32 to 6A.37, any changes to Releases or Sprints shall be subject to agreement via the Change Control Procedure.

Release completion

6A.38 Following the completion of the development stage of each Sprint, the Authority shall, in Accordance with Schedule 6.2 (*Testing Procedures*):

(a) perform the acceptance tests in order to validate the content of the Release against the Project Vision and the acceptance criteria; and

(b) identify any errors, bugs, unexpected behaviours or other failure of the Release to comply with the functional requirements or specifications of the acceptance criteria or the Project Vision.

6A.39 As part of the Sprint planning process, the parties shall agree a reasonable period of time within each Sprint for the Supplier to correct any defects and to rectify any issues identified in the acceptance testing process set out in clause 6A.38 above or otherwise identified by Authority in its review of the Release.

6A.40 Notwithstanding clause 6A.22, Authority may specify additional acceptance tests or testing criteria required to be performed and used by the Supplier in respect of any iteration or Sprint, as part of the Agile project methodology.

7 PERFORMANCE INDICATORS

7.1 The Supplier shall:

(a) Subject to 7.1(c) below, provide the Operational Services and otherwise perform the Services and its other activities under this Agreement in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator and, where relevant, from the Milestone Date for each relevant CPP Milestone; and

(b) comply with the provisions of Schedule 2.2 (Performance Levels) in relation to the monitoring and reporting on its performance against the Performance Indicators;

(c) from the Interim Service Commencement Date, provide the Interim Services in accordance with this Agreement in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator in respect of such Interim Services.

Performance Failures

7.2 If in any Service Period:

(a) a KPI Failure occurs, the relevant Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);

(b) any Performance Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition, and without prejudice, to any Service Credits accruing in accordance with Clause 7.2(a); and/or

(c) a SPI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the SPI Failure and/or to prevent the SPI Failure from recurring.

7.3 The Parties agree that, where a sum is expressed to be due from the Supplier to the Authority as a Service Credit:

(a) such sums are a price adjustment to reflect the actual quality of service provided to the Authority and do not represent an estimate of the loss or damage that may be suffered by the Authority in respect of the breach of the Performance Indicators and/or the Performance Failure which gives rise to the Service Credit; and

(b) the crediting of such sums is, and shall be, without prejudice to any other right, remedy, or entitlement which the Authority may have under this Agreement (including but not limited to the right to claim damages from the Supplier

relating to any loss arising from such failure to achieve the relevant Target Performance Level).

Unacceptable Performance Failure

7.4 If in any Service Period an Unacceptable Performance Failure occurs or is determined:

(a) the Authority shall be entitled to withhold and retain as compensation for the Unacceptable Performance Failure a proportionate part (decided by the Authority in its absolute discretion) of any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being "**Compensation for Unacceptable Performance Failure**"); and

(b) if the Authority withholds and retains such Compensation for Unacceptable Performance Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue.

provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Authority may have to terminate this Agreement and/or to claim damages from the Supplier as a result of such Unacceptable Performance Failure.

7.5 The Supplier:

(a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable Performance Failure occurs; and

(b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

7.6 If a Critical KPI Failure or an Unacceptable Performance Failure occurs, the Authority may exercise its rights to terminate this Agreement in whole or in part pursuant to Clause 34.1 or 34.2 (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

7.7 The provisions of paragraph 2 of Part A of Schedule 2.2 (*Performance Levels*) shall apply in relation to any changes to be made to Performance Indicators and Service Credits (including, but without limitation, in respect of any Key Business Events (as defined in accordance with that Schedule)).

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 Strategic Board at least once every twelve (12) months (or more frequently in the event that the Supplier identifies

or is made aware of significant improvements in or in connection with the Services prior to the next report which is due to be provided pursuant to this Clause 8.1) on:

(a) 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;

(b) 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;

(c) 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 in reduction of operational risk;

(d) 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

(e) 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 and shall be provided together with a Gainshare Report which includes the information set out in Part B (*Savings Initiatives*) of Schedule 7.3 (*Value for Money*). 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.

9 ASSETS, EQUIPMENT AND MAINTENANCE

Assets

9.1 The Parties shall comply with the provisions of Schedule 4.5 (*Assets*).

Supplier Equipment

9.2 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading; removal, safe disposal or storage (as appropriate) of all packaging; and all other associated costs. Likewise on termination or expiry of this Agreement the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, loading, carriage, associated decommissioning and making good the Sites and/or the Authority Premises following

removal, and taking account of any sustainability requirements, including safe and secure removal of data and recycling requirements.

9.3 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.

9.4 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 Agreement, including the Target Performance Levels.

Maintenance

9.5 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.

9.6 The Supplier shall give as much notice as is reasonably practicable to the Authority Representative prior to carrying out any Emergency Maintenance.

9.7 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 Subject to Clause 10.2, in consideration of the Supplier carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).

10.2 Without prejudice to the generality of the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*), the Supplier shall procure a purchase order number from the Authority prior to the commencement of any Services (including Projects) and the Supplier acknowledges and agrees that should it commence Services without a purchase order number:

(a) the Supplier does so at its own risk; and

(b) the Authority shall not be obliged to pay the Charges without a valid purchase order number having been provided to the Supplier.

10.3 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.9 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*) and, to the extent specified therein, Clause 30 (*Remedial Adviser*) and Clause 31 (*Step-In Rights*).

10.4 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

Set-off and Withholding

10.5 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 Agreement or under any other agreement between the Supplier and the Authority.

10.6 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 10.5 or 7.3(a) 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.

Value For Money

10.7 The Parties shall comply with the provisions of Schedule 7.3 (*Value for Money*) in relation to the benchmarking of any or all of the Services, gain share mechanism and savings initiative in relation to the provision of the Services.

Financial Distress

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

Promoting Tax Compliance

10.9 All amounts stated 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.

10.10 To the extent applicable to the Supplier, the Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.

10.11 The Supplier shall provide to the Authority the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Sub-contractor of the Supplier prior to the commencement of any work under this Agreement by that agent, supplier or Sub-contractor. Upon a request by the Authority, the Supplier shall not employ or will cease to employ any agent, supplier or Sub-contractor.

10.12 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by the Authority from the amount of any sum due to the Supplier under this Agreement.

10.13 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs and or any litigation, enquiry or investigation in which it or its Sub-contractors is/are (as appropriate) involved that is in connection with, or which may lead to, any Occasion of Tax Non-Compliance, the Supplier shall:

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

(b) promptly provide to the Authority:

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

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

10.14 The Supplier shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Agreement. Any amounts due under this Clause 10.14 shall be paid in cleared funds by the Supplier to the Authority not less than five (5) Working Days before the date upon which the Tax or other liability is payable by the Authority.

10.15 The Supplier shall provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with its Tax obligations.

10.16 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clauses 10.9 to 10.15 (inclusive) then this shall constitute a Supplier Termination Event.

10.17 The Authority may internally share any information which it receives under Clauses 10.11 to 10.13 (inclusive) and 10.15, for the purpose of the collection and management of revenue for which the Authority is responsible.

Use of Off-shore Tax Structures

10.18 Subject to the principles of non-discrimination against undertakings based either in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Supplier shall not, and shall it ensure that its Connected Companies, Key Sub-contractors (and their respective Connected Companies) shall not, have or put in place (unless otherwise agreed with the Authority) any arrangements involving the use of offshore companies other offshore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Authority under or pursuant to this Agreement or (in the case of any Key Sub-contractor and its Connected Companies) United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under or pursuant to the applicable Key Sub-contract (**"Prohibited Transactions"**). Prohibited Transactions shall not include transactions made between the Supplier and its Connected Companies or a Key Sub-contractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.

10.19 The Supplier shall notify the Authority in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Sub-contractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier shall notify the Authority within a reasonable time to allow the Authority to consider the proposed Prohibited Transaction before it is due to be put in place.

10.20 In the event of a Prohibited Transaction being entered into in breach of Clause 10.18 above, or in the event that circumstances arise which may result in such a breach, the Supplier and/or the Key Sub-contractor (as applicable) shall discuss the situation with the Authority and, in order to ensure future compliance with the requirements of Clauses 10.18 and 10.19, the Parties (and the Supplier shall procure that the Key Sub-contractor, where applicable) shall agree (at no cost to the Authority) timely and appropriate changes to any such arrangements by the undertakings concerned, resolving the matter (if required) through the Escalation Process.

10.21 Failure by the Supplier (or a Key Sub-contractor) to comply with the obligations set out in Clauses 10.19 and 10.20 shall constitute a Supplier Termination Event.

SECTION D | CONTRACT GOVERNANCE

11 GOVERNANCE

11.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Agreement.

Representatives

11.2 Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.

11.3 The initial Supplier Representative shall be the person named as such in Schedule 9.2 (*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:

(a) Schedule 8.2 (*Reports and Records*) in relation to the production of reports and the maintenance and retention of Records; and

(b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

(a) Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

(b) Part C of Schedule 7.5 (*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 as set out in Schedule 8.3 (*Change Control Procedure*).

Change in Law

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

(a) a General Change in Law; or

(b) 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 Without prejudice to clause 5.2(a)(i), each Party shall monitor and shall keep the other Party informed in writing of any Change in Law which may impact the Services and/or Deliverables. The Supplier shall provide the Authority with timely details of measures and changes it proposes to make to comply with any such changes wherever necessary, designed to eliminate (where possible) any potential operational disruption.

13.4 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:

(a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:

(i) whether any Change is required to the Services, the Charges, this Agreement; and

(ii) 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

(b) provide the Authority with evidence:

(i) 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;

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

(iii) 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.

13.5 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(b)) 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:

(a) provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

(b) ensure that all Supplier Personnel:

(i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

(ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Services Description*) and Schedule 2.4 (*Security Management*);

(iii) comply with all relevant policies and reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*); and

(iv) meet the training and awareness requirements set out in paragraph 23.2 (e);

(c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;

(d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Agreement shall be a Default by the Supplier;

(e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

(f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

(g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

(h) procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Agreement.

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

(a) refuse admission to the relevant person(s) to the Authority Premises; and/or

(b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 9.2 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective 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:

(a) requested to do so by the Authority;

(b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;

(c) 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

(d) the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

14.6 The Supplier shall:

(a) 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);

(b) ensure that any Key Role is not vacant for any longer than ten (10) Working Days;

(c) 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;

(d) 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

(e) ensure that any replacement for a Key Role:

(i) has a level of qualifications and experience appropriate to the relevant Key Role; and

(ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

14.7 The Parties agree that:

(a) the Supplier shall both during and after the Term indemnify the Authority against all Employee Liabilities that may arise as a result of any claims brought against the Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and

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

Income Tax and National Insurance Contributions

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

(a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other Laws and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other Laws and regulations relating to national insurance contributions, in respect of that consideration;

(b) indemnify the Authority against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel for which the Supplier is not primarily liable to account to the Authority under the relevant Laws and regulations; and

(c) provide (promptly or within such other period notified by the Authority) information which demonstrates how the Supplier complies with Clause 14.8(a) or why Clause 14.8(a) does not apply to the Supplier (including such specific information as the Authority may request),

and if the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions above in this Clause 14.8 then this shall constitute a Supplier Termination Event.

14.9 The Authority may internally share any information which it receives under Clause 14.8(c).

Staff Transfer

14.10 The Parties agree that:

(a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:

(i) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A of Schedule 9.1 (*Staff Transfer*) shall apply;

(ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of Schedule 9.1 (*Staff Transfer*) shall apply;

(iii) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A and B of Schedule 9.1 (*Staff Transfer*) shall apply; and

(iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;

(b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and

(c) Part D of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

(a) subject to clause 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 £25,000 that arise during the Term;

(b) within 90 days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;

(c) 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;

(d) provide reports on the information at clause 15.1(c) to the Authority in the format and frequency as reasonably specified by the Authority; and

(e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

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 contract award 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:

(a) manage any Sub-contractors in accordance with Good Industry Practice;

(b) comply with its obligations under this Agreement in the delivery of the Services; and

(c) 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 Agreement.

15.6 Prior to sub-contracting any of its obligations under this Agreement, the Supplier shall notify the Authority in writing of:

(a) the proposed Sub-contractor's name, registered office and company registration number;

(b) the scope of any Services to be provided by the proposed Sub-contractor including contract value; and

(c) 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:

(a) a copy of the proposed Sub-contract; and

(b) 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:

(a) 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;

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

(c) the proposed Sub-contractor employs unfit persons; and/or

(d) the proposed Sub-contractor should be excluded in accordance with Clause 15.29;

in which case, the Supplier shall not proceed with the proposed appointment.

15.9 If:

(a) 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:

(i) the Supplier's notice issued pursuant to Clause 15.6; and

(ii) any further information requested by the Authority pursuant to Clause 15.7; and

(b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.12 (*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 4.4 (*Third Party Contracts*).

15.10 The Supplier shall record details of all Sub-contractors it has appointed in Schedule 4.3 (*Notified Sub-contractors and Key Sub-contractors*).

15.11 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:

(a) a copy of any Sub-contract; and

(b) any further information relating to that Sub-contract as reasonably requested by the Authority.

Appointment of Key Sub-contractors

15.12 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:

(a) 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;

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

(c) the proposed Key Sub-contractor employs unfit persons; and/or

(d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.29.

15.13 In making a request pursuant to Clause 15.12, the Supplier shall provide the Authority with the following information about the proposed Key Sub-contractor:

(a) its name, registered office and company registration number;

(b) a copy of the proposed Key Sub-contract;

(c) the purposes for which the proposed Key Sub-contractor will be employed, including the scope of any services to be provided by the proposed Key Sub-contractor;

(d) if relevant, confirmation that the Key Sub-contract requires the proposed Key Sub-contractor to comply with any relevant service levels;

(e) where the proposed Key Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Key Sub-contract has been agreed on "arms-length" terms; and

(f) any further information reasonably requested by the Authority.

15.14 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 4.3 (*Notified Sub-contractors and Key Sub-contractors)*.

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

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

(a) provisions which will enable the Supplier to discharge its obligations under this Agreement;

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

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

(d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the 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;

(e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Agreement in respect of:

(i) data protection requirements set out in Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*);

(ii) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);

(iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.4(m) (Services);

(iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data;

(v) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);

(vi) the reporting requirement set out in paragraph 2.1(b)(vii) of Schedule 8.2 (*Reports and Records*);

(vii) the tax compliance requirements set out in Clauses 10.9 to 10.17 (inclusive) (*Promoting Tax Compliance*);

(viii) the use of off-shore tax structures set out in Clauses 10.18 to 10.21

(inclusive) (*Use of Off-shore Tax Structures*);

(ix) the disclosure of Confidential Information set out in Clause 21 (Confidentiality); and

(x) the slavery and human trafficking compliance requirements set out in Clause 36.5 (Modern Slavery);

(f) 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 34.1(a) (*Termination by the Authority*) and 35.4 (*Payments by the Authority*) and Schedule 7.2 (*Payments on Termination*) of this Agreement;

(g) 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;

(h) a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 30 *(Remedial Adviser*);

(i) 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 31 *(Step-in Rights*);

(j) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Related Third Party Dispute Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Related Third Party Dispute Resolution Procedure; and

(k) a provision requiring the Key Sub-contractor to:

(i) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:

(A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or

(B) 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

(ii) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the

Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Service Continuity Plan.

15.17 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.

15.18 At any time during the Term, the Supplier shall provide within ten (10) Working Days of the Authority's request:

(a) a copy of any Key Sub-contract; and

(b) any further information relating to that Key Sub-contract as reasonably requested by the Authority.

Supply chain protection

15.19 The Supplier shall ensure that all Sub-contracts (which in this subclause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain provisions:

(a) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;

(b) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;

(c) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;

(d) giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period;

(e) granting the Supplier a right to terminate the Sub-contract if the relevant Sub-contractor fails to comply, in the performance of its Sub-contract, with legal obligations in the fields of environmental, social or labour law and a requirement that the Sub-contractor includes a provision having the same effect in any sub-contract which it awards;

(f) requiring the Sub-contractor to provide reports which contain the information referred to in paragraph 2.1(b)(vii) of Schedule 8.2 (Reports and Records); and

(g) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.19 in any contracts it enters into wholly or substantially for the purpose of

performing or contributing to the performance of the whole or any part of this Agreement; and

(h) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Agreement in respect of data protection requirements set out Clauses 20 (*Authority Data and Security Requirements*) and 23 (*Protection of Personal Data*) and in respect of the slavery and human trafficking compliance requirements set out in Clause 36.5 (*Modern Slavery*).

15.20 The Supplier shall:

(a) 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;

(b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.20(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.21 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

15.22 The Supplier shall, and shall ensure that any of its Sub-contractors shall, grant to the Authority and its Authorised Agents the right of access to any of the Supplier Premises and/or Supplier Personnel as the Customer may reasonably require during normal business hours in order to observe the activities of the Supplier and any of its Sub-contractors for the purposes of monitoring and/or better understanding of the Services.

Termination and Amendment of Sub-contracts

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

15.24 The Authority, at its sole discretion, may require the Supplier to terminate:

(a) a Sub-contract where:

(i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 34.1(b) (*Termination by the Authority*);

(ii) the relevant Sub-contractor or any of its Affiliates have embarrassed or are likely to embarrass the Authority or otherwise brought the Authority

into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;

(iii) 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;

(iv) the relevant Sub-contractor has failed to comply with the terms of its Sub-contract equivalent to those set out at Clauses 10.9 to 10.17(inclusive) (*Promoting Tax Compliance*); and/or

(v) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.29; and

(b) a Key Sub-contract where:

(i) 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; and or

(ii) the relevant Key Sub-contractor has failed to comply with the terms of the Key Sub-contract equivalent to those set out at Clauses 10.18 to 10.22 (inclusive) (*Use of Off-shore Tax Structures*).

Competitive Terms

15.25 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:

(a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item; or

(b) subject to Clause 15.24, enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.

15.26 If the Authority exercises either of its options pursuant to Clause 15.25, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control

Procedure.

15.27 The Authority's right to enter into a direct agreement for the supply of the relevant items is subject to:

(a) the Authority making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and

(b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

15.28 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. 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.

Exclusion of Sub-contractors

15.29 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

(a) if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;

Reporting SME/VCSE Sub-contracts

15.30 In addition to any other Management Information requirements set out in this Agreement, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Authority thirty 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 the Schedule 8.2 (Report and Records) Annex 5 and in accordance with any guidance issued by the Authority from time to time.

15.31 The Authority may update the Supply Chain Transparency Information Template from time to time (including the date required and/or format) by issuing a preplacement version with a 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 Except as expressly set out in this Agreement:

(a) subject to Clause 17.5, 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.

(b) 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.

(c) Specially Written Software and Project Specific IPRs (except for any Supplier Know-How or trade-secrets, Supplier Confidential Information or Supplier Background IPR) shall be the property of the Authority.

16.2 Without prejudice to Clauses 16.6 and 17.7, where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, 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).

16.3 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.

16.4 Unless the Authority otherwise agrees in advance in writing:

(a) all Specially Written Software and Project Specific IPRs (which are in the nature of software) 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

(b) where the Specially Written Software and Project Specific IPRs (which are in the nature of software) 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.

16.5 Where the Authority agrees that any Specially Written Software and/or Project Specific IPRs (which are in the nature of software) 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 clause 19A (*Open Source Publication*).

Specially Written Software and Project Specific IPRs

16.6 Subject to Clause 17.17(Patents), the Supplier hereby assigns to the Authority, with full title guarantee, as of the Effective Date or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs and the Specially Written Software, as appropriate title to and all rights and interest in the Project Specific IPRs and the Specially Written Software or shall procure that the first owner of the Project Specific IPRs and the Specially Written Software assigns them to the Authority on the same basis, including (without limitation):

(a) the Documentation, Source Code and the Object Code of the Specially Written Software; and

(b) 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");

but not including any Supplier Know-How, trade secrets or Confidential Information.

16.7 The Supplier:

(a) shall:

(i) inform the Authority of all Specially Written Software and any element of Project Specific IPRs (which are in the nature of software) that constitutes 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 (which are in the nature of software) in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect 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 Clause 17.11 (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 Project Specific IPRs (which are in the nature of software);

(b) acknowledges and agrees that the ownership of the media referred to in Clause 16.7(a)(ii) shall vest in the Authority upon their receipt by the Authority; and

(c) shall without charge to the Authority, execute all assignments, in accordance with Clause 16.6, as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

17 LICENCES GRANTED BY THE SUPPLIER

Supplier Software and Supplier Background IPRs

17.1 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 5 (Intellectual Property Rights) or has been approved by the Authority following a review by the Technical Board.

17.2 The Supplier hereby grants to the Authority:

(a) subject to the provisions of Clause 17.17 (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 Central Government 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 Central Government Body's) business or function.

(b) 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 5 (Intellectual Property Rights) 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 Clauses 17.7 and 17.8 in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and

(c) a perpetual royalty-free non-exclusive licence to use without limitation any Supplier Know-How, trade secrets or Confidential Information contained

within the Specially Written Software or the Project Specific IPRs.

17.3 At any time during the Term or following termination or expiry of this Agreement, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.2(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.2(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 Clause 17.7 (*Authority's right to sub-license*) commits any material breach of the terms of Clause 17.2(a)(i) or 17.2(a)(ii) or 17.5(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within forty (40) Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.

17.4 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.3, the Authority shall:

(a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);

(b) 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 six (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

(c) 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.

17.5 The Supplier hereby grants, or shall procure that the owner or an authorised licensor grants, to the Authority a perpetual, royalty-free, non-exclusive, transferable (including the ability to sub-licence) licence to use (including but not limited to the right to load, execute, store, transmit, display and copy), develop, modify (including reverse engineer and decompile) and maintain the Concealed IPR.

17.6 Where the Supplier wishes to use Concealed IPR in the delivery of the Services, not already set out in Schedule 5 (IPR), it shall notify the Authority of the same and the Parties may agree to update Schedule 5 (IPR) in accordance with the Change Control Procedure.

Authority's right to sub-license

17.7 Subject to Clause 17.17 (Patents) and without prejudice to Clause 17.5, the Authority may sub-license:

(a) the rights granted under Clause 17.2(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 Clause 17.2(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 Central Government 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 5 (*IPR*); and

(b) the rights granted under Clause 17.2(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 5 (*IPR*) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

17.8 Without prejudice to Clause 17.5, the Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.2(a) (*Supplier Software and Supplier Background IPRs*) to:

(a) a Central Government Body; or

(b) to 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.

17.9 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*). If the Authority ceases to

be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licences granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*).

17.10 If a licence granted in Clause 17.2 (*Supplier Software and Supplier Background IPRs*) is assigned, novated or transferred under Clause 17.8 (*Authority's right to assign/novate licences*) or there is a change of the Authority's status pursuant to Clause 17.9, the rights acquired on that assignment, novation, transfer or change of status shall not extend beyond those previously enjoyed by the Authority.

Third Party Software and Third Party IPRs

17.11 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 in each case it has:

(a) 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 Clauses 17.2(a) and 17.3 (*Supplier Software and Supplier Background IPRs*) and Clause 17.8 (*Authority's right to assign/novate licences*); or

(b) complied with the provisions of Clause 17.12.

17.12 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 Clause 17.11(a), the Supplier shall:

(a) 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

(b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing the terms of the licence from the relevant third party.

17.13 The Supplier shall:

(a) 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

(b) unless instructed otherwise in writing by the Authority in any case within twenty (20) Working Days of notification pursuant to Clause 17.12(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.

17.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within 10 days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

17.15 For the avoidance of doubt, the termination or expiry of this Agreement shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

17.16 The Supplier shall, if requested by the Authority in accordance with Schedule 8.5 (*Exit Management*) and at the Supplier's cost:

(a) 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 Clause 17 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 5 (*IPR*) 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

(b) 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

17.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs or Concealed IPR 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, material or software solely for the purpose for which they were delivered under this Agreement.

Escrow

17.18 The Supplier shall where agreed pursuant to Clause 17.22, have the relevant Supplier Software and Third Party Software used exclusively for providing Services to the Authority in which it owns the Intellectual Property Rights placed in escrow with the escrow agent NCC Group, its successor or such other comparable organisation on terms and conditions which are not materially adversely different to the standard NCC tripartite escrow agreement terms and conditions at all times on the Customer's request and at the cost of the Supplier.

17.19 The Supplier agrees that trigger events to be included in the agreement with the escrow agent referred to in Clause 17.18 shall include the following:

(a) a Supplier breach has created a material interruption or disruption in the provision of the Services;

(b) a regulator advises that step in is necessary or desirable; and

(c) the Supplier suffering an Insolvency Event.

17.20 On the occurrence of a "trigger event", the Supplier shall grant to the Authority a perpetual, royalty free, transferable, irrevocable licence to transfer an instance of the Software on to the Authority System and to use, copy, modify and adapt (with a right to sub licence such rights to other third parties engaged) such Software. Such licence shall last only for such period as is reasonable for the Authority to put in place an alternative service delivery solution, whether provided by the Authority itself or a third party. If a third party will not permit the transfer of an instance of the Software to the Authority System as envisaged by this Clause 17.20, the Authority may procure a licence itself and the Supplier shall reimburse the costs reasonably incurred by the Authority in this regard.

17.21 The Supplier shall provide Upgrades to the Supplier Software and Third Party Software provided as part of the Supplier Solution and in accordance with Good Industry Practice at no additional cost to the Authority, and shall ensure that the Supplier Software shall be Upgraded within six (6) months of the release of the latest version, such that it is no more than one (1) major version level below the latest release (normally codified as running software no older than the 'n 1 version') throughout the Term unless otherwise agreed with the Authority in writing.

17.22 The Parties acknowledge that there will be no Software relevant to Clauses 17.18-17.21 at the Effective Date, and there is no obligation on the Supplier to put any relevant Software in escrow at the Effective Date. The Parties will agree whether Clauses 17.18-17.21 will apply in the event that Supplier Software and/or Third Party Software used exclusively for providing Services to the Authority is developed throughout the Term.

18 LICENCES GRANTED BY THE AUTHORITY

18.1 The Authority hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority

Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:

(a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and

(b) 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.

18.2 In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:

(a) immediately cease all use of the Authority Software, the Authority Background IPRs, the Authority Data, the Specially Written Software and the Project Specific IPRs (as the case may be);

(b) 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, the Authority Data, the Specially Written Software and the Project Specific IPRs, 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, the Authority Data, the Specially Written Software and the Project Specific IPRs (as the case may be); and

(c) ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs, Authority Data, the Specially Written Software and the Project Specific IPRs 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, Authority Data, the Specially Written Software and/or the Project Specific IPRs.

19 IPRs INDEMNITY

19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

(a) procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

(b) replace or modify the relevant item with non-infringing substitutes provided that:

(i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

(iii) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and

(iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:

(a) the Authority may terminate this Agreement (if subsisting) with immediate effect by written notice to the Supplier; and

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

19A OPEN SOURCE PUBLICATION

19A.1 The Supplier agrees that the Authority may publish, at its sole discretion, as Open Source software all or part of the Specially Written Software and the Project Specific IPRs (which are in the nature of software) after the Operational Service Commencement Date.

19A.2 The Supplier hereby warrants that the Specially Written Software and the Project Specific IPRs (which are in the nature of software):

(a) are suitable for release as Open Source and that any release shall not allow a third party to use the Open Source software to in any way compromise the operation, running and security of the Specially Written Software, the Project Specific IPRs or the Authority System;

(b) shall not knowingly or recklessly 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 (which are in the nature of software) have been tested using the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor;

(c) do not include or use any Open Source software or any libraries or code licensed from time to time under the General Public Licence (as those terms are defined by the Open Source Initiative or the Free Software Foundation) or anything similar in, or in the development of, the Specially Written Software and the Project Specific IPRs, nor do the Specially Written Software and the Project Specific IPRs operate in such a way that it is compiled with or linked to any of the foregoing;

(d) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;

(e) do not contain any Non-Party IPRs which are not licensed to the Authority under clause 17.11; and

(f) will be supplied in a format suitable for publication as Open Source (**"Open Source Publication Material"**) no later than the date in sub-clause 19A.1.

19A.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 any Supplier Background IPRs that the Supplier is willing to allow to be included in any Open Source publication can remain in the Open Source Publication Material supplied to the Authority. In such a case, the Supplier hereby acknowledges and agrees 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.

19A.4 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and the Project Specific IPRs (which are in the nature of software) as Open Source under clause 19A.1.

20 AUTHORITY DATA AND SECURITY REQUIREMENTS

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

20.2 Save as permitted by Clause 23.2(a), the Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Agreement or as otherwise expressly authorised in writing by the Authority.

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

20.4 The Supplier shall preserve the integrity, confidentiality and accessibility of Authority Data and prevent the unauthorised access, interception, corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.

20.5 Not used

20.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Baseline Security Requirements.

20.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:

(a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 8.6 (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

(b) itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning).

20.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.

20.9 The Supplier may use, implement or permit the implementation of cloud computing technology (meaning a solution whereby the Authority Data is stored on servers that are not owned, leased or operated by the Supplier) by any supplier or any Sub-contractor, only with the prior written consent of the Authority Representative.

20.10 The Supplier shall and shall procure that its Sub-contractors shall comply with the requirements of Schedule 2.4 (*Security Management*).

20.11 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.

20.12 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by

providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

20.13 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause 20.12 the Supplier shall continue to perform the Services in accordance with its existing obligations.

Malicious Software

20.14 The Supplier shall, as an enduring obligation throughout the Term and at no cost to the Authority, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the Parties) to check for, contain the spread of, and minimise the impact of Malicious Software in the IT Environment (or as otherwise agreed by the Parties). The Supplier may be required to provide details of the version of anti-virus software being used in certain circumstances, e.g. in response to a specific threat.

20.15 Notwithstanding Clause 20.14, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

20.16 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Clause 20.15 shall be borne by the Parties as follows:

(a) by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier (except where the Authority has waived the obligation set out in Clause 20.14) or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

(b) otherwise by the Authority.

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

20.17 The Supplier undertakes that it will duly observe, and that it shall ensure that all Sub-contractors and Supplier Personnel shall duly observe:

(a) the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Authority Data. Further, the Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the aforesaid obligations may lead to a prosecution under Section 182 of the

Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and

(b) Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Services. The Supplier acknowledges that (without prejudice to any other rights and remedies of the Authority) a breach of the Supplier's obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

20.18 The Supplier shall regularly (not less than once every six (6) months) remind all Supplier Personnel in writing of the obligations upon Supplier Personnel set out in clause 20.17 above. The Supplier shall monitor the compliance by Supplier Personnel with such obligations.

20.19 The Supplier shall ensure that all Supplier Personnel who will have access to, or are provided with, Authority Data sign (or have previously signed) a declaration, in a form acceptable to the Authority, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier shall provide a copy of each such signed declaration to the Authority upon demand.

21 CONFIDENTIALITY

21.1 For the purposes of this Clause 21, the term **"Disclosing Party"** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **"Recipient"** shall mean the Party which receives or obtains directly or indirectly Confidential Information.

21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

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

(b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

(c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and

(d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

(a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

(b) the need for such disclosure arises out of or in connection with:

(i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;

(ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or

(iii) the conduct of a Central Government Body review in respect of this Agreement; or

(c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

21.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:

(a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;

(b) its auditors; and

(c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

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

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

(a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;

(b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

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

(d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement

(e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 31 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 30 (*Remedial Adviser*) and Exit Management rights; or

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

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

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

Other Ecosystem Suppliers

21.8 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Agreement, where the Supplier receives or obtains directly or indirectly any Confidential Information of an Other Ecosystem Supplier, the Supplier shall:

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

(b) not disclose the Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;

(c) not use or exploit the Confidential Information in any way except for the purposes anticipated under this Agreement; and

(d) immediately notify the Authority and the relevant Ecosystem Supplier if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information.

21.9 The Supplier shall be entitled to disclose Confidential Information of an Other Ecosystem Supplier where:

(a) the Recipient is required to disclose the Confidential Information by Law; or

(b) the Recipient has reasonable grounds to believe that the relevant Ecosystem Supplier is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

21.10 If the Supplier is required by Law to make a disclosure of Confidential Information, the Supplier shall as soon as reasonably practicable and to the extent permitted by Law notify the relevant Ecosystem Supplier of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

21.11 Without prejudice to Clause 21.9, the Supplier may disclose Confidential Information of an Other Ecosystem Supplier on a confidential basis only to:

(a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Agreement;

(b) its auditors; and

(c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Supplier discloses Confidential Information pursuant to this Clause 21.11, it shall notify the Authority and shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

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

22 TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that:

(a) the Transparency Reports; and

(b) the content of this Agreement, including any Changes to this Agreement agreed from time to time except for:

(i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and

(ii) Commercially Sensitive Information;

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

22.2 Notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA *redacted*). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

22.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.2 (*Reports and Records*).

22.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

22.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Supplier.

22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause

21.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.

22.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA, the Re-use of Public Sector Information Regulations 2015 and the EIRs. The Supplier shall:

(a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;

(b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;

(c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and

(d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

22.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

23 PROTECTION OF PERSONAL DATA

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

23.2 The Supplier shall:

(a) not Process or transfer the Personal Data and/or Sanitised Personal Data other than in accordance with the Authority's written instructions, as set out in Schedule 2.8 (*Data Processing and List of Sub-processors*), unless required by EU or member state law or UK Law to which the Supplier is subject, in which

case the Supplier shall promptly inform the Authority of that legal requirement before Processing or transferring that Personal Data and/or Sanitised Personal Data, unless prohibited by law;

(b) acknowledge that the provision of the Services involves the Processing of the types of Personal Data and categories of Data Subject set out in Part A of Schedule 2.8 (*Data Processing and List of Sub-processors*), and shall, with the Authority's written consent, update the details in Schedule 2.8 (*Data Processing and List of Sub-processors*) from time to time as necessary;

(c) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data, Personal Data Breaches and/or accidental loss, destruction or damage to the Personal Data and Sanitised Personal Data, including the measures as are set out in Clause 20 (*Authority Data and Security Requirements)* and having regard to the:

(i) nature of the data to be protected;
(ii) harm that might result from a Personal Data Breach;
(iii) state of technological development; and
(iv) cost of implementing any measures;

(d) not disclose or transfer the Personal Data and/or Sanitised Personal Data to any third party or Supplier Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data and/or Sanitised Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);

(e) take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and/or Sanitised Personal Data and ensure that the Supplier Personnel:

(i) are aware of and comply with the Supplier's duties under this Clause 23 and Clauses 20 (Authority Data and Security Requirements) and 21 (Confidentiality);

(ii) are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;

(iii) are informed of the confidential nature of the Personal Data and Sanitised Personal Data and do not publish, disclose or divulge any of the Personal Data and/or Sanitised Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement;

(iv) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the Relevant Data Protection

Laws); and

(v) retain evidence of the steps taken in respect of Clauses 23.2(e)(i) to 23.2(e)(iv) above for the Authority's inspection;

(f) notify the Authority immediately upon becoming aware of a reasonably suspected, "near-miss" or actual Personal Data Breach or circumstances that may give rise to a Personal Data Breach, providing the Authority with sufficient information and in a timescale which allows the Authority to meet its obligations to report a Personal Data Breach within 72 hours under Article 33 of the GDPR. Such notification shall as a minimum:

(i) describe the nature of the Personal Data Breach, the categories and numbers of Data Subjects concerned, and the categories and numbers of Personal Data records concerned;

(ii) communicate the name and contact details of the Data Protection Officer or other relevant contact from whom more information may be obtained;

(iii) describe the likely consequences of the Personal Data Breach; and

(iv) describe the measures taken or proposed to be taken to address the Personal Data Breach.

(g) co-operate with the Authority and take such reasonable commercial steps as are directed by it to mitigate or remedy the consequences of a reasonably suspected, "near-miss" or actual Personal Data Breach including but not limited to;

(i) documenting any such Personal Data Breaches and reporting them to any supervisory authority;

(ii) taking measures to address any such Personal Data Breaches, including where appropriate, measures to mitigate their possible adverse effects; and

(iii) conducting Data Protection Impact Assessments of any Processing operations and consulting any supervisory authorities, Data Subjects and their representatives accordingly;

(h) notify the Authority immediately if it receives:

(i) from a Data Subject (or third party on their behalf):

(A) a Data Subject Access Request (or purported Data Subject Request);

(B) a request to rectify, any inaccurate Personal Data;

(C) a request to have any Personal Data erased;

(D) a request to restrict the Processing of any Personal Data;

(E) a request to obtain a portable copy of part of the Personal Data, or to transfer such a copy to any Third Party;

(F) an objection to any Processing of Personal Data;

(G) any other request, complaint or communication relating to the Authority's obligations under the Relevant Data Protection Laws;

(ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or

(iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

(i) not, without the Authority's prior written consent, and subject also to Clause 24.1, make or permit any announcement in respect of a Personal Data Breach or respond to any request, communication or complaint of the kind listed at Clause 23.2(h)(i)-(iii);

(j) taking into account the nature of the processing, provide the Authority with full assistance in relation to either Party's obligations under the Relevant Data Protection Laws and any complaint, communication or request as listed at clause 23.2(h) (and insofar as possible within the timescales reasonably required by the Authority) including by promptly providing:

(i) the Authority with full details and copies of the complaint, communication or request;

(ii) such assistance as is reasonably requested by the Authority to enable the Authority to comply with a Data Subject Request within the relevant timescales set out in the Relevant Data Protection Laws;

(iii) the Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

(iv) assistance as requested by the Authority following any Personal Data Breach;

(v) assistance as requested by the Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Authority with the Information Commissioner's Office;

(k) without prejudice to clause 23.2(a), not without the prior written consent of the Authority:

(i) convert any Personal Data for "big data" analysis or purposes; or
(ii) match or compare any Personal Data with or against any other Personal Data (whether the Supplier's or any third party's);

and in each case the Supplier shall only take the steps set out in (i) to (ii) above strictly to the degree required to fulfil its obligations under this Agreement.

23.3 The Supplier's obligation to notify under clause 23.2(f) and 23.2(h) shall include the provision of further information to the Authority in phases, as details become available.

23.4 Insofar as the Supplier processes Sanitised Personal Data, the Supplier shall not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived.

23.5 The Supplier must obtain the prior written consent of the Authority before appointing any Sub-contractor or other Third Party to Process any Personal Data and/or Sanitised Personal Data ("**Sub-processor**") and the Supplier shall remain fully liable to the Authority for any failure by a Sub-processor to fulfil its obligations in relation to the Processing of any Personal Data and/or Sanitised Personal Data. Such consent shall be conditional upon:

(a) the use of any Sub-processor being otherwise in accordance with clause 15 and 23.7; and

(b) the Supplier entering into a continuing obligation to provide the Authority with such information regarding the Sub-processor as the Authority may reasonably require.

23.6 In accordance with clause 23.5, the Authority consents to the use by the Supplier as at the Effective Date of the Sub-processors listed in Part B of Schedule 2.8 (*Data Processing and List of Sub-processors*) which shall be updated as required with the written consent of the Authority

23.7 The Supplier shall procure that all Sub-processors:

(a) prior to commencing the Processing of any Personal Data and/or Sanitised Personal Data enter into a written contract in relation to the Processing with either the Authority or the Supplier which shall include substantially the same

data protection obligations on the Sub-processor as are imposed on the Supplier by these General Terms and Conditions and which shall set out the Sub-processor's agreed Processing activities in the same or substantially similar form as provided at Part A of Schedule 2.8 to these General Terms and Conditions; or

(b) insofar as the contract referred to at paragraph (a) above involves the transfer of Personal Data and/or Sanitised Personal Data outside of the European Economic Area in accordance with clause 23.8, it shall incorporate the Standard Contractual Clauses or such other mechanism as directed by the Authority to ensure the adequate protection of the transferred Personal Data and/or Sanitised Personal Data;

(c) act in accordance with clauses 15 and 23.

23.8 The Supplier shall not Process or otherwise transfer any Personal Data and/or Sanitised Personal Data in or to any Off-shore Location. If, after the Effective Date, the Supplier or any Sub-contractor wishes to Process and/or transfer any Personal Data and/or Sanitised Personal Data in or to any Off-shore Location, the following provisions shall apply:

(a) the Supplier shall submit a Change Request to the Authority which, if the Authority agrees, at its sole discretion, to such Change Request, shall be dealt with in accordance with the Change Control Procedure and Clauses 23.8(b) to 23.8(d);

(b) the Supplier shall set out in its Change Request and/or Impact Assessment details of the following:

(i) the Personal Data and/or Sanitised Personal Data which will be transferred to and/or Processed in any Off-shore Location;

(ii) the Off-shore Location or Countries which the Personal Data and/or Sanitised Personal Data will be transferred to and/or Processed in; and

(iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data and/or Sanitised Personal Data in Off-shore Location;

(iv) how the Supplier will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Off-Shore Location(s) so as to ensure the Authority's compliance with the Relevant Data Protection Laws;

(c) in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals

processes in connection with, the Processing in and/or transfers of Personal Data and/or Sanitised Personal Data to any Off-shore Location; and

(d) the Supplier shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:

(i) incorporating Relevant Data Protection Laws Standard Contractual Clauses into this Agreement or a separate data processing agreement between the Parties; and

(ii) complying with the provisions of clause 23.5 – 23.7 in relation to any Sub-contractor or other Third Party who will be Processing and/or receiving or accessing the Personal Data and/or Sanitised Personal Data in any Off-shore Location either enters into:

(A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or

(B) a data processing agreement with the Supplier on terms which are equivalent to those agreed between the Authority and the Sub-contractor relating to the relevant Personal Data and/or Sanitised Personal Data transfer,

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

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

(a) immediately inform the Authority if, in its opinion, any instruction infringes, or might reasonably be considered to infringe, the Relevant Data Protection Laws;

(b) provide all reasonable assistance to the Authority in the preparation of any Data Protection Impact Assessment prior to commencing any processing, such assistance including, at the discretion of the Authority:

(i) a systematic description of the envisaged processing operations and the purpose of the processing;

(ii) an assessment of the necessity and proportionality of the processing operations in relation to the Services;

(iii) an assessment of the risks to the rights and freedoms of Data Subjects; and

(iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;

(c) implement, review and maintain organisational and technical security measures to ensure the security of Personal Data in accordance with Articles 32 to 34 of the GDPR, including by:

(i) pseudonymising or encrypting Personal Data and/or Sanitised Personal Data , where appropriate;

(ii) ensuring the on-going confidentiality, integrity and, availability of Processing systems and services;

(iii) ensuring a means to restore the availability of and access to Personal Data and/or Sanitised Personal Data in a timely manner following any physical or technical incident; and

(iv) having in place a process for regularly testing, assessing and evaluating the effectiveness of the organisational and technical security measures:

(d) at the written direction of the Authority, promptly and securely delete or return to the Authority or transfer to any Replacement Supplier Personal Data (and any copies of it) in such format as is requested by the Authority, unless the Supplier is required by Law to retain the Personal Data.

23.10 The Supplier shall not cause the Authority to breach any obligation under the Relevant Data Protection Laws and shall itself comply fully with its obligations under the Relevant Data Protection Laws including by:

(a) adhering to any relevant codes of conduct published pursuant to Article 40 of the GDPR;

(b) designating a Data Protection Officer if required by the Relevant Data Protection Laws;

(c) maintaining complete and accurate records of its Processing of Personal Data containing the information set out in Article 30(2) of the GDPR, this requirement applying only where the Supplier employs 250 or more staff, unless:

(i) the Processing is not occasional;

(ii) the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions

and offences referred to in Article 10 of the GDPR; and

(iii) the Processing is likely to result in a risk to the rights and freedoms of Data Subjects; and

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

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

23.12 In the event that the Supplier Processes Personal Data and/or Sanitised Personal Data of any Other Ecosystem Supplier in the performance of this Agreement, the Supplier shall enter into an appropriate data processing agreement with the relevant Other Ecosystem Supplier meeting the requirements of Article 28(3) of the GDPR.

23.13 For the avoidance of doubt, nothing in these Terms and Conditions relieves the Supplier of its own direct responsibilities and liabilities under the GDPR.

24 PUBLICITY AND BRANDING

24.1 The Supplier shall not:

(a) make any press announcements or publicise this Agreement or its contents in any way; or

(b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the prior written consent of the Authority.

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

SECTION G | LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

25.1 Nothing in this Agreement shall exclude or limit:

(a) either Party's liability for:

(i) death or personal injury caused by its negligence, or that of its employees, officers, agents or Sub-contractors (as applicable);

(ii) fraud or fraudulent misrepresentation by it or its employees;

(iii) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

(iv) any liability to the extent it cannot be limited or excluded by Law;

(b) the Supplier's liability in respect of the indemnities in Clause 10.14 (*Promoting Tax Compliance*), Clause 14.7 (*Employment Indemnity)*, Clause 14.8 (*Income Tax and National Insurance Contributions),* Clause 19 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*); or

(c) the Authority's liability in respect of the indemnities in Clause 14.7 (*Employment* Indemnity), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*).

Financial and other limits

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

(a) the Supplier's aggregate liability in respect of loss of or damage to the Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed:

(i) in relation to Defaults occurring in the first Contract Year, an amount equal to one hundred per cent (100%) of the Estimated Year 1 Charges;

(ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to one hundred per cent (100%) of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default;

and

(iii) in relation to Defaults occurring after the end of the Term, an amount equal to one hundred per cent (100%) of the Charges paid and/or due to be paid to the Supplier in the 12-month period immediately prior to the last day of the Term;

(b) the Supplier's aggregate liability in respect of all losses, fines and/or expenses incurred by the Authority, including any further costs required in order to meet any additional requirements imposed by a relevant regulatory body as a result of the relevant Default, arising out of or in connection with loss of or damage to Authority Data and/or breach of any of the Supplier's obligations under Clauses 20 and/or 23 of this Agreement or of the Relevant Data Protection Laws that is caused by Default of the Supplier shall in no event exceed £20million over the Term;

(c) the Supplier's aggregate liability in respect of all:

(i) Service Credits; and

(ii) Compensation for Unacceptable Performance Failure,

incurred in any rolling period of twelve (12) months shall be subject to the Service Credit Cap; and

(d) the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Supplier shall in no event exceed:

(i) in relation to Defaults occurring in the first Contract Year, an amount equal to one hundred and fifty per cent (150%) of the Estimated Year 1 Charges;

(ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to one hundred and fifty per cent (150%) of the Charges paid and/or due to be paid to the Supplier under this Agreement in the Contract Year immediately preceding the occurrence of the Default; and

(iii) in relation to Defaults occurring after the end of the Term, an amount equal to one hundred and fifty per cent (150%) of the Charges paid and/or due to be paid to the Supplier in the 12-month period immediately prior to the last day of the Term,

provided that where any Losses referred to in Clause 25.2(d) have been incurred by the Authority as a result of the Supplier's abandonment of this Agreement (whether in whole or in part), or the Supplier's wilful default, wilful breach of a fundamental term of this Agreement, or wilful repudiatory breach of this Agreement, the references

in such Clause to one hundred and fifty per cent (150%) shall be deemed to be references to two hundred per cent (200%).

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

25.4 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.5 (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment*:*

(a) the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of early termination of this Agreement by the Authority pursuant to Clause 34.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 34.6(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:

(i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*); and

(ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and

(b) the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Agreement as a result of Defaults of the Authority or claims arising pursuant to Clause 32.9 (*Ecosystem Failures*) shall in no event exceed:

(i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;

(ii) 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 Agreement in the Contract Year immediately preceding the occurrence of the Default; and

(iii) in relation to Defaults occurring after the end of the Term, an amount equal to the 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

25.5 Subject to Clause 25.1 (*Unlimited Liability*) and Clause 25.6, neither Party shall be liable to the other Party for:

(a) any indirect, special or consequential Loss; or

(b) any loss of profits, turnover, business opportunities or damage to goodwill (in

each case whether direct or indirect).

25.6 Notwithstanding Clause 25.5 but subject to Clause 25.2, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier which are deemed to be a non-exhaustive list of direct and recoverable Losses:

(a) Not used

(b) notwithstanding Clauses 25.6(c) and 25.6(h), all reasonable operational and/or administrative costs and expenses incurred by the Authority in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of the Default;

(c) any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;

(d) any wasted expenditure or charges;

(e) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Agreement;

(f) any compensation or interest paid to a third party by the Authority;

(g) any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty;

(h) without prejudice to Clause 20 (*Authority Data and Security Requirements*), any losses associated with corruption, loss or degradation to Authority Data;

(i) any Losses incurred by (an) Other Ecosystem Supplier(s) pursuant to the applicable Ecosystem Agreement for which the Authority is liable, to the extent that such Losses arise as a result of a Default by the Supplier and are not otherwise excluded under Clause 25.5.

Conduct of indemnity claims

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

Mitigation

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

25.9 The Supplier acknowledges that:

(a) its sole remedy against any Other Ecosystem Suppliers shall be through a claim against the Authority for its Losses under Clause 32.9 (*Ecosystem Failures*); and

(b) it shall have no right or remedies against the Other Ecosystem Suppliers either under this Agreement or through a direct claim in tort or on any other legal ground against such Other Ecosystem Suppliers in respect of any matters that could have been encompassed in a claim under Clause 32.9 (*Ecosystem Failures*).

26 INSURANCE

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

SECTION H | REMEDIES AND RELIEF

27 RECTIFICATION PLAN PROCESS

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

(a) investigate, assemble and preserve pertinent information with respect to the cause(s) of the problem, including performing a root cause analysis of the problem;

(b) advise the Authority, as and to the extent reasonably requested by the Authority, of the status of remedial effort being undertaken with respect to such problem;

(c) minimise the impact of and correct the problem and thereafter recommence performance in accordance with and so as to meet or exceed the Target Performance Level of all the Key Performance Indicators and Subsidiary Performance Indicators as soon as possible; and

(d) take appropriate preventative measures so that the problem does not reoccur.

Notification

27.2 In the event that:

(a) there is, or is reasonably likely to be, a Delay*;*

(b) in any Service Period there has been a Performance Failure;

(c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default);

(d) following any audit conducted by the Authority in accordance with this Agreement, there is, or is reasonably likely to be, a Default; and/or

(e) there is, or is reasonably likely to be, an Intervention Trigger Event,

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

(f) Any notice provided pursuant to Clause 27.2 must detail the actual or anticipated effect of the Notifiable Default.

27.3 If:

(a) the Supplier notifies the Authority pursuant to Clause 27.2 that a Notifiable Default has occurred; or

(b) the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, subject to Clauses 6.7 and 7.2, unless: the Notifiable Default also constitutes

(c) a Supplier Termination Event or a Rectification Plan Failure and the Authority serves a Termination Notice;

(d) an Intervention Trigger Event and the Authority serves an Intervention Notice;

(e) an Escalation Process Trigger Event and the Authority serves an Escalation Notice; or

(f) a Step-In Trigger Event and the Authority serves a Step-In Notice,

the Supplier shall comply with the Rectification Plan Process.

27.4 The "**Rectification Plan Process**" shall be as set out in Clauses 27.5 (*Submission of the draft Rectification Plan*) to 27.10 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

27.5 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.6 The draft Rectification Plan shall set out:

(a) full details of the Notifiable Default that has occurred, including a root cause analysis;

(b) the actual or anticipated effect of the Notifiable Default; and

(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

27.7 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.4 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

27.8 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:

(a) is insufficiently detailed to be capable of proper evaluation;

(b) will take too long to complete;

(c) will not prevent reoccurrence of the Notifiable Default; and/or

(d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

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

27.10 If the Authority consents to the Rectification Plan:

(a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and

(b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

28 DELAY PAYMENTS

28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

28.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

(a) the Authority is entitled to or does terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*);

(b) the Delay exceeds the Delay Deduction Period; or

(c) an Other Ecosystem Supplier has suffered loss or damage as a result of the Supplier's failure to Achieve a Key Milestone by its Milestone Date.

29 ESCALATION PROCESS

29.1 Where an Escalation Process Trigger Event occurs, without prejudice to any other rights or remedies under this Agreement, the Authority may give not less than five (5) Working Days' notice (**"Escalation Notice"**) to the Supplier requiring a meeting(s) between the Supplier Executive and the Authority (**"Escalation Meeting(s)"**).

29.2 The Supplier shall ensure that the Supplier Executive is available to commit their full time capability to the Escalation Meeting(s).

29.3 The Parties agree and acknowledge that the Escalation Meeting(s) shall take place on Authority Premises and at times and durations as the Authority may determine.

29.4 Subject to Clause 29.5, the Escalation Meeting(s) shall continue until such time as the Escalation Process Trigger Event has been resolved to the reasonable satisfaction of the Authority.

29.5 Where the Escalation Meeting(s) have continued for more than five (5) Working Days, either of the Parties may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.

29.6 If the Supplier is in Default of any of its obligations under Clause 29 (**"Escalation Process Failure"**), the Authority shall be entitled to terminate this Agreement pursuant to Clause 34.1(b) (Termination by the Authority).

30 REMEDIAL ADVISER

30.1 If:

(a) any of the Intervention Trigger Events occur; or

(b) 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:

(i) a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or

(ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 30.

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 30.1 prior to or instead of exercising its right to terminate this Agreement.

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

(a) the Remedial Adviser shall be:

(i) a person selected by the Supplier and approved by the Authority; or

(ii) 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;

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

(c) any right of the Authority to terminate this Agreement pursuant to Clause 34.1(b) (*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"**).

30.3 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 Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

(a) 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;

(b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;

(c) write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;

(d) 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

(e) 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.

30.4 The Supplier shall:

(a) 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;

(b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;

(c) submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;

(d) 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

(e) 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).

30.5 Subject to Clause 30.6, the Authority shall engage and pay the fees charged by the Remedial Adviser.

30.6 The Supplier shall:

(a) on demand indemnify the Authority in respect of the costs of appointing, and the fees charged by, the Remedial Adviser; and

(b) be responsible for its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause 30.

30.7 If:

(a) the Supplier:

(i) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or

(ii) is in Default of any of its obligations under Clause 30.4; and/or

(b) 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 Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*).

31 STEP-IN RIGHTS

31.1 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 31 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:

(a) the action the Authority wishes to take and in particular the Services that it wishes to control (the **"Required Action"**);

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

(c) the date on which it wishes to commence the Required Action;

(d) the time period which it believes will be necessary for the Required Action;

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

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

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

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

(b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;

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

(d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause 31.

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

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

(b) without prejudice to any Service Credits and/or Compensation for Unacceptable Performance Failure which may have accrued in respect of the period prior to the commencement of the Required Action, no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 31.4 shall apply to Deductions from Charges in respect of other Services; and

(c) the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action provided that if the Authority's costs are greater than the Charges then, save for when the step-in action is taken by the Authority under:

(i) limbs (c) or (d) of the definition of a Step In Trigger Event; or

(ii) limbs (e) 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)

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

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

(a) the degradation of any Services not subject to the Required Action; or

(b) the non-Achievement of a Milestone,

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

31.5 Before ceasing to exercise its step in rights under this Clause 31 the Authority shall deliver a written notice to the Supplier (a "**Step-Out Notice**"), specifying:

(a) the Required Action it has actually taken; and

(b) the date on which the Authority plans to end the Required Action (the **"Step-Out Date"**) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 31.6.

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

31.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall within 10 Working Days revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.

31.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 31, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:

(a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or

(b) limbs (e) 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).

32 AUTHORITY CAUSE AND ECOSYSTEM FAILURES

Authority Cause

32.1 Notwithstanding any other provision of this Agreement, if the Supplier has failed to:

(a) Achieve a Milestone by its Milestone Date;

(b) provide the Operational Services in accordance with the Target Performance Levels; and/or

(c) comply with its obligations under this Agreement,

(each a "**Supplier Non-Performance**"),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 32):

(i) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;

(ii) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:

(A) to terminate this Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*); or

(B) to take action pursuant Clauses 30 (*Remedial Adviser*) or 31 (*Step-In*);

(iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:

(A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;

(B) if the Authority, acting reasonably, considers it appropriate, the Transition Plan or any Project Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;

(C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and

(D) in relation to a Key Milestone, the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*); and/or

(iv) where the Supplier Non-Performance constitutes a Performance Failure:

(A) the Supplier shall not be liable to accrue Service Credits;

(B) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2 (*Performance Failures*); and

(C) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable Performance Failure pursuant to Clause 7.3(b) (*Unacceptable Performance Failure*).

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

32.2 In order to claim any of the rights and/or relief referred to in Clause 32.1 the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a "**Relief Notice**") setting out details of:

(a) the Supplier Non-Performance;

(b) the Authority Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

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

(d) the relief and/or compensation claimed by the Supplier.

32.3 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.

32.4 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.

32.5 Without prejudice to Clause 5.8 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

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

(b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

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

32.6 Any Change that is required to the Transition Plan, Project Plan or to the Charges pursuant to Clauses 32.1 to 32.5 shall be implemented in accordance with the Change Control Procedure.

32.7 Save as expressly set out in this Agreement, the Supplier shall not be entitled to any relief or compensation for a Supplier Non-Performance which relates to Performance Indicators designated as shared in Schedule 2.2 (*Performance Levels*).

Ecosystem Failures

32.8 Subject to Clause 25 (*Limitations on Liability*), but notwithstanding any other provision of this Agreement, if the Supplier can demonstrate that a Supplier Non-Performance would not have occurred but for an Ecosystem Failure, then subject to the Supplier fulfilling its obligations under this Agreement with respect to that Ecosystem Failure:

(a) the Supplier shall not be treated as being in breach of this Agreement to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Ecosystem Failure;

(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 Agreement pursuant to Clause 34.1(b) (*Termination by the Authority*); or

(ii) to take action pursuant Clauses 30 (*Remedial Adviser*) or 31 (*Step-In Rights*);

(c) where the Supplier Non-Performance constitutes a failure to Achieve a Milestone by its Milestone Date:

(i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Ecosystem Failure;

(ii) if the Authority, acting reasonably, considers it appropriate, the

Transition Plans or any Project Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Ecosystem Failure; and

(iii) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Ecosystem Failure; and

(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 and retain any Compensation for Unacceptable Performance Failure pursuant to Clause 7.4(a) (*Unacceptable Performance Failure*); and

(iii) the Supplier shall be entitled to invoice for the Service Charges for the relevant Services affected by the Ecosystem Failure,

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

32.9 Subject to Clause 25 (*Limitations on Liability*) and Clause 32.10, if the Supplier incurs any Losses as a result of an Ecosystem Failure caused by a default by an Other Ecosystem Supplier under the applicable Ecosystem Agreement, then the Supplier will be entitled to claim against the Authority for such Losses. To the extent that the Authority acting reasonably either accepts or compromises the Supplier's claim or is found liable for all or part of the claim at the conclusion of the Ecosystem Dispute Resolution Procedure then the Authority shall be obliged to:

(a) use reasonable endeavours to enforce its rights to recover those Losses from the relevant Other Ecosystem Supplier under the terms of the applicable Ecosystem Agreement; and

(b) pay to the Supplier in full satisfaction of its Losses the net amount recovered by the Authority from that Other Ecosystem Supplier as provided for in Clause 32.10 below.

32.10 Any compensation recoverable by the Supplier pursuant to Clause 32.9 shall not in any event exceed the net amount recovered by the Authority (after deducting the Authority's costs of making such recovery) from the relevant Other Ecosystem Supplier(s) as a result of the Ecosystem Failure. If:

(a) multiple Ecosystem Suppliers have suffered Losses as a result of an Ecosystem Failure and have been joined in a single Dispute pursuant to Paragraph 3.3 to 3.4 or 3.7 of Annex 3 (*Ecosystem Dispute Resolution Procedure*) of Schedule 11 (*Collaboration*); and

(b) the net amount recovered by the Authority pursuant to Clause 32.9 above (and the equivalent provisions under the other relevant Ecosystem Agreement(s)) is or is likely to be less than the value of the total settled or otherwise determined claims brought by the relevant Ecosystem Suppliers,

then any written settlement made between the parties, or any determination given in the course of the Ecosystem Dispute Resolution Procedure, shall apportion the total amount to be recovered by the Authority on its own account and in respect of each Ecosystem Supplier's Losses.

32.11 Without prejudice to the Supplier's obligations under Paragraph 3.1 of Schedule 11 (*Collaboration*), in order to claim any of the rights and/or relief referred to in Clause 32.8 to 32.10 above, the Supplier shall as soon as reasonably practicable (and in any event within ten (10) Working Days) after becoming aware that an Ecosystem Failure has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a **"Claim Notice"**) setting out details of:

(a) the Supplier Non-Performance;

(b) the Ecosystem Failure and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Agreement;

(c) any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Ecosystem Failure; and

(d) the relief and/or compensation claimed by the Supplier.

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

32.13 The Supplier shall use reasonable endeavours to eliminate or mitigate the consequences and impact of an Ecosystem Failure, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

32.14 Without prejudice to Clause 5.8 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

(a) whether a Supplier Non-Performance would not have occurred but for an Ecosystem Failure; and/or

(b) the nature and/or extent of the relief and/or compensation claimed by the Supplier or the Authority,

either Party may refer the Dispute to the Ecosystem Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue

to work together to resolve as promptly and effectively as possible the causes of, and mitigate the effects of, the Supplier Non-Performance without prejudice to who may be liable for the additional costs associated with such remedial action and whether that requires a Contract Change to be agreed.

32.15 Any Change that is required to the Transition Plan, Project Plan or to the Charges pursuant to Clauses 32.8 to 32.14 shall be implemented in accordance with the Change Control Procedure.

33 FORCE MAJEURE

33.1 Subject to the remaining provisions of this Clause 33 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this Clause 33 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

33.2 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.

33.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 33 to the extent that consequences of the relevant Force Majeure Event:

(a) are capable of being mitigated by any of the Services including the Disaster Recovery Services, but the Supplier has failed to do so; and/or

(b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.

33.4 Subject to Clause 33.5, 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.

33.5 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.

33.6 Where, as a result of a Force Majeure Event:

(a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:

(i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure other than pursuant to Clause 34.1(c) (*Termination by the Authority*) or Clause 34.6(b) (*Termination by the Supplier)*; and

(ii) neither Party shall be liable for any Default arising as a result of such failure;

(b) the Supplier fails to perform its obligations in accordance with this Agreement:

(i) the Authority shall not be entitled:

(A) during the continuance of the Force Majeure Event to exercise its rights under Clause 30 (*Remedial Adviser*) and/or Clause 31 (*Step-in Rights*) as a result of such failure;

(B) to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and

(C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2 (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable Performance Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and

(ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.

33.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

33.8 Relief from liability for the Affected Party under this Clause 33 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 33.7.

SECTION I | TERMINATION AND EXIT MANAGEMENT

34 TERMINATION RIGHTS

Termination by the Authority

34.1 The Authority may terminate this Agreement (in whole or in part) by issuing a Termination Notice to the Supplier:

(a) for convenience at any time, including where the Agreement should not have been entered into in view of a serious infringement of obligations under European Law declared by the Court of Justice of the European Union under Article 258 of the Treaty on the Functioning of the EU;

(b) if a Supplier Termination Event occurs;

(c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

(d) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

34.2 Where the Authority:

(a) is terminating this Agreement under Clause 34.1(b) due to the occurrence of either limb (c) and/or (j) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

(b) has the right to terminate this Agreement under Clause 34.1(b) or Clause 34.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the Partial Termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination for Persistent Breach

34.3 If a Default by the Supplier has occurred on more than one occasion then without prejudice to any other right of the Authority to terminate this Agreement, the Authority may serve a notice (**"Termination Warning Notice"**) on the Supplier:

(a) specifying that it is a formal Termination Warning Notice;

(b) giving reasonable details of the Default; and

(c) stating that if such Default recurs or continues, it may result in termination of

this Agreement for Persistent Breach.

34.4 If the Default specified in the Termination Warning Notice recurs after the date of service of the relevant Termination Warning Notice then the Authority may serve a further notice on the Supplier (**"Final Termination Warning Notice"**):

(a) specifying that it is a Final Termination Warning Notice;

(b) stating that the specified Default has been the subject of a Termination Warning Notice served within the twelve (12) month period prior to the date of the Final Termination Warning Notice; and

(c) stating that if such Default continues or recurs on one or more occasion within the six (6) month period following the date of the Final Termination Warning Notice the Authority may serve written notice on the Supplier to terminate this Agreement for Persistent Breach (termination to take effect from the date set out in the notice).

34.5 Termination for Persistent Breach shall be treated in the same way as a termination following a Supplier Termination Event.

Termination by the Supplier

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

(a) this Agreement if the Authority fails to pay an undisputed sum due to the Supplier under this Agreement which in aggregate exceeds the average monthly charge, and such amount remains outstanding forty (40) Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or

(b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice). If the operation of Clause 34.6(b) would result in a Partial Termination, the provisions of Clause 34.7 (*Partial Termination*) shall apply.

Partial Termination

34.7 If the Supplier notifies the Authority pursuant to Clause 34.6(b) (*Termination by the Supplier*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Supplier within one (1) month of receiving the Supplier's Termination Notice. For the purpose of this Clause 34.7, in

assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.

34.8 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:

(a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;

(b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and

(c) the Supplier shall not be entitled to reject the Change.

35 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

35.1 The provisions of Clauses 5.7 (*Specially Written Software warranty*), 10.9 and 10.14 (*Promoting Tax Compliance*), 10.5 and 10.6 (*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 (*Licences Granted by the Supplier*), 19.1 (*IPRs Indemnity*), 21 (*Confidentiality)* 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*), 25 (*Limitations on Liability*), 35 (*Consequences of Expiry or Termination*), 41 (*Severance*), 43 (*Entire Agreement*), 44 (*Third Party Rights*), 47 (*Disputes*) and 48 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 7.1 (*Charges and Invoicing*), 7.2 (*Payments on Termination*), 7.5 (*Financial Reports and Audit Rights*), 8.2 (*Reports and Records*), 8.4 (*Dispute Resolution Procedure*), 8.5 (*Exit Management*), and 9.1 (*Staff Transfer*), shall survive the termination or expiry of this Agreement.

Exit Management

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

Payments by the Authority

35.3 If this Agreement is terminated by the Authority pursuant to Clause 34.1(a) (*Termination by the Authority*) or by the Supplier pursuant to Clause 34.6(a) (*Termination by the Supplier*), the Authority shall pay the Supplier the Termination Payment (which shall be the Supplier's sole remedy for the termination of this Agreement).

35.4 If this Agreement is terminated (in part or in whole) by the Authority pursuant to

Clauses 34.1(b), 34.1(c) and/or 34.2 (*Termination by the Authority*), or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

(a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and

(b) payments in respect of unpaid Charges for Services received up until the Termination Date.

35.5 The costs of termination incurred by the Parties shall lie where they fall if:

(a) either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clauses 34.1(c) or 34.2(b) (*Termination by the Authority*) or 34.6(b) (*Termination by the Supplier*); or

(b) the Authority terminates this Agreement under Clause 34.1(d).

Payments by the Supplier

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

35.7 If this Agreement is terminated (in whole or in part) by the Authority pursuant to Clause 34.1(b) (*Termination by the Authority*) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within twelve (12) months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a **"Milestone Adjustment Payment Notice"**) require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

35.8 A Milestone Adjustment Payment Notice shall specify:

(a) each CPP Milestone to which it relates;

(b) in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Authority wishes to retain, if any (each such Deliverable being a **"Retained Deliverable"**); and

(c) those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an **"Allowable Price Adjustment"**),

and may form part of a Termination Notice.

35.9 The Supplier shall within ten (10) Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

(a) notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and

(b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;

(c) provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone that is the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:

(i) all relevant Milestone Payments; and

(ii) the Allowable Price of each Retained Deliverable; and

(d) provide the Authority with such supporting information as the Authority may require.

35.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within twenty (20) Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

35.11 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause 35.7:

(a) the Authority shall:

(i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and

(ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease 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 all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

(b) all licences granted pursuant to Clause 17 (*Licences granted by the Supplier*) in

respect of any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

SECTION J | MISCELLANEOUS AND GOVERNING LAW

36 COMPLIANCE

Health and Safety

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

(a) all applicable Law regarding health and safety; and

(b) the Health and Safety Policy whilst at the Authority Premises.

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

Equality and Diversity

36.3 The Supplier shall:

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

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

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

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

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

Official Secrets Act

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

Modern Slavery

36.5 The Supplier shall:

(a) comply with all applicable anti-slavery and human trafficking law, statutes and regulations from time to time in force including the Modern Slavery Act 2015;

(b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015;

(c) make reasonable enquiries to ensure that its officers, employees and Sub-contractors have not been convicted of slavery or human trafficking offences;

(d) in its contracts with Sub-contractors include anti-slavery and human trafficking provisions that are substantially the same as the provisions in this contract;

(e) notify the Authority immediately upon becoming aware of any actual or suspected breach of its obligations under Clause 36.5(a) and/or (b), details of the breach and the mitigation action it has taken or intends to take in order to:

(i) remedy the breach; and

(ii) ensure future compliance.

36.6 The Supplier shall prepare and deliver to the Authority an annual slavery and human tracking report setting out the steps it has taken to ensure that human trafficking is not taking place in any of its supply chains or in any part of its business and a certificate of compliance.

36.7 If the Supplier fails to comply (or if the Authority receives information which demonstrates that the Supplier has failed to comply) with any of the provisions in Clause 36.5 then this shall constitute a Supplier Termination Event.

37 ASSIGNMENT AND NOVATION

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

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

(a) any Central Government Body; or

(b) to a body other than a Central Government Body (including any private sector 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 37.2.

37.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 37.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

37.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a **"Successor Body"**), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (m) of the definition of Supplier Termination Event (as if references in that limb (m) to the Supplier and references to a Party in the definition of Insolvency Event were references to the Successor Body).

38 WAIVER AND CUMULATIVE REMEDIES

38.1 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.

38.2 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.

39 RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

40 PREVENTION OF FRAUD AND BRIBERY

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

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

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

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

(a) commit a Prohibited Act; and/or

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

40.3 The Supplier shall during the term of this Agreement:

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

(b) 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 the Act;

(c) keep appropriate records of its compliance with its obligations under Clause 40.3(a) and make such records available to the Authority on request; and

(d) comply with 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.

40.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 40.1 and/or 40.2, or has reason to believe that it has or any of the Supplier Personnel have:

(a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

(b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

(c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.

40.5 If the Supplier makes a notification to the Authority pursuant to Clause 40.4, 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*).

40.6 If the Supplier is in Default under Clauses 40.1 and/or 40.2, the Authority may by notice:

(a) require the Supplier to remove from performance of this Agreement any Supplier Personnel whose acts or omissions have caused the Default; or

(b) immediately terminate this Agreement.

40.7 Any notice served by the Authority under Clause 40.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

41 SEVERANCE

41.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.

41.2 In the event that any deemed deletion under Clause 41.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.

41.3 If the Parties are unable to agree on the revisions to this Agreement within five (5) Working Days of the date of the notice given pursuant to Clause 41.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within thirty (30) Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 41.3.

42 FURTHER ASSURANCES

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

43 ENTIRE AGREEMENT

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

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

43.3 Nothing in this Clause 43 shall exclude any liability in respect of misrepresentations made fraudulently.

44 THIRD PARTY RIGHTS

44.1 The provisions of Clause 19.1 (*IPRs Indemnity*), Clause 25.9 (*Limitations on Liability*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C and Paragraphs 1.4, 2.3 and 2.8 of Part D of Schedule 9.1 (*Staff Transfer*) and the provisions of Paragraph 8.12 of Schedule 8.5 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

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

44.3 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 44.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

Service Recipients and Service Beneficiaries

44.4 Subject to Clause 44.1 and Clauses 44.5 to 44.10, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

44.5 With effect from the Effective Date, the Supplier shall provide the Services to the Service Recipients and/or Service Beneficiaries listed in Schedule 2.7 (*Service Recipients and Service Beneficiaries*) in accordance with, and subject to, the terms of this Agreement. In addition, the Supplier shall provide the Services to such other Service Recipients and Service Beneficiaries (in addition to those listed in Schedule 2.7 (Service Recipients) as at the Effective Date) as the Authority may designate during the Term (and such third parties shall become "Service Recipients" or "Service Beneficiaries" (as appropriate) for the purposes of this Agreement).

44.6 The provision of any of the Services for the benefit of a Service Recipient or a Service Beneficiary shall be without prejudice to the terms and conditions of any existing agreement which may have been entered into by the Supplier and such Service Beneficiary and/or Service Recipient (as appropriate).

44.7 Nothing in this Agreement shall create or be deemed to create a supplier - customer relationship between the Supplier and any Service Beneficiary and/or Service Recipient at a contractual or management level but, without prejudice to that position, in providing services and dealing with service-related issues, at the level of the end user, the Supplier will deal directly with the end users or their relevant representatives in the Service Recipient or Service Beneficiary.

44.8 If there is a Default by the Supplier, any liability of the Supplier as a result of such Default shall be dealt with as between the Supplier and the Authority under the terms of this Agreement, provided that:

(a) if any Service Recipient and/or Service Beneficiary suffers or incurs any losses and/or damages as a direct result of any such Default or is entitled to make a claim under Clause 19 *(IPRs Indemnity*), such losses and/or damages shall be recoverable from the Supplier, and such claim shall be made against the Supplier, under this Agreement by the Authority (and not by the Service Recipient) and shall be subject to Clause 25 (*Limitations on Liability*); and

(b) the Authority shall procure the agreement of the Service Recipient and/or Service Beneficiary to the provisions of this Clause 44 prior to the commencement of provision of any services to that Service Recipient or Service Beneficiary.

44.9 Where compliance with any obligation or responsibility of the Authority is necessary in order to enable the Supplier to supply the benefit of a Service to a Service Recipient and/or Service Beneficiary, responsibility for compliance shall remain with the Authority but compliance by the Service Recipient and/or Service Beneficiary shall be deemed to be compliance by the Authority.

44.10 Other terms and conditions applicable to the provision of Services to any Service Recipient and/or Service Beneficiary are as follows:

(a) the maximum period for which the Service Recipient and/or Service Beneficiary may enjoy the benefit of the Services shall be the duration of this Agreement;

(b) to the extent that the Service Recipient and/or Service Beneficiary receives the benefit of the Services, the term "Authority Data" shall be deemed to extend to any data of the Service Recipient and/or Service Beneficiary;

(c) for the purposes of this Agreement, the Services received by the Service Recipient and/or Service Beneficiary shall be treated as though provided to the Authority and references to the Authority in Clause 17 (Licences Granted by the Supplier) shall be deemed to include references to the Service Recipient

and/or Service Beneficiary;

(d) a right, indemnity or any limitation or exclusion of liability in favour of the Authority, is intended by the Parties to be a right or benefit of such Service Recipients and/or Service Beneficiary, as if such Service Recipients and/or Service Beneficiary had been parties to this Agreement;

(e) the Authority shall ensure that any relevant Service Recipients and/or Service Beneficiary shall comply with the Dispute Resolution Procedure in respect of any Disputes regarding the Services which involve such Service Recipients and/or Service Beneficiary. In respect of any such Disputes, the Authority shall participate in and manage the Dispute Resolution Procedure on the applicable Services Recipient's and/or Service Beneficiary's behalf and the Supplier agrees that such Disputes may be so managed by the Authority;

(f) the Parties agree that no consent from any Service Recipient and/or Service Beneficiary is required for the Parties to vary or terminate this Agreement (whether or not in a way that varies or extinguishes rights or benefits in favour of such Service Recipients and/or Service Beneficiary); and

(g) during the Term, the Authority shall be entitled to remove any Service Recipient and/or Service Beneficiary from the scope of this Agreement in accordance with Clauses 44.12 and 44.13 below.

44.11 Notwithstanding that the Service Recipient and/or Service Beneficiary shall each receive the same Services from the Supplier the following adjustments will apply in relation to how the Agreement will operate in relation to the Authority and Service Recipient:

(a) the Supplier's obligation in regards to reporting will be owed to each Service Recipient and/or Service Beneficiary and the Authority separately;

(b) the Authority and Service Recipients and/or Service Beneficiaries shall be entitled to separate invoices in respect of the provision of Services;

(c) the separate invoices will correlate to the Services provided to the respective Authority and Service Recipient/ Service Beneficiary; and

(d) any KPIs and corresponding Service Credits will be calculated in respect of each Service Recipient and/or Service Beneficiary and the Authority, and they will be reported and deducted against Charges due by each respective Service Recipient and the Authority.

Addition and/or removal of Service Recipients and/or Service Beneficiaries

44.12 From time to time, the Authority may decide that it requires a new Service Recipient and/or Service Beneficiary to receive the Services or part of the Services or that a

Service Recipient and/or Service Beneficiary will no longer receive the Services or part of the Services. In such circumstances:

(a) the Authority shall provide written notice to the Supplier to add or remove that Service Recipient and/or Service Beneficiary (as appropriate) from the scope of this Agreement as of the date specified by the Authority;

(b) the Authority shall, if necessary, adjust the Charges on an equitable basis to reflect the increased/reduced scope and/or volume of the Services;

(c) the Authority may request that the Supplier provide Termination Assistance (including continuing the benefit of any licences granted to the said Services Recipient and/or Service Beneficiary under this Agreement) in relation to the removed Services Recipient and/or Service Beneficiary; and

(d) if a Service Recipient and/or Service Beneficiary is removed from the scope of this Agreement pursuant to this Clause 44.12 as a result of any UK Government reorganisation, the Supplier shall, if requested by the Authority, provide Services to any new UK Government entity designated by the Authority under the terms of this Agreement for a reasonable period designated by the Authority, which may include Termination Assistance.

44.13 The Authority may partially add or remove a Service Recipient and/or Service Beneficiary from the scope of this Agreement based upon the principles of Clause 44.12 and, upon so doing, the Supplier shall comply with the other provisions of Clause 44.12.

45 NOTICES

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

45.2 Subject to Clause 45.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

	occur at 9.00am on the next Working Day.	
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

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

	Supplier	**Authority**
Contact	Billie Major (Head of UK HMRC Business Unit)	Paul McCarrick
Address	@Phoenix Grange Central Telford Shropshire TF3 4ER	5W Ralli Quays, 3 Stanley Street, Salford, M60 9LA
Email	billie.major@capgemini.com	paul.mccarrick@hmrc.gov.uk

45.4 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 45.2:

(a) Step-In Notices;

(b) Force Majeure Notices;

(c) notices issued by the Supplier pursuant to Clause 34.6 (*Termination by the Supplier)*;

(d) Termination Notices; and

(e) Dispute Notices.

45.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 45.4 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 45.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

45.6 This Clause 45 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.4 (*Dispute Resolution Procedure*)).

46 NON-SOLICITATION

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

47 DISPUTES

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

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

48 GOVERNING LAW AND JURISDICTION

48.1 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.

48.2 Subject to Clause 7 (*Disputes*) and Schedule 8.4 (*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 Agreement or its subject matter or formation.

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

EXECUTED AS A DEED, but not delivered until the date specified on this deed, by ***Capgemini UK plc***, by a director in the presence of a witness:)

Signature:

Name (block capitals): **PAUL MARGETTS**

CAPGEMINI UK MANAGING DIRECTOR

Witness signature:

Witness name
(block capitals): **JULIE MANGAN**
CAPGEMINI UK COMPANY SECRETARY

Witness address:
1 Forge End
Woking
Surrey
GU21 6DB

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

Signature:

Name (block capitals): **ROB WOODSTOCK**

Position: **CHIEF COMMERCIAL OFFICER**

Date:

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 1 | Definitions

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

"Accounting Reference Date"	means the dates to which the Supplier prepares its audited financial statements;
"Achieve"	(a) in respect of a Test, to successfully pass a Test without any Test Issues; and (b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (*Testing Procedures*), and **"Achieved"** and **"Achievement"** shall be construed accordingly;
"Acquired Rights Directive"	the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;
"Admission Agreement"	has the meaning given in Schedule 9.1 (*Staff Transfer*);
"Affected Party"	the Party seeking to claim relief in respect of a Force Majeure Event;
"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Agile"	means an iterative and incremental approach to software design and systems development;
"Agile Development Project"	has the meaning given in clause 6A.19;
"Agreement"	means the clauses of this agreement together with the Schedules and annexes to it;

"Allowable Assumptions"	the assumptions set out in Annex 5 of Schedule 7.1 (*Charges and Invoicing*);
"Allowable Price"	in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula: A – B where: (a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and (b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero, provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;
"Allowable Price Adjustment"	has the meaning given in Clause 35.8(c) (*Payments by the Supplier*);
"Annual Contract Report"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*);
"Annual Revenue"	means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology: (a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to

	British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
"Anticipated Contract Life Profit Margin"	has the meaning given in Schedule 7.1 (*Charges and Invoicing*);
"Approved Sub-Licensee"	any of the following: (a) a Central Government Body; (b) any third party providing services to a Central Government Body; and/or (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;
"Assets"	all assets and rights used by the Supplier to provide the Services in accordance with this Agreement but excluding the Authority Assets;
"Associated Person"	
"Associates"	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
"Assurance"	means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;
"ATP Milestone"	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Transition Plan or a Project Plan;
"Audit"	any exercise by the Authority of its Audit Rights pursuant to Clause 12 (*Records, Reports, Audit and Open Book Data*) and Schedule 7.5 (*Financial Reports and Audit Rights)*;

"Audit Agents"	(a) the Authority's internal and external auditors; (b) the Authority's statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
"Audit Rights"	the audit and access rights referred to in Schedule 7.5 (*Financial Reports and Audit Rights*);
"Authority Assets"	the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
"Authority Background IPRs"	(a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority's Know-How, documentation, processes and procedures; (b) IPRs created by the Authority independently of this Agreement; and/or (c) Crown Copyright which is not available to the Supplier otherwise than under this Agreement; but excluding IPRs owned by the Authority subsisting in the Authority Software;
"Authority Cause"	any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is: (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;

"Authority Data"	(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the Supplier by or on behalf of the Authority; and/or (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; (b) any Personal Data; or (c) any Sanitised Personal Data;
"Authority IT Strategy"	the Authority's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;
"Authority Materials"	the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which: (a) are owned or used by or on behalf of the Authority; and (b) are or may be used in connection with the provision or receipt of the Services, but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;
"Authority Premises"	premises owned, controlled or occupied by the Authority and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);
"Authority Representative"	the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*);
"Authority Requirements"	the requirements of the Authority set out in Schedules 2.1 (*Services Description*), 2.2 (*Performance Levels),* 2.3 (*Standards),* 2.4 (*Security Management), 2.5 (Insurance*

	Requirements), 6.1 (*Transition*), 8.2 (*Reports and Records*), 8.5 (*Exit Management*) and 8.6 (*Service Continuity Plan and Corporate Resolution Planning)*;
"Authority Responsibilities"	the responsibilities of the Authority specified in Schedule 3 (*Authority Responsibilities*);
"Authority Software"	software which is owned by or licensed to the Authority (other than under or pursuant to this Agreement) and which is or will be used by the Supplier for the purposes of providing the Services;
"Authority System"	the Authority's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Agreement 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;
"Authority to Proceed" or "ATP"	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
"Baseline Security Requirements"	the Authority's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (*Security Management*), as updated from time to time by the Authority and notified to the Supplier;
"Board"	means the Supplier's board of directors;
"Board Confirmation"	means the written confirmation from the Board in accordance with paragraph 8 of Schedule 7.4 (Financial Distress);
"Breakage Costs Payment"	has the meaning given in Schedule 7.2 (*Payments on Termination*);
"Cabinet Office Markets and Suppliers Team"	means the UK government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;

"Central Government Body"	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) Non-Ministerial Department; or (d) Executive Agency;
"Certificate of Costs"	has the meaning given in Schedule 7.1 (*Charges and Invoicing*);
"Change"	any change to this Agreement;
"Change Authorisation Note"	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.3 (*Change Control Procedure*);
"Change Control Procedure"	the procedure for changing this Agreement set out in Schedule 8.3 (*Change Control Procedure*);
"Change in Law"	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
"Change Request"	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.3 (*Change Control Procedure);*
"Charges"	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (*Charges and Invoicing)*, including any Milestone Payment or Service Charge;
"CNI"	means Critical National Infrastructure;
"Class 1 Transaction"	has the meaning set out in the listing rules issued by the UK Listing Authority;
"Commercially Sensitive Information"	the information listed in Schedule 4.2 (*Commercially Sensitive Information*) comprising the information of a commercially sensitive nature relating to;

(a) the pricing of the Services;

(b) the details of the Supplier's IPRs; and

(c) the Supplier's business and investment plans;

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;

"Comparable Supply" the supply of services to another customer of the Supplier that are the same or similar to any of the Services;

"Compensation for Unacceptable Performance Failure" has the meaning given in Clause 7.3(b) (*Unacceptable Performance Failure*);

"Concealed IPR" means IPR of the Supplier (or licensed to the Supplier) which is or will be used before or during the Term for designing, testing implementing and/or providing the Services which IPR is not set out in Schedule 5 (*IPR*);

"Condition Precedent" has the meaning given in Clause 4.6 (*Condition Precedent*);

"Confidential Information"

a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Agreement that relates to:

(i) the Disclosing Party Group; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;

(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient's attention or into the Recipient's possession in connection with this Agreement;

(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its

directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and all matters arising therefrom; and

(d) Information derived from any of the above,

but not including any Information which:

(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;

(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient's knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;

(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality;

(iv) was independently developed without access to the Confidential Information; or

(v) relates to the Supplier's:

1. performance under this Agreement; or
2. failure to pay any Sub-contractor as required pursuant to Clause 15.20 (*Supply Chain Protection*);

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

"Contract Change" any change to this Agreement other than an Operational Change;

"Contracts Finder" means the online government portal which allows suppliers to search for information about contracts

	worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contracts Regulations 2015;_
"Contract Inception Report"	the initial financial model, delivered by the Supplier to the Authority at least five days before the Effective Date, and in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
"Contract Year"	(a) a period of twelve (12) months commencing on the Effective Date; or (b) thereafter a period of twelve (12) months commencing on each anniversary of the Effective Date; provided that the final Contract Year shall end on the expiry or termination of the Term;
"Control"	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controls"** and "**Controlled"** shall be interpreted accordingly;
"Controller"	has the meaning given in the Relevant Data Protection Laws;
"Corporate Change Event"	means: (a) any change of Control of the Supplier that could have a material adverse effect on the Services; (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services; (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Authority, could have a material adverse effect on the Services; (d) a Class 1 Transaction taking place in relation to the shares of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;

	(e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier; (f) payment of dividends by the Supplier exceeding 25% of the Net Asset Value of the Supplier in any 12 month period; (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group; (h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group; (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or (j) any process or events with an effect analogous to those in paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;
"Corporate Resolution Planning Information"	means, together, the: a) Group Structure Information and Resolution Commentary; and b) UK Public Sector and CNI Contract Information;
"Costs"	has the meaning given in Schedule 7.1 (*Charges and Invoicing*);
"CPP Milestone"	a contract performance point as set out in the Transition Plan or a Project Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment

	in accordance with Schedule 6.2 (*Testing Procedures*);
"Critical National Infrastructure"	means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in: a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or b) significant impact on national security, national defence, or the functioning of the UK;
"Critical Failure Performance Threshold"	means the relevant level of performance designated as such for a Performance Indicator and set out in the relevant table in Part I of Annex 1 of Schedule 2.2 (*Performance Levels*);
"Critical KPI Failure"	shall have the meaning given, in relation to the relevant Key Performance Indicator, in Paragraph 1.7 of Part A of Schedule 2.2 (*Performance Levels*);
"Critical Service Contract"	means the overall status of this Agreement as determined by the Authority and specified in paragraph 10.1 of Part 2 to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*)
"CRP Information"	means the Corporate Resolution Planning Information;
"CRTPA"	the Contracts (Rights of Third Parties) Act 1999;
"Cyara"	Cyara Pty Limited (a Sub-contractor);
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the processing on the protection of Personal Data;
"Data Protection Officer	has the meaning given in the Relevant Data Protection Laws"
"Data Subject"	has the meaning given in the Relevant Data Protection Laws;

"Data Subject Request"	a request made by a Data Subject in accordance with rights granted pursuant to the Relevant Data Protection Laws to access his or her Personal Data;
"Deductions"	all Service Credits, Compensation for Unacceptable Performance Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Agreement;
"Default"	any breach of the obligations of the relevant Party (including abandonment of this Agreement in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement: (a) in the case of the Authority, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, in connection with or in relation to the subject-matter of this Agreement and in respect of which such Party is liable to the other;
"Defect"	(a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or (d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or

	not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
"Delay"	(a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Transition Plan or a Project Plan;
"Delay Deduction Period"	the period of one hundred (100) days commencing on the relevant Milestone Date;
"Delay Payments"	the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Schedule 7.1 (*Charges and Invoicing*);
"Deliverable"	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Agreement;
"Delivery Group"	has the meaning given in Schedule 2.2 (*Performance Levels*);
"Detailed Transition Plan"	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 (*Transition*);
"Dependent Parent Undertaking"	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Agreement, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Agreement;
"DI&T Plan"	means the plan developed in accordance with clause 6A.5 to 6A.8;
"DI&T Services"	has the meaning given in clause 6A.1;
"Disclosing Party"	has the meaning given in Clause 21.1 (*Confidentiality*);

"Disclosing Party Group"	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with which the Authority or the Supplier interacts in connection with this Agreement;
"Dispute"	any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Agreement directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
"Dispute Notice"	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Schedule 8.4 (*Dispute Resolution Procedure*);
"Documentation"	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: (a) is required to be supplied by the Supplier to the Authority under this Agreement; (b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;

	(c) is required by the Supplier in order to provide the Services; and/or (d) has been or shall be generated for the purpose of providing the Services;
"DOTAS"	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes or those who use them to tell HMRC of any notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992 and in Schedule 11A to the Value Added Tax Act 1994 (as amended by Schedule 1 to the Finance (no. 2) Act 2005;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;
"Draft DI&T Plan"	has the meaning set out in Clause 6A.5;
"Ecosystem Agreement"	means a contract between the Authority and one of the Ecosystem Suppliers;
"Ecosystem Dispute"	has the meaning given in Paragraph 3.2 of Annex 3 (*Ecosystem Dispute Resolution Procedure*) to Schedule 11 (*Collaboration*);
"Ecosystem Dispute Resolution Procedure"	means the multi-party dispute resolution procedure set out in Annex 3 (*Ecosystem Dispute Resolution Procedure*) to Schedule 11 (*Collaboration*);
"Ecosystem Failure"	a failure by an Other Ecosystem Supplier to perform its obligations under its Ecosystem Agreement;
"Ecosystem Supplier"	means any supplier to the Authority (including the Supplier) which: (a) has entered into an agreement incorporating:

(i) a schedule that is identical or substantially similar to Schedule 11 (*Collaboration*); and

(ii) Clauses that are identical or substantially similar to Clauses 32.8 to 32.15 (*Ecosystem Failures*); and

(b) is notified to the Supplier from time to time;

"Effective Date" the date the Agreement is signed by both parties;

"EIRs" the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;

"Emergency Maintenance" ad hoc and unplanned maintenance provided by the Supplier where:

(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

(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;

"Employee Liabilities" all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

(a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

(b) unfair, wrongful or constructive dismissal compensation;

(c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender

	reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees; (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions; (f) employment claims whether in tort, contract or statute or otherwise; (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
"Escalation Meeting"	shall have the meaning at clause 29.1;
"Escalation Notice"	shall have the meaning at clause 29.1;
"Escalation Process Failure"	shall have the meaning at clause 29.6;
"Escalation Process Trigger Event"	shall mean: (A) an Intervention Trigger Event; (B) Rectification Plan Failure; and/or (C) A Remedial Adviser Failure;
"Estimated Year 1 Charges"	the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;
"Estimated Initial Service Charges"	the estimated Service Charges payable by the Authority during the period of twelve (12) months from the first Operational Service Commencement Date, as set out in the Financial Model;
"Euro Compliant"	means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the

performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Authority's business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):

(a) be able to perform all such functions in any number of currencies and/or in euros;

(b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;

(c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;

(d) incorporate protocols for dealing with rounding and currency conversion;

(e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and

(f) permit the input of data in euro and display an outcome in euro where such data, supporting the Authority's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;

"Exit Day" shall have the meaning as defined in the European Union (Withdrawal Act 2018);

"Exit Management" services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority

	and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (*Exit Management*);
"Exit Plan"	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (*Exit Management*);
"Expedited Dispute Timetable"	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.4 (*Dispute Resolution Procedure*);
"Expert"	has the meaning given in Schedule 8.4 (*Dispute Resolution Procedure*);
"Expert Determination"	the process described in Paragraph 6 of Schedule 8.4 (*Dispute Resolution Procedure*);
"Extension Period"	has the meaning given in Clause 4.2;
"Final Termination Warning Notice"	has the meaning given to it in Clause 34.4;
"Financial Distress Event"	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (*Financial Distress*);
"Financial Distress Remediation Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Agreement in the event that a Financial Distress Event occurs;
"Financial Model"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*;
"Financial Reports"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*;
"Financial Transparency Objectives"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights)*;
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;
"Force Majeure Event"	any event outside the reasonable control of either Party affecting its performance of its obligations under this Agreement arising from acts, events,

	omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier's or a Sub-contractor's supply chain;
"Force Majeure Notice"	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
"Former Supplier"	has the meaning given in Schedule 9.1 (*Staff Transfer*);
"GDPR"	means the Regulation of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data being enforced in the EU from 25 May 2018 (repealing Directive 95/46/EC and the Data Protection Act 1998), along with the codes of practice, codes of conduct, regulatory guidance and standard clauses and other related or equivalent domestic legislation, as updated from time to time;
"General Anti-Abuse Rule"	**(A)** the legislation in Part 5 of the Finance Act 2013; (b) the legislation in sections 10 and 11 of the National Insurance Contributions Act 2014; and **(C)** any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid any Tax;
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including Tax or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Good Industry Practice"	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of

	services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
"Group Structure Information and Resolution Commentary"	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"Health and Safety Policy"	the health and safety policy of the Authority and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
"HMRC"	HM Revenue & Customs;
"Impact Assessment"	has the meaning given in Schedule 8.3 (*Change Control Procedure);*
"Incentive Payment"	has the meaning in paragraph 8.2 of Part C of Schedule 7.1;
"Incumbent Supplier"	means the supplier to the Authority of services similar to the Services prior to the Services Commencement Date;
"Indemnified Person"	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Agreement;
"Information"	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

"Initial Term"	the period of three (3) years from and including the first Operational Service Commencement Date;
"Initial Upload Date"	means the occurrence of an event detailed in Schedule 8.2 (*Reports and Records*) Annex 4 (*Records to Upload to Virtual Library*) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;
"Insolvency Event"	(a) with respect to any person, means: (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: (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) 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 partnership) for the sole purpose of a scheme for a solvent amalgamation of that that person with one or more other companies or the solvent reconstruction of that person; (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; (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 14 days;

(e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

(f) where that person is a company, a LLP or a partnership:

(i) a petition is presented (which is not dismissed within 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;

(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;

(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

(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

(g) 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;

"Intellectual Property Rights" or **"IPRs"** (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website

addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;

(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and

(c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Interim Services" means those Services which the Supplier has indicated would be available from the Interim Service Commencement Date as set out in Schedule 4.1 which are to meet or exceed the performance levels ascribed to them in Schedule 2.2

"Interim Service Commencement Date" means the date on which the first telephone numbers should transfer to the Supplier in accordance with the Transition Plan

"Intervention Cause" has the meaning given in Clause 30.1 (Remedial Adviser);

"Intervention Notice" has the meaning given in Clause 30.1 (*Remedial Adviser*);

"Intervention Period" has the meaning given in Clause 30.2(c) (*Remedial Adviser*);

"Intervention Trigger Event"

(a) any event falling within limb (a), (c), (d), (f), (h) or (i) of the definition of a Supplier Termination Event;

(b) any event falling within limb (b) or (e) of the definition of Step-In Trigger Event;

(c) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;

(d) the Supplier committing a Major KPI Failure or a Critical KPI Failure; and/or

(e) the Supplier not Achieving a Key Milestone within seventy five (75) days of its relevant Milestone Date;

"IPRs Claim"	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, 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 Agreement or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Agreement;
"IT"	information and communications technology;
"IT Environment"	the Authority System and the Supplier System;
"Key Milestone"	the Milestones identified in the Transition Plan or any Project Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
"Key Performance Indicator" or "KPI"	the key performance indicators set out in Table 1 of Part I of Annex 1 of Schedule 2.2 (*Performance Levels*);
"Key Personnel"	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 9.2 (*Key Personnel*) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (*Key Personnel*);
"Key Roles"	a role described as a Key Role in Schedule 9.2 (*Key Personnel*) and any additional roles added from time to time in accordance with Clause 14.4 (*Key Personnel*);
"Key Sub-contract"	each Sub-contract with a Key Sub-contractor;
"Key Sub-contractor"	any Sub-contractor: (a) which, in the opinion of the Authority, performs (or would perform if appointed) a

	critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) ten per cent (10%) of the aggregate Charges forecast to be payable under this Agreement (as set out in the Financial Model);
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party's possession before this Agreement;
"KPI Failure"	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
"Law"	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, 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;
"Licensed Software"	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 Agreement, including any Supplier Software, Third Party Software and/or any Specially Written Software;
"Losses"	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Maintenance Schedule"	shall have the meaning set out in Clause 9.5 (*Maintenance*);
"Major Failure Performance Threshold"	means the relevant level of performance designatedas such for a Performance Indicator and set out in the

	relevant table in Part I of Annex 1 of Schedule 2.2 (Performance Levels);
"Major KPI Failure"	shall have the meaning given, in relation to the relevant Key Performance Indicator, in paragraph 1.7 of Part A of Schedule 2.2 (*Performance Levels*);
"Major SPI Failure"	shall have the meaning given, in relation to the relevant Subsidiary Performance Indicator, in paragraph 1.7 of Part A of Schedule 2.2 (Performance Levels);
"Malicious Software"	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;
"Management Information"	the management information specified in Schedule 2.2 (*Performance Levels*), Schedule 7.1 (*Charges and Invoicing*) and Schedule 8.1 (*Governance*) to be provided by the Supplier to the Authority;
"Measurement Period"	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier's performance is measured (for example, a Service Period if measured monthly or a twelve (12) month period if measured annually), as is specified for each Key Performance Indicator and Subsidiary Performance Indicator in the relevant table set out at Annex 1 to Schedule 2.2 (*Performance Levels*);
"Milestone"	an event or task described in the Transition Plan or a Project Plan which, if applicable, shall be completed by the relevant Milestone Date;
"Milestone Achievement Certificate"	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (*Test and Assurance*);

"Milestone Adjustment Payment Amount"	in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula: A – B where: (a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and (b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;
"Milestone Adjustment Payment Notice"	has the meaning given in Clause 35.7 (*Payments by the Supplier*);
"Milestone Date"	the target date set out against the relevant Milestone in the Transition Plan or a Project Plan by which the Milestone must be Achieved;
"Milestone Payment"	a payment identified in Schedule 7.1 (*Charges and Invoicing*) to be made following the issue of a Milestone Achievement Certificate;
"Milestone Retention"	has the meaning given in Schedule 7.1 (*Charges and Invoicing);*
"Minor KPI Failure"	shall have the meaning given, in relation to the relevant Key Performance Indicator, in Paragraph 1.7 of Part A of Schedule 2.2 (*Performance Levels*);
"Minor SPI Failure"	shall have the meaning given, in relation to the relevant Subsidiary Performance Indicator, in Paragraph 1.7 of Part A of Schedule 2.2 (*Performance Levels*);
"Month"	a calendar month and **"monthly"** shall be interpreted accordingly;
"Related Third Party Dispute Initiation Notice"	has the meaning given in Paragraph 9.2 of Schedule 8.4 (*Dispute Resolution Procedure*);

"Related Third Party Dispute Resolution Procedure"	has the meaning given in Paragraph 9.1 of Schedule 8.4 (*Dispute Resolution Procedure*);
"New Releases"	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;
"Non-Party IPRs"	any Intellectual Property Right owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs;
"Non-retained Deliverables"	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;
"Non-trivial Customer Base"	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
"Notifiable Default"	shall have the meaning given in Clause 27.2 (*Rectification Plan Process*);
"Object Code"	software and/or data in machine-readable, compiled object code form;
"Occasion of Tax Non-Compliance"	(a) any Tax return of the Supplier and/or its Sub-contractors and/or any non-submission of a Tax return (whether deliberate or by omission) by the Supplier and/or its Sub-contractors to the Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of: (i) a Relevant Tax Authority successfully challenging the Supplier or relevant Sub-contractor under the General Anti-Abuse Rule or the Halifax Abuse Principle or TAAR or under any Tax rules

or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle or TAAR;

(ii) the failure of an avoidance scheme which the Supplier or relevant Sub-contractor was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or

(b) the Tax affairs of the Supplier or any of its Sub-contractors have given rise to a criminal conviction in any jurisdiction for Tax related offences within the last five (5) years which is not spent at the Effective Date or to a civil penalty for fraud or evasion within the last three (3) years;

(c) For the purposes of this definition:

(i) a return is "submitted" when it is first submitted to the Relevant Tax Authority and any subsequent amendments or re-submissions are to be ignored; and

(ii) a Relevant Tax Authority will not be deemed to have "successfully challenged" the Supplier or a Sub-contractor until an appeal against such challenge is no longer possible.

"Odigo"	Odigo SAS (a Key Sub-contractor);
"Off-shore Location"	any place outside of the United Kingdom;
"Open Book Data"	has the meaning given in Schedule 7.5 (*Financial Reports and Audit Rights*)
"Open Source"	software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
"Open Source Publication Material"	has the meaning given in Clause 19A.2(f);
"Operating Environment"	the Authority System and the Sites;

"Operational Change"	any change in the Supplier's operational procedures which in all respects, when implemented: (a) will not affect the Charges and will not result in any other costs to the Authority; (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services; (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and (d) will not require a change to this Agreement;
"Operational Service Commencement Date"	in relation to an Operational Service, the later of: (a) the date identified in the Transition Plan or a Project Plan for the Operational Services upon which the Operational Service is to commence; and (b) where the Transition Plan or a Project Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;
"Operational Services"	the operational services described as such in the Services Description;
"Optional Services"	the services described as such in Schedule 2.1 (*Services Description*) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.9 (*Optional Services*);
"Other Ecosystem Model"	the overarching term for the scope of the operating model comprised of the Authority and the Other Ecosystem Suppliers;
"Other Ecosystem Supplier(s)"	the Ecosystem Supplier(s) excluding the Supplier;
"Other Ecosystem Supplier Delay"	(a) a delay by an Other Ecosystem Supplier to achieve a milestone by its milestone date in accordance with its Ecosystem Agreement; or (b) a delay by an Other Ecosystem Supplier to design, develop, test or implement a

	deliverable by the relevant date set out in that Ecosystem Supplier's transition plan or any project plan;
"Other Supplier"	any other third party which supplies services to the Authority, including the Other Ecosystem Suppliers but excluding the Incumbent Suppliers;
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Partial Termination"	the partial termination of this Agreement to the extent that it relates to the provision of any part of the Services as further provided for in Clause 34.2(b) (*Termination by the Authority*) or 34.6(b) (*Termination by the Supplier*), or otherwise by mutual agreement by the Parties;
"Parties" and **"Party"**	have the meanings respectively given on page 1 of this Agreement;
"Performance Failure"	a KPI Failure or an SPI Failure;
"Performance Indicators"	the Key Performance Indicators and the Subsidiary Performance Indicators;
"Performance Monitoring Report"	has the meaning given in Schedule 2.2 (*Performance Levels*);
"Permitted Maintenance"	has the meaning given in Clause 9.5 (*Maintenance*);
"Persistent Breach"	means a Default which continued or recurred on more than one occasion within a six (6) month period following the date of a Final Termination Warning Notice;
"Personal Data"	personal data (as defined in the Relevant Data Protection Laws) which is Processed by the Supplier or any Sub-contractor pursuant to or in connection with this Agreement;
"Personal Data Breach"	means: (a) a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise Processed;

(b) a discovery or reasonable suspicion that there is a vulnerability in any technological measure used to protect any Personal Data that has previously been subject to a breach within the scope of paragraph (a), which may result in exploitation or exposure of that Personal Data; or

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

"Preceding Services" has the meaning given in Clause 5.2(b) (*Standard of Services)*;

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

"Processor" has the meaning given in the Relevant Data Protection Laws;

"Prohibited Act"

(a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:

(i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a relevant function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) an offence:

(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);

(ii) under legislation or common law concerning fraudulent acts (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or

(iii) defrauding, attempting to defraud or conspiring to defraud the Authority; or

	(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;
"Prohibited Transaction"	has the meaning given in Clause 10.18 (*Use of Off-shore Tax Structures*);
"Project"	any programme of work which has been agreed by the Authority and the Supplier in accordance with the procedures set out in Schedule 6.3 (*Projects and Ordering*) (or equivalent). Such programme of work may involve the participation of an Other Supplier and require project management and project office activity;
"Project Plan"	the agreed project plan for a Project set out in, attached to or included by reference in the relevant Project Work Order;
"Project Specific IPRs"	(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Agreement and updates and amendments of these items including (but not limited to) database schema; and/or (b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Agreement; but shall not include the Supplier Background IPRs or the Specially Written Software;
"Project Team"	has the meaning given in clause 6A.18(a);
"Project Vision"	has the meaning given in clause 6A.18(b);
"Project Work Order"	has the meaning given in Schedule 6.3 (*Projects and Ordering*);
"Public Sector Dependent Supplier"	means a supplier where that Supplier, or that Supplier's Group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
"Public Sector and CNI Contract Information"	means the information requirements set out in accordance with Paragraphs 11 to 13 and Appendix

	II of Part 2 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Quality Plans"	has the meaning given in Clause 6.1 (*Quality Plans*);
"Quarter"	the first three Service Periods and each subsequent three (3) Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement);
"Recipient"	has the meaning given in Clause 21.1 (*Confidentiality*);
"Records"	has the meaning given in Schedule 8.2 (*Reports and Records*);
"Rectification Plan"	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
"Rectification Plan Failure"	(a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 27.5 (*Submission of the draft Rectification Plan*) or 27.9 (*Agreement of the Rectification Plan*); (b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.8 (*Agreement of the Rectification Plan*); (c) the Supplier failing to rectify a material Default within the later of: (i) thirty (30) Working Days of a notification made pursuant to Clause 27.3 (*Notification);* and (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default; (d) where a Rectification Plan has been implemented a Performance Failure re-

	occurring in respect of the same Key Performance Indicator and for the same (or substantially the same) root cause (in relation to which a Rectification Plan was implemented) on two or more occasions in the period ending on the date falling 6 months (or, where the relevant KPI has a Measurement Period longer than 6 months, at the end of the next complete Measurement Period) following the date set for the completion of the Rectification Plan (or, if later, the date that the Supplier indicates that the Rectification Plan is complete); (e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of six (6) months for the same (or substantially the same) root cause as that of the original Notifiable Default;
"Rectification Plan Process"	the process set out in Clauses 27.5 (*Submission of the Rectification Plan*) to 27.10 (*Agreement of the Rectification Plan*);
"Registers"	has the meaning given in Schedule 8.5 (*Exit Management*);
"Reimbursable Expenses"	has the meaning given in Schedule 7.1 (*Charges and Invoicing*);
"Relevant Authority"	means the Authority or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
"Release"	means in relation to any Deliverables (including Specially Written Software and Project Specific IPRs (which are in the nature of software)) the stage in the development process whereby those Deliverables are intended to be put in to live operation or production following successful completion of acceptance tests;
"Relevant Data Protection Laws"	Means: (i) the Data Protection Act 2018; (ii) the GDPR, the Law Enforcement Directive (Directive EU

	2016/680) and any applicable national implementing Laws as amended from time to time; (iii) any other applicable Laws relating to the processing of personal data and privacy; and (iv) all applicable guidance, standard terms, codes of practice and codes of conduct issued by the Information Commissioner and other relevant regulatory, supervisory and legislative bodies in relation to such Laws;
"Relevant IPRs"	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier's obligations under this Agreement 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;
"Relevant Preceding Services"	has the meaning given in Clause 5.1(b)(ii) (*Standard of Services*);
"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established, resident or liable to any Tax;
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relief Notice"	has the meaning given in Clause 32.2 (*Authority Cause and Ecosystem Failures*);
"Remedial Adviser"	the person appointed pursuant to Clause 30.2 (*Remedial Adviser*);

"Remedial Adviser Failure"	has the meaning given in Clause 30.7 (*Remedial Adviser*);
"Replacement Services"	any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Agreement, whether those services are provided by the Authority internally and/or by any third party;
"Replacement Supplier"	any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);
"Request For Information"	a Request for Information under the FOIA or the EIRs;
"Required Action"	has the meaning given in Clause 31.1(a) (*Step-In Rights*);
"Requirement Tracking Tool"	means the Supplier's requirement tracking tool approved by the Customer for the Supplier's use from time to time in connection with the delivery of the Services;
"Retained Deliverables"	has the meaning given in Clause 35.8(b) (*Payments by the Supplier*);
"Risk Register"	the register of risks and contingencies that have been factored into any Costs due under this Agreement, a copy of which is set out in Annex 4 of Schedule 7.1 (*Charges and Invoicing*);
"Sanitised Personal Data"	data derived from Authority Personal Data which has had any designatory data identifiers removed so that an individual cannot be identified;
"Security Management Plan"	the Supplier's security plan as attached as Annex 2 of Schedule 2.4 (*Security Management*) and as subsequently developed and revised pursuant to Paragraphs 4 and 5 of Schedule 2.4 (*Security Management*);
"Service Beneficiary"	means an entity, other than the Authority, that may

	receive the benefit of some aspect of the Services and whom the Authority shall notify to the Supplier from time to time (an indicative and non-exhaustive list of Services Beneficiaries is set out in Schedule 2.7 (*Services Recipients and Services Beneficiaries*);
"Service Charges"	the periodic payments made in accordance with Schedule 7.1 (*Charges and Invoicing*) in respect of the supply of the Operational Services;
"Service Continuity Plan"	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) as may be amended from time to time;
"Service Continuity Services"	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Service Credit Cap"	has the meaning given in paragraph 6.3 of Part A (*Performance Indicators and Service Credits*) of Schedule 2.2 (*Performance Levels*);
"Service Credits"	credits payable by the Supplier due to the occurrence of one (1) or more KPI Failures, calculated in accordance with Paragraph 3 Part C of Schedule 7.1 (*Charges and Invoicing*);
"Service Period"	a calendar month, save that: (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
"Service Points"	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the table in Annex 1 of Schedule 2.2 (*Performance Levels*);
"Service Recipient"	means those listed as such in Schedule 2.7 (*Service Recipients and Service Beneficiaries*) (as such

	Schedule is amended from time to time by the Authority), being Other Government Departments and any other third party other than the Authority to which the Supplier shall provide all or part of the Services;
"Services"	any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 2.1 (*Services Description*);
"Services Description"	the services description set out in Schedule 2.1 (*Services Description*);
"Service Transfer Date"	has the meaning given in Schedule 9.1 (*Staff Transfer*);
"Sites"	any premises (including the Authority Premises, the Supplier's premises or third party premises): (a) from, to or at which: (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or (b) where: (i) any part of the Supplier System is situated; or (ii) any physical interface with the Authority System takes place;
"SME"	means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the European Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises
"Software"	Specially Written Software, Supplier Software and Third Party Software;
"Software Supporting Materials"	has the meaning given in Clause 16.6(b) (*Specially Written Software and Project Specific IPRs*);
"Source Code"	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;
"Specially Written Software"	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 Agreement, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Agreement;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
"SPI Failure"	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
"Sprint"	means the process pursuant to which the software is written for a given User Story in a defined timebox or with a defined output as described in clause 6A;
"Staffing Information"	has the meaning given in Schedule 9.1 (*Staff Transfer*);
"Standard Contractual Clauses"	means the standard contractual clauses for the transfer of personal data to processors established in third countries, as approved by the European Commission in Decision 2010/87/EU, or any set of clauses approved by the European Commission or a supervisory authority (as such term is defined by the GDPR) which subsequently amends, replaces or supersedes these;
"Standards"	the standards, polices and/or procedures identified in Schedule 2.3 (*Standards*) and as updated from time to time by the Authority and notified to the Supplier;
"Step-In Notice"	has the meaning given in Clause 31.1 *(Step-In Rights)*;
"Step-In Trigger Event"	(a) any event falling within the definition of a Supplier Termination Event;

(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;

(c) the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Agreement;

(d) the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 31 (Step-In Rights) is necessary;

(e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or

(f) a need by the Authority to take action to discharge a statutory duty;

"Step-Out Date" has the meaning given in Clause 31.5(b) (*Step-In Rights*);

"Step-Out Notice" has the meaning given in Clause 31.5 (*Step-In Rights*);

"Step-Out Plan" has the meaning given in Clause 31.6 (*Step-In Rights*);

"Strategic Supplier" means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers;

"Strategic Board" has the meaning given in Schedule 8.1 (*Governance*);

"Sub-contract" any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;

"Sub-contractor"	any third party with whom: (a) the Supplier enters into a Sub-contract; or (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;
"Sub-Processor"	has the meaning given at Clause 23.5
"Subsidiary Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Subsidiary Performance Indicator" or "SPI"	the performance indicators set out in Table 2 of Part I of Annex 1 of Schedule 2.2 (*Performance Levels*);
"Successor Body"	has the meaning given in Clause 37.4 (*Assignment and Novation*);
"Supplier Background IPRs"	(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or (b) Intellectual Property Rights created by the Supplier independently of this Agreement, which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;
"Supplier COTS Background IPRs"	means any embodiments of Supplier Background IPRs that: (a) the Supplier makes generally available commercially prior to the date of this Agreement (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;

"Supplier COTS Software"	Supplier Software (including open source software) that: (a) the Supplier makes generally available commercially prior to the date of this Agreement (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;
"Supplier Equipment"	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;
"Supplier Executive"	means the Head of UK HMRC Business Unit ;
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier Non-COTS Background IPRs"	any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
"Supplier Non-COTS Software"	Supplier Software that is not Supplier COTS Software;
"Supplier Non-Performance"	has the meaning given in Clause 32 (*Authority Cause and Ecosystem Failures*);
"Supplier Personnel"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier's obligations under this Agreement;
"Supplier Profit"	has the meaning given in Schedule 7.1 (*Charges and Invoicing*);
"Supplier Profit Margin"	has the meaning given in Schedule 7.1 (*Charges and Invoicing*);
"Supplier Representative"	the representative appointed by the Supplier pursuant to Clause 11.3 (*Representatives);*
"Supplier Software"	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 as specified as such in Schedule 5 (*IPR*) or as agreed in accordance with Clause 17.6;
"Supplier Solution"	the Supplier's solution for the Services set out in Schedule 4.1 (*Supplier Solution*) including any Annexes of that Schedule;
"Supplier System"	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);

"Supplier Termination Event"

(a) the Supplier's level of performance constituting an Unacceptable Performance Failure or a Critical KPI Failure;

(b) the Supplier's level of performance constitutes a Persistent Breach;

(c) the Supplier committing a material Default which is irremediable;

(d) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed eighty per cent (80)% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 25.2(d) (*Financial Limits*);

(e) a Remedial Adviser Failure;

(f) a Rectification Plan Failure;

(g) an Escalation Process Failure;

(h) where a right of termination is expressly reserved in this Agreement, including pursuant to:

(i) Clause 19 (*IPRs Indemnity*);

(ii) Clause 40.6(b) (*Prevention of Fraud and Bribery*); and/or

(iii) Paragraph 4 of Schedule 7.4 (*Financial Distress*);

(iv) Paragraph 12 of Part 2 to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

(i) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (*Warranties*) being materially untrue or misleading;

(j) the Supplier committing a material Default or failing to provide details of steps being taken and mitigating factors pursuant to Clauses 10.9 to 10.17 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;

(k) the Supplier committing a material Default under any of the following:

(i) Clause 5.4(j) (*Services*);

(ii) Clauses 10.09 to 10.17 (inclusive) (*Promoting Tax Compliance*);

(iii) Clauses 10.18 and 10.21 (*Use of Off-shore Tax Structures*);

(iv) Clause 14.8 (*Income Tax and National Insurance Contributions*);

(v) Clause 23 (*Protection of Personal Data);*

(vi) Clause 22 (*Transparency and Freedom of Information*);

(vii) Clause 21 (*Confidentiality*);

(viii) Clause 36 (*Compliance*);

(vi) in respect of any security requirements set out in Schedule 2.1 (*Services Description*), Schedule 2.4 (*Security Management*) or the Baseline Security Requirements; and/or

(vii) in respect of any requirements set out in Schedule 9.1 (*Staff Transfer*);

(l) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.8 of Schedule 7.3 (*Value for Money*);

(m) an Insolvency Event occurring in respect of the Supplier;

(n) Not used

(o) a change of Control of the Supplier unless:

(i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed, and the consent shall not to be unreasonably withheld; or

(ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the change of Control;

(p) a change of Control of a Key Sub-contractor unless:

(i) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed, and the consent shall not to be unreasonably withheld; or

(ii) the Authority has not served its notice of objection within six (6) months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the change of Control;

(q) any failure by the Supplier to enter into or to comply with an Admission Agreement under the Annex to either Part A or Part B of Schedule 9.1 (*Staff Transfer*);

(r) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Agreement;

(s) the Supplier:

(i) commits an irremediable breach of the Admission Agreement; or

(ii) commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it; or

(t) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;

(u) the Supplier commits a breach of any of the requirements set out at Clause 36.5 (Modern Slavery Act);

"Supply Chain Transparency Report"	means the report provided by the Supplier to the Authority in the form set out in Annex 4 of Schedule 8.2 (*Reports and Records*);
"TAAR" or "Targeted Anti-Avoidance Rule"	means provision(s) in any legislation which seeks to prevent avoidance of any Tax;
"Target Performance Level"	the minimum level of performance for a Performance Indicator which is required by the Authority, as set out in respect of the relevant Performance Indicator in the tables in Annex 1 of Schedule 2.2 (*Performance Levels*);
"Tax"	means: (a) all forms of tax whether direct or indirect; (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction; (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and withholdings; and (d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above, in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction;
"Tax Revenue"	means any Tax, levy or duty due to be collected by the Authority and/or any reimbursement of Tax, levy or duty, correctly paid to the Authority, as a result of a Default by the Supplier;
"Term"	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement;
"Termination Assistance Notice"	has the meaning given in Paragraph 5.1 of Schedule 8.5 (*Exit Management*);
"Termination Assistance Period"	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide

	the Termination Services as such period may be extended pursuant to Paragraph 5.3 of Schedule 8.5 (*Exit Management*);
"Termination Date"	the date set out in a Termination Notice on which this Agreement (or a part of it as the case may be) is to terminate;
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination;
"Termination Payment"	the payment determined in accordance with Schedule 7.2 (*Payments on Termination*);
"Termination Services"	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (*Exit Management*), and any other services required pursuant to the Termination Assistance Notice;
"Termination Warning Notice"	has the meaning given to it in Clause 34.3;
"Test Issue"	has the meaning given in Schedule 6.2 (*Testing Procedures*);
"Tests" and "Testing"	any tests required to be carried out under this Agreement, as further described in Schedule 6.2 (*Testing Procedures*) and "**Tested"** shall be construed accordingly;
"Third Party Auditor"	an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 8.2 (*Reports and Records*);
"Third Party Beneficiary"	has the meaning given in Clause 44.1 (*Third Party Rights*);
"Third Party COTS IPRs"	Third Party IPRs that: (a) the Supplier makes generally available commercially prior to the date of this Agreement

	(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;
"Third Party COTS Software"	Third Party Software (including open source software) that: (a) the Supplier makes generally available commercially prior to the date of this Agreement (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;
"Third Party IPRs"	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software as specified as such in Schedule 5 (*IPR*) or as agreed in accordance with Clause 17.11;
"Third Party Non-COTS IPRs"	Third Party IPRs that are not Third Party COTS IPRs;
"Third Party Non-COTS Software"	Third Party Software that is not Third Party COTS Software;
"Third Party Provisions"	has the meaning given in Clause 44.1 (*Third Party Rights*);
"Third Party Software"	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, as specified as such in Schedule 5 (IPR) or as agreed in accordance with Clause 17.11;
"Transferring Assets"	has the meaning given in Paragraph 8.2(a) of Schedule 8.5 (*Exit Management*);
"Transferring Authority Employees"	has the meaning given in Schedule 9.1 (*Staff Transfer*);
"Transferring Former Supplier Employees"	has the meaning given in Schedule 9.1 (*Staff Transfer*);
"Transferring Supplier Employees"	has the meaning given in Schedule 9.1 (*Staff Transfer*);

"Transparency Information"	has the meaning given in Clause 22.1 (*Transparency and Freedom of Information*);
"Transparency Reports"	has the meaning given in Schedule 8.2 (*Reports and Records*);
"Transition"	has the meaning given in Schedule 6.1 (*Transition*);
"Transition Plan"	the Outline Transition Plan and the Detailed Transition Plan as described in Schedule 6.1 (*Transition*);
"UK"	the United Kingdom;
"UK Public Sector Business"	means any goods, service or works provision to UK public sector bodies, including Central Government Departments 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;
"UK Public Sector / CNI Contract Information"	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"Unacceptable Performance Failure"	the Supplier committing a Performance Failure in respect of 75% or more of the Performance Indicators that are measured in a Service Period;
"Unrecovered Payment"	has the meaning given in Schedule 7.2 (*Payments on Termination*);
"Updates"	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;
"Update Requirement"	means the occurrence of an event detailed in Schedule 8.2 (*Reports and Records*) Annex 4 (*Records to Upload to Virtual Library*) which requires the

	Supplier to update the relevant information hosted on the Virtual Library;
"Upgrades"	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;
"User Story"	means one or more sentences written in the everyday or business language of a user of a system that captures use requirements which together constitute the requirements for a given Deliverable, agreed by the parties in accordance with the provisions of clause 6A plus any associated image or visual implementation;
"Valid"	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part 2 to Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
"VAT"	value added tax as provided for in the Value Added Tax Act 1994;
"VCSE"	means voluntary, community and social enterprises which are non-governmental organisations that are value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Velocity Measure"	means the rate of productivity measured over time taking account of the complexity of the Services being provided;
"Waterfall"	means a linear and sequential approach to software design and systems development;
"Virtual Library"	means the data repository hosted by the Supplier containing the information about this Agreement and the Services provided under it in accordance with Schedule 8.2 (*Reports and Records*);
"Working Day"	any day other than a Saturday, Sunday or public holiday in England and Wales.

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 2.1 | Services Description

SCHEDULE 2.1
SERVICES DESCRIPTION

Services Description

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"THE AUTHORITY"	means HM Revenue & Customs (HMRC), as the contracting authority and receivers of the services:
"THE SUPPLIER(S)"	means the person, firm or company with whom The Authority enters into the Contract:
"AGENT"	means a person using any of the systems:

2 INTRODUCTION

2.1 Background

a. The Authority is the UK's tax, payments and customs authority and its purpose is to collect the money that pays for the UK's public services and help families and individuals with targeted financial support.

b. During the financial year 2018-19, the Authority collected total revenues of £627.9bn at a cost of just over half a penny (£0.0052p) per pound and over £3bn tax was protected, or generated, from tackling organised crime.

c. The Authority has three strategic objectives, and everything it does is focused on delivering these for the UK. They are to:
   i. Maximise revenues due and bear down on avoidance and evasion
   ii. Transform tax and payments for its customers
   iii. Design and deliver a professional, efficient and engaged organisation

d. The Authority is designing new systems, products and processes around customers to make it as easy as possible for them to deal with it. The Authority's aim is to become the world's most digitally advanced tax authority and it has taken great strides towards achieving this ambition.

e. The number of taxpayers is growing as more people are in work, leading to an increase in overall demand for the Authority's customer services. To meet this demand, the Authority has invested in new online services which are being used by millions, such as Personal and Business Tax Accounts and online tax credits renewal.

f. The Authority is using sophisticated technology to analyse the enormous amount of data it holds in new ways – analysing risks and identifying customer needs so the Authority can support more people to pay the right tax at the right time. As a result, the Authority continues to have one of the lowest tax gaps (the difference between what is owed and what is collected) in the world.

g. The Authority as an organisation has entered into a commitment to transform the way it communicates and engages with its customers through the delivery of a set of world class integrated contact management services of which telephony is a key part. The telephony platform which supports the Authority's current customer contact which is due to reach its end of life in January 2021.

h. Replacing and improving the full telephony platform will play a role in the Authority's ambition to deliver a healthy tax system by providing world-class customer service. The Authority aims to support this by building services which:

i. Are relevant to the customer as it is personalised to their needs and requirements
ii. Are effortless and convenient to use (right channel at right time) with smooth transition between them.
iii. Addresses customer needs in a timely manner
iv. Are safe and secure, instilling trust in digital services
v. Uses clear and simple language, ensuring customers understand what is required of them
vi. Makes it easy for customers to access information and be informed on their tax and benefits obligations.
vii. Encourages 'Digital by Default'
viii. Builds in high degrees of automation

These improvements in customer service will drive enhanced compliance and debt prevention.

i. The following diagram describes the aims that the Authority is looking to achieve and the benefits that are expected to be realised by both customers and the Authority:

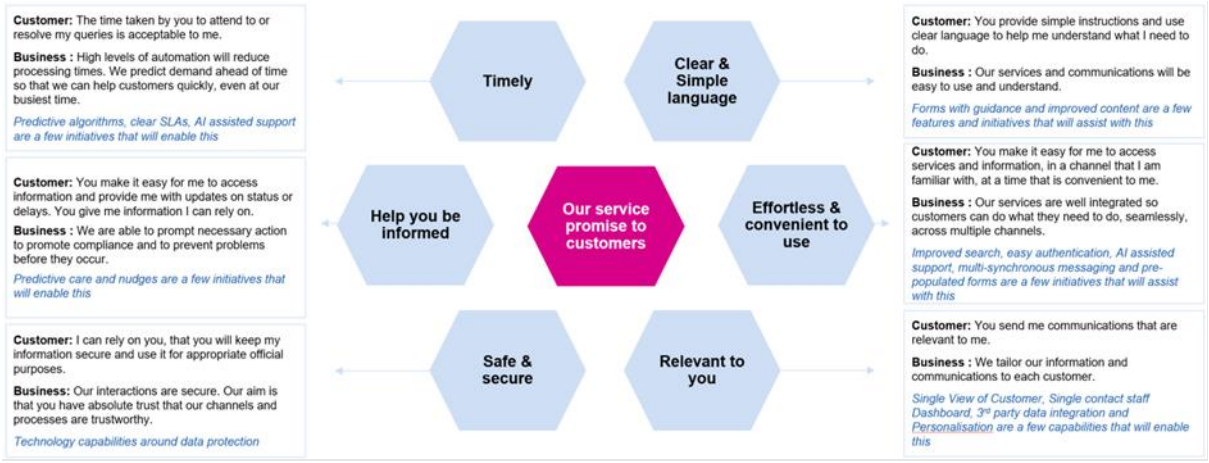

Figure 1

j. There is a need, therefore, for an intelligent telephony platform which integrates with digital platforms, where an integrated, multi-channel service with single view of the customer will allow customers to seamlessly move between channels and receive personalised advice and more 'right first time' interactions. The figure below captures the shifts required in how the Authority is looking to meet customer expectations and how things will change for the Authority and its staff as a result of a channel shift to a true digital first future.

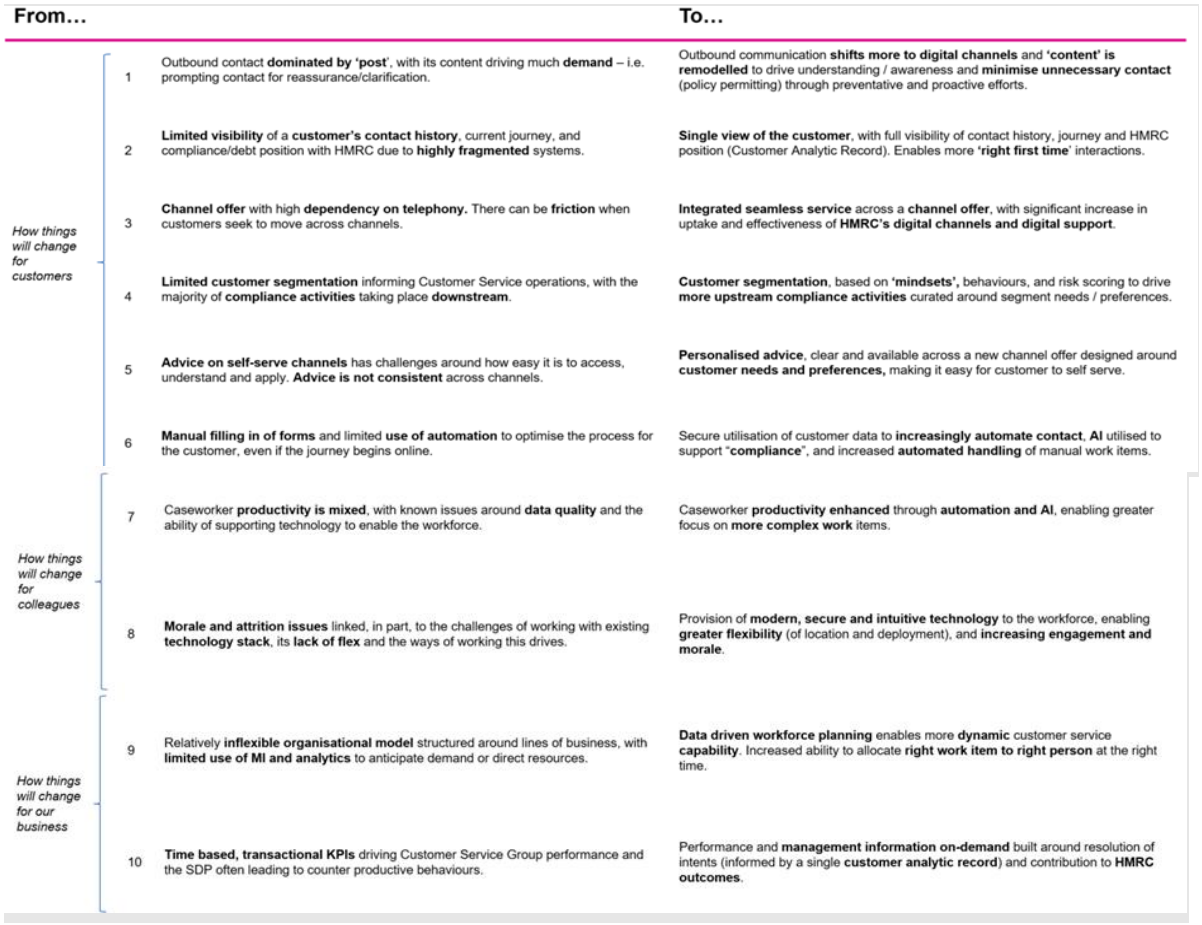

Figure 2.

k. The Authority's current technology and contractual relationships do not support these strategic aims. Therefore, the Authority cannot simply try to replicate the current telephony configuration with new technologies, as there is limited scope for future transformation. Transformation within its current system is restricted due to a number of factors:

   i. Cost of change and the time required due to the Authority's reliance on supplier-led change.

   ii. Links between telephony and digital channels are limited.

   iii. The Authority does not have the ability to fully leverage or optimise the offerings currently provided due to Contact Management Application (CMA) service limitations.

   iv. It would require further investment to expand the end-user community.

   v. It does not allow for an orchestration layer across all Lines of Business (LOBs)/Tax Regimes to provide a full 360-degree view of the customer.

   vi. Management information is limited and can be difficult to use.

   vii. The current Voice Automation implementation is not fully meeting the original objectives of routing customer to the right outcome whether that is advisor handled phone call, self-service options or online products.

l. The Authority is looking to replace the existing Telephony Platform with one suitable for the digital age under a contractual relationship that will give the flexibility to allow transformation to take place.

m. The size and scale of the current Authority telephony platform is one of the largest hosted contact centres in Europe:
   i. handling 55.5m call attempts per year (with significant peaks)
   ii. serving 8 independently managed Business Units (number may be revised during design) routing to agents through both natural language speech recognition and Dual Tone Multi-Frequency (DTMF) Interactive Voice Responses (IVR) with in excess of 575k customer journeys
   iii. through 196 locations
   iv. in 3.2k teams
   v. and 28k users (current capacity limit is 12k concurrent users on 12k active calls)
   vi. answering around 600 different Telephone Numbers (03xx/08xx)
   vii. with an ever-growing historical database of circa 300m encrypted call recordings plus circa 1.5m voice biometrics records
   viii. using approximately 4k user variables

   (see section 2.2.3 and Appendix I – 'Customer Contact Volumetrics' for further volumetrics)

n. To realise its ambition, the Authority requires the 'best in breed' product(s) that a Supplier, or Suppliers, have to offer and which incorporate its THREE services (Core & Carrier, Voice Automation, and Recording & Analytics) and meet the Authority's defined non-functional requirements.

o. Further details of the high-level requirements of the Authority's services are listed at Section 3.

p. The functional requirements that are set out in this RFP reflect industry norms and are similar to those for the current service. However, a significant difference between the current services provided to the Authority and the services required from the new Suppliers is the Authority's intention to use these functional capabilities in different ways to deliver improved customer outcomes. The Authority will use the new services as a foundation so that, going forward, it can transform the way that it engages with its customers. Hence, the flexibility and interoperability of the new services along with the innovative thinking and right working relationship with the Suppliers will be key to achieving this.

2.2 Telephony Platform Usage

2.2.1 Agent Locations

a. The Authority staff using these services will be based at over 100 UK locations. During the next few years the Authority will continue with its location strategy to bring all users into its regional centres (dates and numbers are indicative and may be subject to change). The table below lists the planned locations, the number of full-time employees they will support and the date by which consolidation of into those locations is expected to be completed:

Site	Transfer To Regional Centre Expected Completion Date	FTE Numbers
Birmingham	28/02/2021	2650 (+1200 Specialist)
Bristol	30/09/2020	1350 (+300 EU Exit)
Cardiff	28/02/2021	3600
Croydon	28/02/2026	2400 (+ 300 EU Exit + 900 Specialist)
Edinburgh	30/04/2022	2680
Glasgow	28/02/2026	2870
Leeds	31/03/2021	3850
Liverpool	31/03/2023	4100
Manchester	31/05/2028	2500
Newcastle	31/08/2024	6250
Northern Ireland	30/09/2020	1580 (+ 245 RFTU)
Nottingham	31/01/2022	3700 (+ 580 EU Exit)
Stratford	30/09/2027	4400 (+ 450 RFTU)
RFTU = Road Fuel Testing Unit		

Figure 3

b. Suppliers will be required to support the move to the regional centres. Details of current infrastructure and forthcoming changes are provided in Appendix M – 'Location Changes'.

c. Many of the site consolidation activities will occur during the period of the new telephony platform implementation so potential Suppliers must be prepared to handle these changes while performing implementation activities.

2.2.2 Agent Concurrency

a. The Authority requires flexibility in the concurrency of usage to reflect demand. It anticipates 30,000 configured users, an overall annual peak concurrency of at least 10,000 users for the telephony platform as a whole and an average monthly peak concurrency of around 8,700. These figures reflect the Authority's forecast based on current business as usual but there are a number of political and economic scenarios where a peak of up to 30,000 concurrent users may be required. The Supplier will be expected to enable this quickly.

2.2.3 Customer Contacts

a. To help illustrate the scale of the totality of the Authority's customer contact, detailed below is the total contact volumes for the 12-month period 1 April 2018 to 31 March 2019:
    i. Total telephone attempts (calls made to the platform): 55.5 million
    ii. Digital Tax Account and App session (Personal, Business and App): 76.5 million
    iii. Post & Submittable Online Forms: 20 million
    iv. Webchat: 1.4 million
    v. Visits to The Authority tagged pages on gov.uk: 521 million

b. In terms of in scope telephony only customer contact:
    i. Peak Day for calls received: 31 January 2019
    ii. Peak Day call attempts: 380,503
    iii. Peak Day for calls handled: 30 July 2018
    iv. Peak Day calls handled: 173,580
    v. In the last year there were 55.5 million calls to the platform.
    vi. The average call length was 10 minutes (for all calls), with the total call time being 555 million minutes.
    vii. The total time spent in the infrastructure (listening to messages and selecting options) is 143 million minutes, time in queue is 169 million minutes, time in talk is 221 million minutes and transferred calls 22 million minutes.
    viii. On average, for calls answered by agents, it takes just over 2.5 minutes to be routed through the infrastructure, 5 minutes being queued, and 7 minutes are spent speaking to an agent.

c. Current forecasts indicate that overall demand (in terms of incoming calls) is expected to fall by approximately 10% over the next 5 years. It should be noted that these changes are not consistent to all business lines and that other unforeseen factors may affect call volumes. In addition, the Authority expects that call volumes will decrease as the full benefits of customers utilising digital channels to interact with it is realised.

d. The Authority expects that the Telephony Platform can be quickly and automatically scaled up and down dependent on usage and unforeseen demand and to follow a consumption-based usage model. Irrespective of the Supplier's ability to scale the Telephony Platform quickly up or down quickly, The Authority requires an innovative pricing model that reflects the ambition to incur cost only for capacity and capability being actively used.

2.2.4 Service Operation Hours

a. Typical hours of the Core telephony services for individual customers and some business tax lines are 08:00 – 20:00. The Authority does currently have two business

areas that are open for service 24 hours per day, seven days a week. In addition, selected lines have extended opening hours during times of peak activity. Typical hours of the Core telephony services for individual customers and some business tax lines during Extended opening times are 08:00 – 22:00. Hours outside of these are defined as 'non-standard operating hours'.

b. Whilst the majority of lines are not open on Sundays at present, the Authority may require them to be open on specific days and have extended opening hours (e.g. immediately before a peak) and may require more general Sunday opening in the future.

c. The service times required by the Authority are that the Service shall be available 24 hours per day, 365 days per year (366 days in a leap year).

d. The Authority also requires the platform to be available for out of hours messaging, self-service applications and configuration changes 24 hours per day, 365 days a year (366 days in a leap year).

2.2.5 Current Contact Centre Capabilities

a. All of the existing Contact Centre capabilities, including the overall integrator role, will need to be replaced under the new procurement.

b. The current Contact Centre capabilities are:

i. Public Switched Telephone Network (PSTN) Services: The existing supplier provides the PSTN lines to the hosted Contact Centre to provide the necessary voice capacity to answer customer calls.

ii. Call Steering: IVR providing a DTMF based Service to route calls depending on the options selected on a customer keypad.

iii. Voice Automation using Automatic Speech Recognition: Natural Language Call Steering using customer utterances to understand call reason and route accordingly, automated identification & verification, and several self-serve applications such as card payment processing and tax credit renewals.

iv. Queuing – Calls are sent to contact centre queues either based on intents from Natural Language Call Steering, information gathered from IVR menus or based on dialled number. While in queue announcements and information messages are played to customers, then calls are routed to the next available adviser within the relevant adviser group.

v. Voice Recording – The vast majority of calls are recorded and retained for a period of six years plus the current tax year, with all calls being available for instant access. There are some exclusions in relation to recording calls achieved via specific agent or dialled number configuration.

vi. Speech Analytics – For the 2 lines of business using speech analytics, 20% of call recordings are transcribed and analysed using the speech analytics service to provide insight into demand, reasons for call and customer experience.

vii. Outbound Dialling – A list management tool is used to segment, sort and prioritise customer records for customer outbound contact. The outbound dialler is utilised in various dialling modes (including preview and progressive dialling) with associated dialling strategies to maximise outbound right party contacts.

viii. Advisor User Interface – Enables agents to sign onto the contact platform and manage their status while providing call control capabilities (receive a call, place a call, put a call on hold, transfer a call, conference a call). The user interface can be configured by The Authority to display the relevant customer information.

ix. CTI Service – Provides the link between various telephony components including Voice Recording and the screen pop to an adviser desktop.

x. Reporting – Reporting is provided on real-time and historical components, and data is extracted out into the Authority's data store for further analysis.

xi. Operational Quality Management – Adviser call handling evaluation tool with reporting capabilities.

xii. Voice Biometrics - Customers having elected to register their voice are able to authenticate using voice biometrics.

xiii. Automated Testing – Used to place automated calls into the Authority's contact centre to test the health and correctness of the call steering services.

c. Also in the scope of current services but not within the scope of this procurement:

i. WFM – Integrated with the contact platform to provide historical and real-time information on both customer and agent activity to support planning, scheduling and adherence to schedules.

3 TELEPHONY PLATFORM – SERVICES

a. The Authority as an organisation has entered into a commitment to transform the way it communicates and engages with its customers through the delivery of a set of world class integrated contact management services of which telephony is a key part. The telephony platform which supports the Authority's current customer contact is due to reach its end of life in January 2021.

b. As outlined in Appendix E – 'Key Principles' the Authority has a number of key principles which the Supplier must abide by. These key principles (which apply to all lots) are:
   i. Create The Right Relationships – Promote shared ownership of the solution and its development
   ii. Scalable/Elastic Solutions – Allow the Authority to easily and quickly scale services up or down in response to changes in demand
   iii. Payment For Usage – The Authority is seeking an innovative pricing model that reflects the ambition to incur cost only for capacity and capability being actively used.
   iv. Delivery Confidence - Use of the telephone is a key feature and solutions must be capable of handling the Authority's large, diverse and complex telephony services which can be implemented quickly, robustly and securely.
   v. Innovation – To work in partnership with the Authority to drive innovation and continual improvement to services.
   vi. Skills Transfer – Enable the Authority to become more self-sufficient

c. The Telephony Platform will be made up of various component services which have been divided into three lots. ***This schedule and contract is for Lot 1, but the outline of all three is as follows:***
   i. Lot 1 – Core and Carrier Services with Integration
      1) Core System - telephony capabilities for receiving, queuing and handling inbound telephone calls and making bulk outbound calls.
      2) Carrier Services - capability to make and receive calls from the public telecommunications network, including the provisions of connections to the public network, intelligent network layer and a range of non-geographic telephone numbers.
      3) Systems Integrator – performing the IT Delivery Lead role to ensure that the different telephony systems delivered under lots 1 – 3 will integrate with each other and with the wider ecosystem.

   ii. Lot 2 – Voice Automation

1) Voice Automation - the use of Voice Automation in identifying and verifying caller's identity and intent, call steering and access to voice self-service applications.
2) Voice Biometrics - capability to deliver secure and accurate customer identification based on the unique characteristics of their voice.

iii. Lot 3 – Recording and Analytics

1) Recording and Storage - the recording of calls received by the Authority and the secure storage of around 300m call recordings.
2) Transcription and Interaction - the transcription and analysis on calls received by the Authority. Integrating the analytical capability with all other telephony components will bring greater business insight and capability for data-driven change.
3) Quality Management – the capability to analyse and score agent behaviour and automatically measure and report on call quality.

d. The Supplier must ensure that each component part of the platform and the supporting professional services:
   i. Has all the mandatory functionality and non-functional characteristics described in Appendix C – 'Lot 1 - Core and Carrier Requirements' as appropriate.
   ii. Has the capability to integrate with other services as outlined in Appendix A – 'Architectural Overview'.
e. By replacing and improving the full telephony platform we will deliver a service that will drive enhanced compliance and debt prevention (as outlined in section 2).

f. The Authority requires solutions that have the right capabilities and flexibility to meet our needs, and those of its diverse customer base, both now and as they evolve throughout the life of the contract. The solutions must have the ability to integrate using industry standard interfaces with other components used by the Authority, be able to accommodate the extreme fluctuations in the volume of contact and complexity of the business operation and follow a consumption-based usage model when being charged for the service.

g. The Supplier must:
   i. Have a clear understanding of the Authority's volumes and peak processing periods (as outlined in Appendix I – 'Customer Contact Volumetrics') to ensure the capability to efficiently handle the Authority's volumes consistently throughout the year. This is mandatory and forms part of the Supplier's Key Performance Indicators (KPIs)

ii. Ensure that peaks in service are accommodated, requiring robust performance monitoring and business continuity processes as well as proactive communication with the Authority leading up to these peaks.
iii. Ensure that the service has the flexibility, and its functionality appropriately partitioned, to accommodate the Authority in making local changes, e.g. light touch governance allowing business configuration within agreed Service levels without formal change requests.
iv. Be able to satisfy the size of scale of the Authority's telephony platform project.
v. Have prior experience of delivering a program of skills and knowledge transfer to an organisation of a size and complexity comparable to the Authority.

h. The Telephony Platform must:
   i. Be capable of spanning across the entire organisation with multiple Business Units
   ii. Be industry standard compliant out of the box or with relatively simple configuration tools
   iii. Be independently scalable and configurable for each business line
   iv. Allow call flows and automated dialogues which are designed to support rapid change

i. The services implemented under this procurement must allow the Authority to implement a design approach where:
   i. Business services are designed "digital first" allowing integration with digital services
   ii. The ecosystem can be extended by adding further products and capabilities in the future
   iii. Personalised dialogues reflect the Authority's understanding of customer needs
   iv. The customer experiences a quicker and more insightful response to their call

3.1 **Lot** 1 – Core and Carrier Services with Integration Service

a. The Supplier for this lot must provide the Core and Carrier Services and lead on the integration with other services used by the Authority. Since the Core and Carrier services are central to Contact Engagement processing, The Supplier must also deliver an Integration Service, performing the IT Delivery Lead (ITDL) role, working with the Authority and other selected Suppliers to implement their services as part of the Telephony Re-platforming in particular and as part of the wider evolving Contact Engagement architecture.

3.1.1 Core System

a. The Authority requires a world class, industry leading service that allows it to receive and manage efficiently and maximise best value from incoming customer calls, and make and manage outgoing calls. The Supplier will provide a Core System which meets the mandatory functional and non-functional characteristics detailed in Appendix C - 'Lot 1 - Core and Carrier Requirements' in the section relating to Core System.

b. The Core System must be capable of handling the Authority's call volumes and meet the Authority's pre-requisite to be scalable, both up and down, to meet business peaks. In doing so, it must ensure a sustained high quality of service for voice, measured using MOS (Mean Opinion Score), of 4.1 or higher for call quality across telephony services as outlined in the end-to-end topology diagram shown in section 6.4.

c. The Core System must have the capability to support agents using single sign-on across multiple systems and working at Authority locations and other locations where there is a secured Virtual Private Network (VPN) connection. It will also have the capability to integrate with Microsoft Teams and will have a Soft Phone capability.

d. Although the Advisor UI service is being provided by Pega at the time of the Effective Date, the Supplier's Core Service should also have a user interface capability that agents can use, if required, either for an interim period before the Advisor UI has been implemented across the Authority's estate or for a limited number of agents who may not be using the Advisor UI service. In line with the key principles outlined in Appendix E – 'Key Principles', the Authority would not expect any associated cost for this functionality if it is not used.

e. The Core System must have the capability to receive and manage inbound calls with the ability to automatically trigger outbound Short Message Service (SMS) texts, enable the caller to traverse to digital communication channels and allow call-back options. It must also enable identification of unique Customer Line Identities (CLI) which require different treatment and be able to support Payment Card Industry (PCI) compliant card payment methods.

f. The Core System must have an outbound dialler and list management capability which can receive lists from integrated third-party campaign management tools, legacy systems or via a graphical user interface (GUI). It must be able to apply segmentation and filtering to outbound contact lists and have the capability to manage call-backs, removal of duplicate numbers, define a CLI for an outbound campaign and provide real-time reporting on outbound abandoned calls.

g. Other capabilities will include conferencing, call transfer, speed dials, call prioritisation (between internal and external), searchable directories and a softphone.

h. Supervisor functions such as live call monitoring and barge in are required, as are administrator functions to configure how agents receive calls, are allocated to queues and to change their state on the platform. It will also allow the Authority to maintain user accounts without recourse to change request processes and without incurring additional costs.

i. The Core System will facilitate the capturing of Customer Feedback Surveys by allowing customers to opt into surveys and select the appropriate survey channel/method for them. The solution should be flexible, being fully adaptable/configurable by the Authority, allowing easy access to the data customers provide the Authority for extraction and analysis.

j. The Supplier will be expected to migrate over from the current telephony service (consisting of approximately 1,500 call reasons across 18 different helplines (around 10k call reasons in total across the Authority), 1.1k Agent Skill Sets and 2k Routing Scripts which will need to be rationalised as part of this process.

k. The Supplier will be expected to work with the Authority to develop an efficient customer journey strategy, utilising multivariate testing and incremental transformational change approaches that help steer callers onto the Authority's digital offerings.

3.1.2 Carrier Service

a. The Authority requires a world class, industry leading service offering carrier grade availability, which allows the Authority to receive and make calls 24 hours a day, 365 days a year. The Supplier will provide a Carrier Service which meets the mandatory functional and non-functional characteristics detailed in Appendix C - 'Lot 1 – Core and Carrier Requirements' in the section relating to Carrier Service.

b. The Carrier Service must connect to the Public Switched Telephone Network (PSTN) and support geographic, non-geographic and international calls. The Service must provide resilient support for inbound and outbound calls to and from all these

number types, route these into the contact platform and be able to select a target destination for these numbers. It also must have the capability to make and receive calls originating from the internet.

c. At no additional cost, the Supplier will have the capacity to port existing live numbers (currently estimated at less than 600 live different telephone numbers currently in use) and will work with the incumbent Supplier(s), and their partners, to achieve this. The Supplier must allow the Authority to stagger the porting of telephone numbers from the incumbent to the new provider based on a migration plan defined by the Authority. The Carrier Service must have the capability to distribute calls across multiple platforms to support a staggered migration between the Authority's old and new contact centre platforms.

d. In addition, the Supplier will have a pool of available network-enabled numbers for use at short notice as the Authority must be able to directly provision and configure new telephone numbers.

e. The Carrier Service must have the capacity and capability to handle and support high volumes of calls and telephony activity, including high numbers of concurrent users and customers queuing and accessing the automated service. Key to this service will be its capability to provide flexibility of service and its capacity to meet a highly dynamic and fluctuating demand. It must support business priorities including increased call volumes, concurrent users, and bringing additional locations into the Virtual Contact Centre environment to support peak demand.

f. The Carrier Service must ensure a sustained high quality of service for voice, measured using MOS (Mean Opinion Score), of 4.1 or higher for call quality across telephony services as outlined in the end-to-end topology diagram shown in section 6.4.

g. In addition to the capabilities mentioned above, the Carrier service must allow the Authority to add, move, modify or delete user accounts without additional costs to those given for the service implementation.

3.1.3 Systems Integrator

a. The Supplier will perform an ITDL and Systems Integrator (SI) role in line with the mandatory requirements detailed in Appendix C - 'Lot 1 – Core and Carrier Requirements' in the sections relating to ITDL Roles and SI Roles.

b. In addition to delivering the Core System and Carrier Service, the Supplier of Lot 1 will perform a Systems Integrator ITDL role having responsibility for ensuring all capabilities delivered within Lot 1 are integrated and that the capabilities within Lots 2 and 3 are also integrated. This will include integration with other services within the wider ecosystem.

c. Appendix A – 'Architectural Overview' describes the services with which it is anticipated telephony products will be required to integrate, including but not exclusive to:
    i. Pegasystems (known as Pega) delivering the Advisor UI and
    ii. Nuance delivering the Digital Engagement Platform.

d. The Supplier will need to collaborate with the other Suppliers and the Authority to help find solutions to any issues arising, taking the lead role in identifying options that will deliver the expected business outcomes.

e. During the initial transition period, the Supplier will be required to work with the Authority (which will provide architectural direction, design parameters, direction on appropriate standards and policies) to deliver an overall transition plan and to deliver an overarching design of the telephony services in addition to a detailed design for the components within Lot 1. The Supplier will agree the design with the Authority who will need to assure that the design meets all the service requirements.

f. The ITDL role will apply throughout the planning, designing, building, testing, deployment and transition phases through to delivery of the service into a live environment.

g. The Supplier will also be required to prepare appropriate reporting and tooling to facilitate service management once the services are delivered into live running.

h. In addition, for a period following the initial transition, the Supplier will be required to perform a lead role in service management of the telephony services until the Authority's staff have sufficient knowledge for them to take over the lead role in the day-to-day service management.

i. Following transition, where any significant changes to services are required which are not within the scope of service management, the Supplier will continue to provide input.

j. The ITDL SI/ SI roles the Supplier will perform are detailed in Appendix C – 'Lot 1 - Core and Carrier Requirements', however, these duties may change during discussions between the Authority and the Supplier as the roles and relationship are established in more detail.

4 MANAGEMENT INFORMATION (MI) REPORTING

a. As one of the biggest telephony contact organisations in the UK, the Authority needs to develop its MI & Analytics capability to provide better customer service at a lower cost. The range of reasons for contacting the Authority is vast and complex and understanding the reasons and how this links with wider customer contact end-to-end journeys will enable the Authority to radically evolve its digital engagement offering to deliver better value for money for the public purse.

b. To enable the Authority to achieve this, the Supplier services will provide a data feed to a repository containing data gathered from all Customer Contact channels and Digital Services. The data feed must have all the granular underlying data to enable the Authority to develop its own reporting and analytical solution to improve Business Insight and allow the Authority to take the right action quickly to improve customer service.

c. Whilst this is being developed, the Authority requires the Supplier to deliver a comprehensive suite of MI reports to allow the Authority to operate. All components provided by the Supplier must have some 'out of the box industry standard' self-serve reporting capability, configurable and customisable to allow reporting of the Authority's KPIs. These metrics must be consistent with what has been reported in the past due to the Authority being accountable to HM Treasury through Treasury Select Committee and Parliamentary Accounts Committee. The Authority will also need to know about all aspects of the business through management information reported at various levels, including performance metrics, speech analytics and transcriptions, customer survey results and customer drop-out rates.

d. Detailed requirements for Management Information Reporting relating to all lots are shown in:
    i. Appendix L - 'MIS Requirements'

The Supplier must comply with all MIS Requirements related to Lot 1.

and are additional to the requirements shown in:
    ii. Appendix C – 'Lot 1 - Core and Carrier Requirements'

5 OVERARCHING NON-FUNCTIONAL REQUIREMENTS

a. Overarching non-functional requirements have been listed within this section but comprehensive details of all non-functional requirement are detailed in the Requirements spreadsheets in the appendices.

5.1 Service Continuity Plan and Corporate Resolution Planning

a. The Supplier must ensure that the service supplied to the Authority is resilient. As referred to in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*), the Supplier must provide a Service Continuity plan, which details how the service will be continued should there be a breakdown in the Supplier's IT infrastructure, such as a server becoming unavailable.

5.2 Planned Downtime, Updates and Maintenance

a. The Supplier must agree with the Authority the times and timescales in advance when the planned downtime, updates and maintenance will take place.

b. The Supplier must ensure that:
   i. Software updates and maintenance takes place outside of peak periods and Periods of Heightened Change (PoHC) unless there is a clear and agreed need to undertake it.
   ii. Software updates are planned in advance, tested by The Supplier (and the Authority when needed) and approved by the Authority before going live.
   iii. There is an option to regress if an update fails in the live environment.

5.3 Support Service

a. The Supplier must offer ongoing support either via a dedicated helpline (during business hours including hours of extended working at peak times) or specific contact points (during non-business hours). Escalation routes must be available at all times. This support should be available for both:
   i. Hardware; and
   ii. IT/Software.

5.3.1 Hardware Breakdowns

a. In respect of hardware breakdowns, the Supplier must maintain sufficient redundancy in the Telephony Service or its component parts to ensure that their Service Level Agreements are not breached.

5.3.2 Operate Uninterrupted

a. The telephony platform must operate uninterrupted during normal office hours, referred to in Section 2.2.4, and any updates which limit the service working at maximum capacity must be carried out during non-standard operating hours.

b. Where maintenance activities to manage patches and upgrades are required, these must be planned outside of core operating hours and peak periods, in agreement with the Authority, and must be undertaken in a timely way to minimise risk, business disruption, and downtime.

5.3.3 Service Levels/Credits

a. The Supplier must adhere to the service levels detailed in Schedule 2.2 (*Performance Levels*) which will include a service credit framework.

5.4 Service Responsiveness

a. The Authority deals with a fluctuating high volume of calls throughout the year. The telephony platform, and each of the services delivered by the Suppliers, must be capable of handling these large peak volumes (as defined by the Authority) without the responsiveness of the service being noticeably reduced when under load.

5.5 Cloud based

a. Services must be hosted by the Supplier and should be cloud based within the UK.

6 ABILITY TO INTEGRATE

6.1 Collaborative Working with The Authority

a. The Supplier must work with the Authority and other service providers during the design, build, implementation and live running of the service and adhere to the Architectural overview set out in Appendix A – 'Architectural Overview', which shows key integration points and shows the positioning of the Telephony Platform in the context of an omni-channel customer experience.

6.2 Collaborative Working with Other Suppliers

a. The Supplier must work with other service providers of the wider Authority Customer Engagement Platform to help develop a completely integrated customer journey, for example switching between voice/telephony, digital, integration with Advisor UI etc.

6.3 Integration Architecture View

a. The telephony systems will form part of a wider engagement ecosystem and must be capable of integrating with other systems as shown in Appendix A – 'Architecture Overview'.

b. When developing the software for integration into the Authority's IT systems, the following elements must be accommodated:
   i. Target Architecture
   ii. All data should reside in the UK, including Service Continuity and failover scenarios
   iii. The Supplier will provide minimum requirements for (amongst other things) infrastructure, operating systems and databases to be provisioned within any other system currently used or hosted by the Authority.

6.4 End-to-End Topology

a. The overall topology of the Contact Engagement Platform is shown in the background details below. It contains known and not yet known suppliers as well as the incumbent service delivered out of the Authority's connected datacentres.

b. The agents are located in the Authority's offices at the bottom of the diagram and either currently have or will soon have direct Internet access from their office through a secure Platform as a Service (PaaS) browsing solution.

c. There is also Authority corporate access from the office into existing legacy and new strategic datacentres. All offices and datacentres have a secure path to the Internet

where a number of suppliers are delivering key elements of the Contact Engagement Platform.

d. As of the Effective Date, the centre of the Contact Engagement Platform is the Pega platform which is currently responsible for the Adviser UI and may in the future implement other omni-channel services.

e. As of the Effective Date, Nuance Cloud will provide Webchat as well as a webchat based Virtual Assistant (VA) capability and it is expected that other platforms will deliver the Contact Centre as a Service.

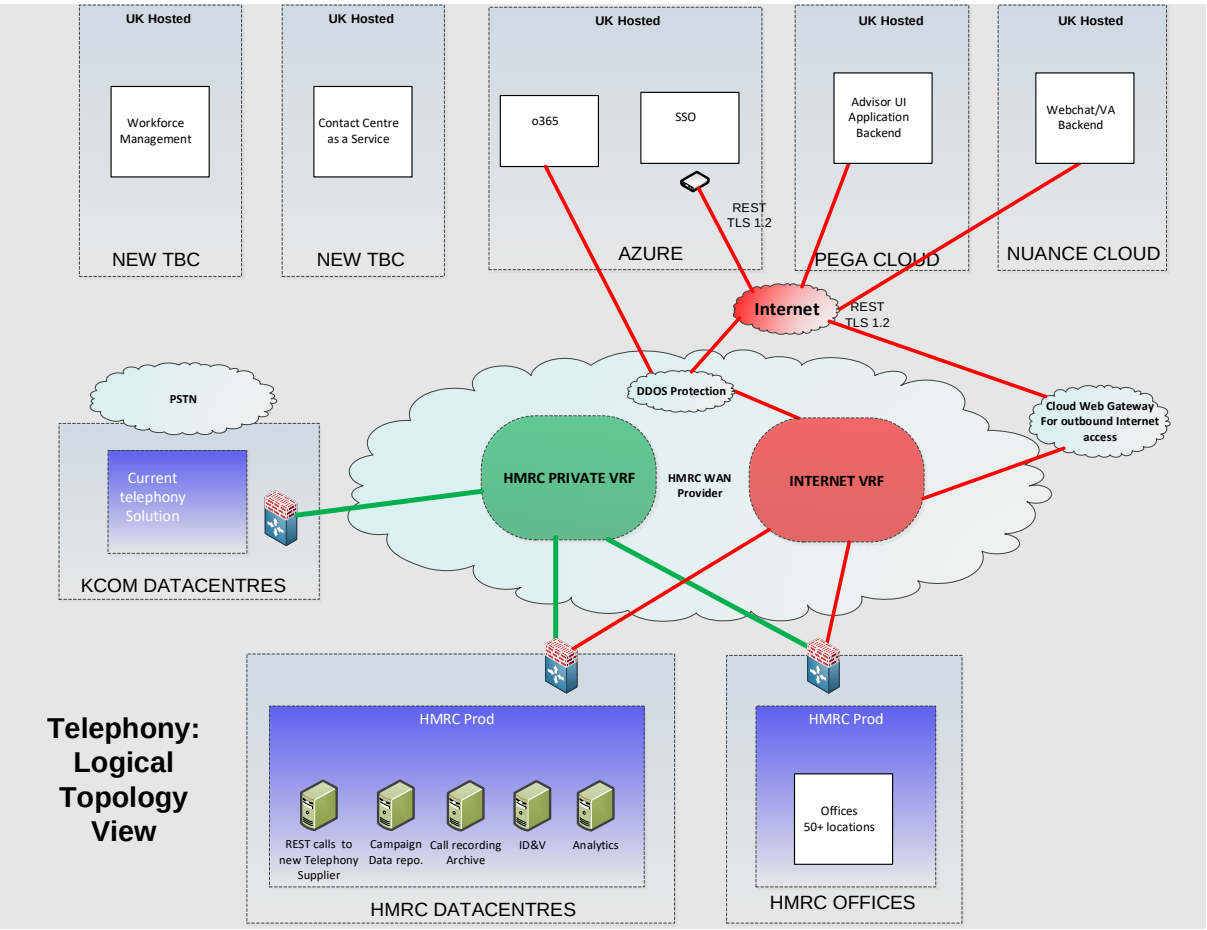

Figure 4

6.5 Integrate with other Contact Platforms

a. Services provided by the Supplier must have the capability to integrate with other contact platforms using open standards to enable unified communication. They must be able to integrate with cloud platforms such as AWS and MS Azure and must comply with Cloud security controls and the Supplier must work with the Authority

to ensure their services remain compatible with other Contact Platforms as changes, enhancements and upgrades are made during the life of the contract.

6.6 Integrate with external Case Management and Contact Management Systems

a. Services must have the capability to integrate with external case management & contact management systems using open standards.

6.7 Integrate with Desktops and Browsers

a. The Supplier services should, in principle, be thin client by design and ideally be browser agnostic. Browsers currently used by the Authority are shown in Appendix A – 'Architectural Overview'.
b. The Supplier must work with the Authority to ensure that their services remain compatible with the browsers and desktops being used by he Authority as upgrades are made during the life of the contract.

c. Although the Authority uses the latest stable software on the Authority's estate where possible, there may be occurrences where this is not the case. Suppliers must work with the Authority to ensure compatibility across end user devices.

6.8 Integrate with Headsets

a. Where applicable, The Supplier will be required to stipulate the types of headsets that their services are compatible with. The Headsets currently used by the Authority are:
    i. Plantronics HW710-HW720 using DA80 amp
    ii. Jabra Biz 2300 and Biz 2400 utilising the Link 260 MS cable

6.9 Device Agnostic

a. Services must be device agnostic through all common voice-based platforms (Landline, Mobile, Tablet).

7 SECURITY AND AUDIT

7.1 Security Plan

a. The Supplier must adhere to industry security best practices and will be required to comply with the security guidelines and standards as set out in Schedule 2.4 (*Security Management*). This requires the Supplier to prepare a Security Management Plan in accordance with the Authority's Security Policy.

b. The Authority has developed a Supplier Security Questionnaire which is a standard set of questions and recommendations covering the principles of protective security to be applied in delivering the services in accordance with The Authority's Security Policy and Standards (Appendix K – 'Supplier Security Questionnaire'). The Supplier Security Questionnaire ensures consistency across relevant contracts and the Supplier is required to provide answers to the standard set of questions contained within this questionnaire to formulate the initial Security Management Plan.

c. The Supplier's responses, together with any subsequent amendments as may be agreed as part of a clarification process, will be included in the signed version of any resulting agreement, as confirmation that the content of the Security Management Plan has been agreed with the Authority.

d. Once agreed, the Security Management Plan will also apply to any sub-contractors engaged by the Supplier to perform any of the services and the Supplier must provide details, where applicable, of sub-contractors' compliance to all the security requirements.

7.2 Security Controls

a. The Supplier's service must provide evidence that relevant security controls are in place to protect against security attacks, malware infections and Distributed Denial of Service (DDoS) attacks.

b. The Supplier must provide evidence on request of an effective vulnerability management system and response times in disclosing and fixing vulnerabilities.

7.3 Security Clearance

a. The Supplier's staff must provide assurance that any of its staff that will directly come in contact with the Authority's data are security vetted to an appropriate level. Any of the Supplier's staff accessing the Authority's sites during the transition phase must have at least Baseline Personnel Security Standard clearance, as per the conditions in Appendix B – 'Security Standards'. The Authority will sponsor the Supplier's staff.

7.4 Data Security

a. The Supplier's services must be able handle official and official-sensitive classifications of data, apply appropriate security controls to each and it must use the appropriate encryption standards between end points and call control servers.

b. The Supplier's service must provide appropriate user authentication controls and an effective access management system to ensure that anyone with access to the Authority's data has been authorised and appropriately security cleared.

7.5 Offshoring

a. All data storage and processing must be UK onshore. Any access to systems by offshore support teams of the Supplier and/or Sub-contractors must not allow access to the Authority's customer data and the Supplier must inform the Authority about any offshore activities relating to the hosting, administration or disaster recovery options for the Authority's data or it's processing. The following definition of Offshoring includes examples which would not be permitted.

b. <u>The definition of Offshoring</u>

Offshoring is defined by the Cabinet Office as: *"Any arrangement where the performance of any part of the services or a solution under a contract may occur outside the UK for domestic (UK) consumption."*

Examples of offshoring could include the:

i. use of a cloud service or platform hosted outside the UK;
ii. storage of customer email addresses at a supplier's data centre in the United States;
iii. overseas remote support to UK based technology assets where remote administrators could access customer data.

7.6 Audit Trails and Logs

a. The Supplier must provide any assistance as may be required by the Authority for the Authority to meet its GDPR requirements.

b. Under GDPR, the Authority has a responsibility to adequately protect the data for which it is responsible and the use of audit trails on all the Authority's systems is a requirement for security accreditation.

c. The Supplier's services are required to comply with Appendix B – 'Security Standards' as set out in this Agreement (this applies to both internal and external operators) and that there is logging and analysis of all operator activity. This will include the collection and retention of information enabling identification of user activity which will enable detection of fraud and/or system misuse.

d. General Internal Audit (IA) requirements for any system are to audit view accesses, access to general MI data, access to management/audit trails and logs, access to call recording and high privilege access to systems. All systems must be fully auditable from day one of live running.

7.6.1 Audit Rights

a. In the context of financial reporting and accuracy of charges & costs, the Authority (or its Audit Agents) shall have the right, during the Term and for a period of 18 months thereafter, to assess the Supplier's (and Sub-contractors') compliance to obligations under Schedule 7.5 (*Financial Reports Audit Rights*), Part C.

8 TRANSITION

8.1 Phased Approach

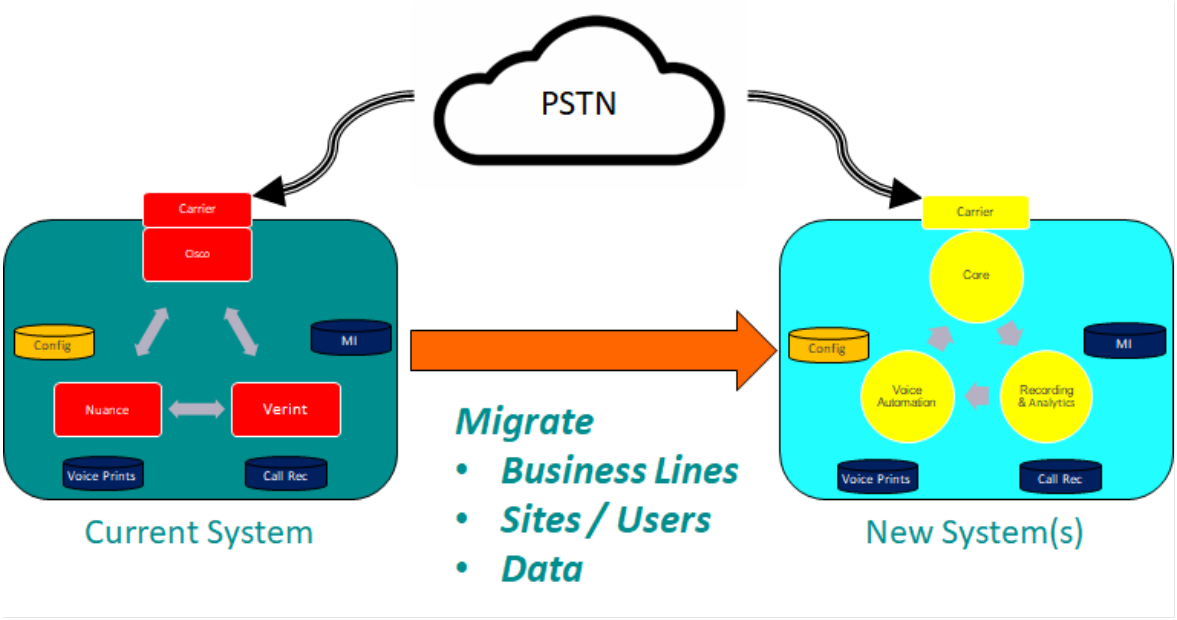

Figure 5

a. The Authority requires a phased approach across the independently managed business units to ensure that the Telephony Platform is operable end-to-end before any existing services are migrated across to the new service. Current requirements cover generic telephony capabilities required and how the Authority will use them will be determined during the detailed design phase. As referred to in Schedule 6.2 (*Transition*), the Supplier must provide a transition plan which must be agreed with the Authority.

b. It is required that the Supplier supports the Authority by:

Business Support

i. Providing best practice on organising and managing large implementation and migration exercises.
ii. Training front line staff in new technologies – training key Authority staff to enable them to train others within the Authority.

Technology Support

iii. Distributing incoming customer calls between current and new systems during migration of larger business lines.
iv. Migrating data from current systems into the Supplier's new services – this will include call recordings, biometric voice prints and site/team/user configuration data as appropriate.
v. Creating a single MI view covering current and new system(s).
vi. Porting of telephone numbers once migration is complete.

c. Responses should include proposals for how this implementation can best be achieved.

8.2 Smooth Transition

a. It is essential that during the Transition to the new platform, the service is managed carefully to ensure that the current levels of operations are preserved and that no break in service occurs. To ensure a smooth Transition, the Supplier and Authority will be required to work in conjunction with the Former Supplier and their partners. The Supplier's service should be able to produce suitable Management Information to allow monitoring of performance during this transition period.

8.3 Transition Timeline

a. The Authority has an assumed timeline of events shown in the table below:

	Date	**Event**	**Comments**
1	1st March 2021	Interim Service Commencement Date	Initial Transition stage begins. Operable solution goes live.
2	1st August 2021	Operational Service Commencement Date	Full solution goes live.

Figure 6

b. Whilst the Authority recognises that the timeline is challenging, the Supplier must ensure planning takes place to ensure all activities required are completed in order to maintain the above milestones set out, particularly the Interim Service Commencement Date.

c. As stipulated in Schedule 7.1 (*Charges and Invoicing*), the Authority will pay the Supplier incentive payments if they meet or exceed the milestone dates for the Interim Service Commencement Date and the Operational Service Commencement Date.

8.4 Warranty Period

a. Following completion of the Transition, the Supplier must ensure that staff with intimate knowledge of the delivered platform are available to support the Implementation during the Term of the contract.

b. As the Authority achieves increased self-sufficiency throughout the life of the contract it is expected that the need for Supplier support will reduce, however, the Supplier should ensure that key support roles with knowledgeable staff are retained.

9 SERVICE PROVISION

9.1 Accessibility Standards

a. The Supplier must provide any assistance as may be required by the Authority for the Authority to meet its accessibility standards.

b. The Authority recognises the need to ensure that its Information Communication Technology (ICT) products and services can be used by everyone, whether internal staff or external customers, from a population with the widest range of characteristics and capabilities. This may need to be achieved through the use of hardware and/or software added to or connected to a system that increases accessibility for an individual.

c. In order to achieve this, the Authority has adopted the European Standard 'EN 301 549 Accessibility requirements suitable for public procurement of ICT products and services in Europe' (which includes extending the Web Content Accessibility Guidelines 2.1, success criterion AA (WCAG v2.1 AA) to non-web systems) as our minimum accessibility standard.

d. Without overriding the need for the EN301 549 standard to be met, the key accessibility elements of the standard are listed in Sections 3 and 4 of Appendix D – 'Accessibility Questionnaire', and by answering the associated questions, it will assist the Authority in evaluating the readiness of your ICT product and/or service to meet the standard.

9.2 Training

a. The Authority anticipates that it will be working with new technologies which its staff currently lack the skills and experience to work on. It will be a condition of the contract that the Supplier, and their integration partners, will put in place a training strategy to upskill the Authority's staff in the use of the Supplier's service.

b. The type and level of training should be dependent on the role being performed by the Authority's staff and the exact nature, timing and quality of the training will be agreed with the Authority.

c. As well as the training itself (whether face-to-face, remotely delivered or digitally delivered), training material must also be provided to help support the on-going use of the Supplier's service and the Supplier must provide updated guidance to accompany any updates to Hardware and/or Software etc., when required.

d. For specific training requirements see:
    i. Appendix C – 'Core and Carrier Requirements' requirement L1-087

9.3 Innovation

a. Whilst there are prescriptive elements to the requirement, the Authority requires the Supplier to offer innovative options which would continuously improve the service. This is to enable the Authority to take advantage of new capabilities being delivered either by the Supplier's component or by components delivered by other suppliers where integration may be required.

b. The preparation and provision of proposals will be at no cost to the Authority.

9.4 Testing

a. The Supplier must ensure that unit/module testing has been completed on each component and, where the Supplier provides more than one component, between each of the Supplier's components. These Supplier internal tests will include functional tests, integration tests and load tests. Once the Supplier has completed these tests and is satisfied that the components being provided meet the functional and non-functional requirements that have been specified by the Authority, the Supplier will be required to present their test evidence to the Authority for each phase that they have undertaken.

b. Following the internal tests performed on their components, the Supplier must provide environments to support acceptance testing of their product by the Authority's nominated Test and Release Service. To achieve acceptance of their component, the Supplier will be expected to partake in inter-system and acceptance testing managed by the Authority which will include functional, load, soak and call quality testing. Where any testing is carried out by a third party engaged by the Authority and the Supplier's product causes the tests to fail, the Supplier will be required to fund any repeat tests that are required as a result. In addition, the Supplier will be required to cooperate with the Authority and allow it to perform penetration tests both on and off the Supplier's premises.

c. Performance metrics used in the acceptance tests will be agreed in line with the Authority's stated non-functional requirements. The Supplier is expected to collaborate with the Authority and other suppliers in the testing of their components to ensure that quality is being built into the solution being delivered.

9.5 Incident Management

a. The Supplier will be expected to work within ITILv4 processes and integrate with the Authority's IT Service Desk. This will involve the provision of:

i. Helpdesk function with a support contact number for queries referred by the ITSD
ii. Trained and dedicated helpdesk staff that respond to queries referred by the ITSD
iii. Escalation processes for the Service Management Community
iv. Issue references must allow traceability of issues across all helpdesks

9.6 Licences and Certificate Planning

a. The Supplier must ensure that all licences and certificates that are required to deliver and run the Services are monitored to ensure that any renewals take place before expiration so that no break in service is suffered by the Authority.

10 Staff Transfer

As noted in Clause 14.10 (Staff Transfer) of this contract the Parties agree that, where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers under TUPE, Schedule 9.1 (Staff Transfer) shall apply. Where the commencement of the provision of the Services or any part of the Services does not result in one or more Relevant Transfers under TUPE, Part C of Schedule 9.1 shall apply.

The Supplier acknowledges that, as detailed in Section 3 to this Schedule 2.1 the Authority intends to fragment the existing managed service provision leading to a new type of Telephony Platform, which may impact on the extent to which TUPE may or may not apply.

10.1 Transition Planning

Outline Transition Plan

As part of the transition planning process detailed in Schedule 6.1 (*Transition*), the Supplier takes responsibility for any activities relating to Staff Transfer in the Outline Transition Plan.

This includes obtaining further information from the Former Supplier needed in order to:

a) verify that the criteria for a Staff Transfer exist;
b) verify that the Former Supplier's Provisional Supplier Personnel List is correct and, where necessary, arrange for the Former Supplier to make periodic updates as and when additional information or changes in circumstances become apparent;
c) agree the Former Supplier's Final Supplier Personnel List; and
d) agree the Relevant Transfer Date for each Relevant Transfer that will take place, which may be at different times as and when the Services transition across.

The Supplier must ensure that the Former Supplier's Final Supplier Personnel List and the Relevant Transfer Date is agreed between the Former Supplier and the Authority before any Relevant Transfer is scheduled to take place, especially where the

Authority is required to reimburse the Supplier of any direct costs incurred as a result of a Relevant Transfer, as referred to in paragraph 10.2.

Detailed Transition Plan

Where, during the transition planning process, it is confirmed that a Relevant Transfer will apply, then the Supplier must:

a) ensure that the Former Supplier's Final Supplier Personnel List is included as an appendix to the Detailed Transition plan; and
b) manage the Relevant Transfer using the process as detailed in Schedule 9.1 (*Staff Transfer*) Part B.

Should the Supplier be made aware and identify a further Relevant Transfer may be applicable post-commencement of the Services, then Schedule 9.1, Staff Transfer, Parts C will apply to manage the Relevant Transfer process.

10.2 Reimbursement of direct additional costs

For a period up to six months after the Operational Service Commencement Date the Authority will reimburse the Supplier for the actual direct costs incurred, as detailed in Schedule 7.1 (*Charges and Invoicing*).

10.3 Use of Information

The information contained in the Former Supplier's Provisional Supplier Personnel List at Appendix N is confidential and must be treated accordingly. The Supplier must not copy or use the material except for the purposes of managing this contract.

Whilst the Authority obtained the information contained the Former Supplier's Provisional Supplier Personnel List in good faith, the Authority gives no warranty, guarantee or assurance as to the accuracy of the information provided, and is not responsible for errors or omissions in it. This information represents the position at the time of the contract effective date and may be subject to change once the Service transition planning process commences.

11 CONTRACT MANAGER/CONTRACT MANAGEMENT TEAM

11.1 Supplier Contract Manager

a. The Supplier must provide a Representative/Contract Manager/Contract Management team to facilitate the business as usual activities associated with the service.

11.2 Contract Manager Role

a. The Contract Manager will liaise with the Authority's Representative/Contract Manager/Contract Management team as may be applicable given the nature and the extent of services required.

11.3 Monitor, Maintain and Improve

a. The primary contract management activity from both parties will be to monitor, maintain and improve the service performance as detailed in Schedule 2.2 (*Performance Levels*).

11.4 Formal Contract Management Plan

a. To effectively manage the contract, both parties will contribute to, and agree, a formal contract management plan, as part of the transition phase.

11.5 Governance Process

a. Contract management will form part of the overall governance process, as referred to in Schedule 8.1 (*Governance*).

APPENDICES

Appendix A. Architectural Overview

Architecture Overview.docx

See "Schedule 2.1 Appendix A – Architecture Overview.docx" as exchanged between the Parties on 1st September 2020 at 15.45.

Appendix B. Security Standards

Security Standards.docx

See "Schedule 2.1 Appendix B – Security Standards.docx" as exchanged between the Parties on 1st September 2020 at 15.45.

Appendix C. Lot 1 - Core and Carrier Requirements

Lot 1 Requirements v2.xlsx

See "Schedule 2.1 Appendix C – Lot 1 Requirements v2.xlsx" as exchanged between the Parties on 1st September 2020 at 15.45.

Appendix D. Accessibility Questionnaire

Accessibility Questionnaire.docx

See "Schedule 2.1 Appendix D – Accessibility Questionnaire.docx" as exchanged between the Parties on 1st September 2020 at 15.45.

Appendix E. Key Principles

Key Principles.docx **See "Schedule 2.1 Appendix E – Key Principles.docx" as exchanged between the Parties on 1st September 2020 at 15.45.**

Appendix F. User Roles and Hierarchy

User Roles and Hierarchy.pdf **See "Schedule 2.1 Appendix F – User Roles and Hierarchy.pdf" as exchanged between the Parties on 1st September 2020 at 15.45.**

Appendix G. Organisational Test Strategy

Organisational Test Strategy.docx **See "Schedule 2.1 Appendix G – Organisational Test Strategy.docx" as exchanged between the Parties on 1st September 2020 at 15.45.**

Appendix H. Auto Payments Basic Call Flow

Auto Payments Basic Call Flow.pdf **See "Schedule 2.1 Appendix H – Auto Payments Basic Call Flow.pdf" as exchanged between the Parties on 1st September 2020 at 15.45.**

Appendix I. Customer Contact Volumetrics

Customer Contact Volumetrics.xlsb **See "Schedule 2.1 Appendix I – Customer Contact Volumentrics.xlsx" as exchanged between the Parties on 1st September 2020 at 15.45.**

Appendix J. Common String Patterns

Common String Patterns.docx **See "Schedule 2.1 Appendix J – Common String Patterns.docx" as exchanged between the Parties on 1st September 2020 at 15.45.**

Appendix K. Supplier Security Questionnaire

Supplier Security Questionnaire.docx **See "Schedule 2.1 Appendix K – Supplier Security Questionnaire.docx" as exchanged between the Parties on 1st September 2020 at 15.45.**

Appendix L. MIS Requirements

MIS Requirements.xlsb

See "Schedule 2.1 Appendix L – MIS Requriements.xlsx" as exchanged between the Parties on 1st September 2020 at 15.45.

Appendix M. Location Changes

Location Changes.docx **See "Schedule 2.1 Appendix M – Location Changes.docx" as exchanged between the Parties on 1st September 2020 at 15.45.**

Appendix N. Staff Transfer – Provisional Supplier Personnel List

Redacted

Appendix O. Staff Transfer – Activity Mapping

Redacted

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 2.2 | Performance Levels

Schedule 2.2 | Performance Levels

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"KBE Notice" and "KBE End Notice"	has the meaning given at Paragraph 2.8 of Part A;
"Key Business Event"	means an event designated as such by the Authority from time to time;
"Performance Failure"	has the meaning given in Paragraph 1.7 of Part A;
"Performance Monitoring Report"	has the meaning given in Paragraph 1.1 of Part B;
"Performance Review Meeting"	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Schedule, as further described in Paragraph 1.4 of Part B;
"Repeat KPI Failure"	has the meaning given in Paragraph 4.1 of Part A;
"Repeat SPI Failure"	has the meaning given in Paragraph 4.2 of Part A;
"Repeat Failure Count"	has the meaning given in Paragraph 4.2 of Part A;
"Service Credit Cap"	means the cap described at Paragraph 6.3 of Part A;
"Severity Levels"	means, for each Performance Indicator, the bands or levels of performance falling below the Target Performance Level which determine the seriousness of the Supplier's failure, as determined in accordance with the tables in Annex 1 and which are further described in paragraph 1.7 of Part A;

PART A | Performance Indicators and Service Credits

1 PERFORMANCE INDICATORS

1.1 Annex 1 to this Schedule sets out the Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.

1.2 Performance Indicators are be broken down into Key Performance Indicators and Subsidiary Performance Indicators, the Supplier's performance of and against which the Parties have agreed will be measured.

1.3 The Supplier shall perform the Services so that they meet or exceed the applicable Target Performance Levels at all times.

1.4 Each Performance Indicator which relates to a Service shall apply and be measured from the relevant Operational Service Commencement Date of the relevant Service(s) to which that Performance Indicator relates (unless otherwise stated in Annex 1).

1.5 The Supplier shall monitor its performance of the Services against the Target Performance Level for each Performance Indicator and shall send the Authority a Performance Monitoring Report detailing the level of service and relevant level of performance actually achieved by the Supplier against each Performance Indicator in the relevant Measurement Period in accordance with the provisions of Part B of this Schedule.

1.6 The Target Performance Level is the minimum standard of performance which is required by the Authority. A **"Performance Failure"** will have occurred where the Supplier fails to provide any part of the Services in accordance with and so as to at least meet the relevant Target Performance Levels. Performance Failures are further divided into the following Severity Levels:

(a) a "Minor KPI Failure" or "Minor SPI Failure" will have occurred where the Supplier fails to provide any part of the Services to a level which meets or exceeds the Target Performance Level for the relevant Performance Indicator, but where performance meets or exceeds the relevant Major Failure Performance Threshold;

(b) a "Major KPI Failure" or "Major SPI Failure" will have occurred where the Supplier fails to provide any part of the Services to a level which meets or exceeds the Major Failure Performance Threshold for the relevant Performance Indicator, but where performance meets or exceeds the relevant Critical Failure Performance Threshold (as appropriate) (if one exists)

(c) a "Critical KPI Failure" will have occurred where the Supplier fails to provide any part of the Services to a level which meets or exceeds the Critical Failure Performance Threshold for the relevant Performance Indicator. It is acknowledged and agreed by the Supplier that the Critical Failure Performance Threshold level has been set for the most critical of the Services and Performance Indicators, and represents a level of non-performance by the Supplier which would represent a serious Performance Failure

1.7 The Parties acknowledge and agree that not every Performance Indicator has each Severity Level associated with it. The Parties further acknowledge and agree that no Key Performance Indicator shall be modelled in a way which only has a Critical KPI Failure level. For example, a Key Performance Indicator may have a "Minor KPI Failure" Level and a "Critical KPI Failure" level attributed to it, but not a "Critical KPI Failure" level only.

1.8 If the Supplier fails to measure or report on a Performance Indicator in accordance with the requirements placed upon it by Part B of this Schedule, the Supplier shall be deemed to have failed to meet the Target Performance Level for the relevant Performance Indicator in the relevant Measurement Period, unless the Authority otherwise agrees in writing. For the purposes of paragraphs 3 below, Service Points shall accrue to the Supplier in respect of that deemed Performance Failure and following the relevant Service Period at the highest available level associated with that Performance Indicator.

1.9 Service Points, and therefore Service Credits, shall accrue for any KPI Failure which occurs in the relevant Measurement Period and shall be calculated in accordance with Paragraphs 3, 4 and 6 of this Part A.

1.10 Service Points do not accrue for any SPI Failure which occurs in the relevant Measurement Period, however the relevant Subsidiary Performance Indicator shall be monitored and reported on in accordance with Part B of this Schedule.

2 CREATION, MODIFICATION, PROMOTION AND DEMOTION OF PERFORMANCE INDICATORS AND KEY BUSINESS EVENTS

2.1 Without prejudice to the rules on promotion and demotion below, new Performance Indicators for existing Services may only be added to the Agreement through the Change Control Procedure. Where a new Service is introduced to this Agreement through the Change Control Procedure, appropriate Performance Indicators, Target Performance Levels Major Failure Performance Thresholds and Critical Failure Performance Thresholds may either be proposed by the Authority or failing that, shall be proposed by the Supplier (acting reasonably and in good faith in accordance with Good Industry Practice) as part of its Impact Assessment in relation to the relevant proposed Change (and, so far as possible, taking an approach which is commensurate with the nearest equivalent Performance Indicator(s) already in existence under the Agreement and the best equivalent level which is otherwise available in the market at the relevant time). Such proposed details will be agreed and documented at the same time that the new Service is agreed and documented. Unless otherwise agreed in writing by the Authority, the Supplier shall not be entitled to invoice for any relevant Charges until the Performance Indicators, Target Performance Levels Major Failure Performance Thresholds and Critical Failure Performance Thresholds which are to apply to the same have been defined, agreed and documented.

2.2 Once Performance Indicators, Target Performance Levels and Major Failure and Critical Failure Performance Thresholds and Severity Levels have been defined, agreed and documented for a new Service in accordance with paragraph 2.1 above, the Supplier shall be entitled to invoice the Authority in respect of its provision of the new Service from the date on which the new Service commenced. Any such invoice shall take account of and include any Service Credits which would have accrued to the Authority had the new Performance Indicators, Target Performance Levels and Severity Levels (which have been agreed in respect of the relevant Service) been agreed and applicable from and including the date on which the new Service commenced (including deemed failures as provided for in paragraph 1.8 above).

2.3 The Authority may remove a Performance Indicator at its sole discretion at any time by giving notice to the Supplier. Such notice and removal will take effect from the end of the relevant applicable Measurement Period or, if sooner, the date following 30 days from the date of the notice (or such other time, if any, as may be specified by the Authority in the relevant notice). The consequence of such removal by the Authority shall be that the removed Performance Indicator will no longer be applicable to future or existing Services and any Service Points which may have been attributed to such a removed Performance Indicator may be re-allocated by the Authority amongst the remaining Performance Indicators in accordance with paragraph 3.5 below save that such re-allocation may happen at any time in line with, and shall take effect at the same time as, the removal of the relevant Performance Indicator.

2.4 Without prejudice to the ability of the Authority to select between different Service Level Categories in accordance with the Agreement and/or any changes in accordance with Paragraphs 2.8 and 2.9 below Target Performance Level, Major Failure Performance Threshold, Critical Failure Performance Threshold, and/or a Severity Level may only be changed as a result of the application of:

(a) the Change Control Procedure;

(b) the continuous improvement requirements set out in clause 8 of this Agreement which will be addressed through the Change Control Procedure;

(c) the agreed results of a benchmarking exercise which is carried out pursuant to the provisions of Schedule 7.3 (*Value for Money*) which will be addressed through the Change Control Procedure; or

(d) an adjustment under paragraphs 2.8 and 2.9 below to reflect the designation by the Authority of a Key Business Event.

2.5 Any KPI may, at any time, be demoted by the Authority to an SPI at the sole discretion of the Authority and by sending written notice to the Supplier. Any such demotion shall take effect from the end of the relevant applicable Measurement Period or, if sooner, the date falling 30 days from the date of the relevant notice (or such other time, if any, as may be specified by the Authority in the relevant notice) . Where a KPI is demoted to a SPI, Service Points shall no longer accrue where the Supplier fails to meet or exceed the Target Performance Level in respect of such Performance Indicator. All other attributes (including the relevant Target Performance Level and Severity Levels) of the KPI shall remain unaffected. Any Service Points which may have been attributed to such a demoted KPI may be re-allocated by the Authority amongst the remaining Performance Indicators in accordance with paragraph 3.5 below, save that such re-allocation may happen at any time and in line with, and shall take effect at the same time as, the demotion of the relevant KPI.

2.6 Subject to the remaining provisions of this paragraph 2.6, and without prejudice (and in addition) to paragraph 2.7 below, a SPI may be promoted to a KPI at the sole discretion of the Authority by sending written notice to the Supplier at least one relevant Measurement Period in advance of any such promotion. The promotion of an SPI to a KPI shall take effect at the start of the next Measurement Period to commence for that promoted SPI following service of notice in writing by the Authority in accordance with this paragraph 2.6. The Parties agree that:

(a) no more than one (1) SPI can be promoted to a KPI in any one Measurement Period but without prejudice and in addition to any promotion under paragraph 2.7 below;

(b) no promoted KPI can be demoted to an SPI for three (3) full relevant Measurement Periods (commencing with the first Measurement Period to occur for the new KPI following service of notice in writing by the Authority in accordance with this paragraph 2.6);

(c) promoted KPIs shall be liable to accrue Service Points in accordance with the provisions of paragraph 3 (and the Authority may in the notice of promotion confirm how Service points are to be allocated to the relevant promoted KPI and, where relevant, moves from other KPIs); and

(d) to the extent that it does not already have one, the Authority may designate the Major Failure Performance Threshold(s) and/or Critical Failure Performance Threshold(s) which will apply to the newly promoted KPI

2.7 In addition to any promotion under paragraph 2.6 above, the Authority shall be entitled to promote a SPI to a KPI when the SPI has accrued a Repeat SPI Failure (as further outlined in paragraph 4). Where the relevant SPI is promoted to a KPI (which shall be conducted in accordance with paragraph 2.6), the Repeat Failure Count which applied to the SPI shall be reset to zero (0) (i.e. as if there had been no preceding Performance Failure in respect of the newly promoted KPI).

2.8 The Authority may, at any time on 20 days' notice in writing to the Supplier, declare that a particular event relating to the business of the Authority is a Key Business Event ("**KBE Notice**"). In such KBE Notice, the Authority may also set out any adjustments which it requires in relation to the Performance Indicators and which will apply for the purposes of that Key Business Event. Such adjustments and notice may include:

(a) The date on which the adjustments will take effect

and

(b) The relevant duration for which the adjustments will apply

2.9 In the event that the Authority serves a KBE Notice on the Supplier in accordance with paragraph 2.8 above, the Supplier agrees that the relevant adjustments shall apply to this Agreement for any duration set out in the notice or, if no such duration is specified, until the Authority provides a further notice in writing to the Supplier confirming that the relevant Key Business Event has ended and the relevant adjustments are no longer required ("**KBE End Notice**"). The KBE End Notice shall take effect meaning that the relevant adjustments shall (without prejudice to any Changes to the Agreement which may have been agreed between the Parties following the service of the relevant KBE Notice) cease to apply for the purposes of this Agreement no sooner than 20 days from the date of the relevant KBE End Notice.

3 SERVICE POINTS

3.1 If the level of performance of the Supplier during a Measurement Period meets or exceeds the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.

3.2 If the level of performance of the Supplier during a Measurement Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Annex 1 (and as such points may be adjusted in accordance with this Schedule).

3.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the relevant number as set out in Annex 1 (in its form at the relevant time and as may be adjusted in accordance with this Schedule and the Agreement) depending on whether the KPI Failure is a Minor KPI Failure, a Major KPI Failure or a Critical KPI Failure, unless the KPI Failure is a Repeat KPI Failure in which case the provisions of paragraph 4 shall also apply. For the avoidance of doubt, where a KPI only has Service Points associated with a Minor KPI failure and/or a Major KPI Failure, then in the event of a Critical KPI Failure against that KPI, Service Points shall still accrue to the Supplier, and at the highest available amount associated with that KPI.

3.4 It is acknowledged and agreed that the total number of Service Points that may be allocated across all KPIs shall not exceed 100. In calculating this figure, the Service Points that are deemed to be allocated to any one KPI shall be the maximum Service Points that can be awarded in respect of a Performance Failure relating to that Key Performance Indicator. Annex 1 to this Schedule sets out the initial allocation of Service Points across the KPIs and shall be updated from time to time in accordance with the provisions of this Schedule.

Example: if, for a particular KPI, a Minor KPI Failure is allocated 10 Service Points and a Major KPI Failure is allocated 20 Service Points, the total Service Point allocation to that KPI for the purposes of this paragraph (and assessing the amount from the total mentioned above which is allocated to that KPI) would be 20.

3.5 The Authority shall be entitled to redistribute Service Points between KPIs (including newly promoted KPIs and from demoted or removed KPIs) at its sole discretion by giving at least one (1) months' notice in writing to the Supplier without prejudice to any time periods applicable under paragraph 2.3, 2.5 or 2.6 above but without having to follow the Change Control Procedure, subject to the following restrictions:

(a) the maximum number of Service Points that can be allocated to any one (1) single KPI is 15 (without prejudice to the application of Paragraph 4 below in relation to Repeat Failures);

(b) no more than 60 Service Points can be reallocated across all of the KPIs in any one Measurement Period (save for any reallocation as a result of a promotion under paragraph 2.7 above and/or as a result of a Key Business Event as described at paragraphs 2.8 and 2.9 above)

(c) any such reallocation shall take effect at the start of the next Measurement Period to commence for the relevant KPIs following service of notice in writing by the Authority in accordance with this paragraph 3.5;

and

(d) the total Service Points allocated cannot (without prejudice to the application of Paragraph 4 below) exceed the limit specified in paragraph 3.4, although not all Service Points need to be allocated at all times (For example only and without prejudice to the formality of this section, a KPI which is measured on a monthly basis may have 10 Service Points deducted from it and moved to a KPI which is measured on a quarterly basis. As the KPI measured on a quarterly basis is on a different measurement cycle to the monthly KPI, those Service Points will not be relevant for accrual until the end of the relevant quarterly Measurement Period). Any unallocated Service Points are available to be allocated by HMRC in addition to the limit specified in 3.5(a).

3.6 For the avoidance of doubt:

(a) Service Points (and accordingly Service Credits) shall be accrued cumulatively by the Supplier (and for each KPI against which there is a relevant Performance Failure). Service Credits and Service Points accrued by the Supplier for all Performance Failures in a Service Period shall be added together to give the total Service Credit due from the Supplier in respect of that Service Period

4 REPEAT KPI FAILURES

4.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a **"Repeat KPI Failure"**.

4.2 If a SPI Failure occurs in respect of the same Subsidiary Performance Indicator in any two consecutive Measurements Periods, the second and any subsequent SPI Failure shall be a **"Repeat SPI Failure"**. The Supplier shall track and report on the current number of sequential Repeat SPI Failures for each Subsidiary Performance Indicator.

4.3 In each Performance Monitoring Report, the Supplier shall track and report on the current number of sequential Repeat KPI Failures for each KPI (the "**Repeat Failure Count"**). For example, if a KPI Failure has occurred in three (3) sequential Measurement Periods, the Repeat Failure Count will be two (2).

4.4 The Repeat Failure Count shall be a count of the number of sequential Repeat KPI Failures (being failures to meet the relevant Target Performance Levels). The severity of the Performance Failure shall be irrelevant to the Repeat Failure Count. Any Minor KPI Failures, Major KPI Failures and Critical KPI Failures shall each be counted as one increment of the Repeat Failure Count.

4.5 When, in a Measurement Period, a KPI with a Repeat Failure Count above zero (0) meets its Target Performance Level, the Repeat Failure Count shall be reset to zero (0).

4.6 Without prejudice to the Authority's other rights and remedies, there shall be no upper limit to the Repeat Failure Count. However, a Repeat Failure Count of four (4) or more shall be deemed to be a Critical KPI Failure by the Supplier against the relevant KPI.

4.7 The number of Service Points that shall accrue to the Supplier in respect of a Measurement Period and for a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

SP = P + (P * RFC (* 0.5))

where:

SP = the number of Service Points that shall accrue for the relevant Repeat KPI Failure;

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 (as updated) depending on whether the relevant Repeat KPI Failure is a Minor KPI Failure, a Major KPI Failure or a Critical KPI Failure and the applicable Service Level Category; and

RFC = the Repeat Failure Count.

5 REMEDIES

5.1 Without prejudice to the Authority's other rights and remedies in this Agreement, the Parties acknowledge and agree that Critical KPI Failures and Repeat KPI Failures (at the level referred to at paragraph 4.6 above) represent a level of non-performance that would entitle the Authority to invoke its termination rights set out in clause 34.1(b)of this Agreement.

5.2 The Parties agree that Service Credits are a non-exclusive remedy, and shall be without prejudice to any rights or remedies of the Authority under this Agreement or at Law including any entitlement that the Authority may have to damages and/or to terminate.

5.3 The provisions of clause 32 of this Agreement shall apply in respect of any failure by the Supplier to provide the Services in accordance with the Target Performance Levels which would not have occurred but for an Authority Cause.

5.4 Once any necessary allocation of Service Points has been determined and made, the Parties shall make the necessary adjustments to the next invoice to be raised by the Supplier pursuant to Schedule 7.1 (*Charges and Invoicing*).

6 SERVICE CREDITS AND AMOUNT AT RISK

6.1 Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Credits are applied to invoices.

6.2 The maximum Service Credits which shall be payable by the Supplier in respect of the relevant Key Performance Indicators, irrespective of the number of Service Points accrued, shall not exceed the Service Credit Cap.

6.3 The Service Credit Cap shall be, 15% of the monthly Charges for the Services. For the avoidance of doubt, the operation of a Service Credit Cap shall not affect the continued accrual of Service Points where relevant in accordance with the provisions of this Schedule (for the purposes of calculating whether certain thresholds within this Agreement have been reached).

6.4 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period and by reference to those Key Performance Indicators for which the Measurement Period ended in or at the end of that Service Period.

6.5 For each Service Period:

(a) the Service Points accrued shall be converted to a percentage deduction from the Charges for the relevant Service Period; and

(b) the total Service Credits applicable in respect of the Service Period shall be calculated in accordance with the following formula:

SC = TSP x X x AC where where:

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

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

X is 1%; and

AC is the total Run Services Charges payable for the Service Period (prior to deduction of applicable Service Credits).

6.6 The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, amongst other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Service Period.

6.7 It is acknowledged and agreed that, where in accordance with this Schedule, a change is made to the Performance Indicators, including (but not limited to) a change in the allocation of Service Points and/or the promotion or demotion of a SPI or KPI, the Authority may issue a revised version of Annex 1 reflecting such changes and that version shall, as between the Parties, apply for the purposes of this Schedule from that point.

PART B | Performance Monitoring

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

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

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

Information in respect of the Service Period just ended

(a) for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period and the relevant Measurement Period which has just ended, and that achieved over the previous three (3) relevant Measurement Periods;

(b) a summary of all Performance Failures that occurred during or which have occurred by the end of the Service Period;

(c) the Severity Level of each Performance Failure which occurred during the Service Period or by the end of it;

(d) which Performance Failures remain outstanding and progress in resolving them;

(e) for any Critical KPI Failures occurring during or by the end of the Service Period, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;

(f) the status of any outstanding Rectification Plan processes, including:

(i) whether or not a Rectification Plan has been agreed; and

(ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;

(g) for any Repeat KPI Failures and/or Repeat SPI Failures, actions taken to resolve the underlying cause and prevent recurrence;

(h) the number of Service Points awarded in respect of each KPI Failure;

(i) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;

(j) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;

(k) such other details as the Authority may reasonably require from time to time;

Information in respect of previous Service Periods

(l) a rolling total of the number of Performance Failures that have occurred over or by the end of the past six Service Periods, including any Repeat Failure Counts; and

(m) the amount of Service Credits that have been incurred by the Supplier over or by the end of the past six Service Periods.

Performance Disputes

1.3 The Performance Monitoring Report shall be reviewed by the Authority including at the next Performance Review Meeting held in accordance with Paragraph 1.5. The Supplier acknowledges and agrees that the Authority may, whilst it considers the Performance Monitoring Report, provide, acting reasonably and in good faith, its own assessment of the Supplier's actual level of performance against a particular Performance Indicator. In the event of any dispute or difference between the Supplier's assessment and the Authority's assessment in respect of a Performance Indicator the Authority's assessment shall, for the purposes of the calculation of the Supplier's level of actual performance in relation to the relevant Measurement Period (and any associated remedies) prevail. However, without prejudice to the foregoing, the Supplier shall be entitled to subsequently escalate any remaining dispute or difference to in accordance with the Dispute Resolution Procedure.

1.4 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review the Performance Monitoring Reports. These meetings (**"Performance Review Meetings"**) shall (unless otherwise agreed):

(a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;

(b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and

(c) be attended by the Supplier Representative and the Authority Representative.

1.5 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any Performance Failure.

1.6 In addition to the requirements above and elsewhere in this Agreement to maintain and provide appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier.

1.7 The Supplier shall ensure that the Performance Monitoring Report, and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

2 PERFORMANCE VERIFICATION

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

ANNEX 1 | Key Performance Indicators and Subsidiary Performance Indicators

SERVICE LEVELS: SERVICE POINT ALLOCATIONS

In respect of the Services:

1.1. where the applicable table below indicates that a Service Level has Service Points assigned to it, such Service Level shall be a "Key Performance Indicator" (or "KPI") for the purposes of Schedule 2.2 (Performance Levels); and

1.2. where the applicable table below indicates that a Service Level does not have Service Points assigned to it, such Service Level shall be a "Subsidiary Performance Indicator" (or "SPI") for the purposes of Schedule 2.2 (Performance Levels).

Id	Service Level Name	Minor Failure Service Points	Major Failure Service Points	Critical Failure Service Points
1	**Carrier Services Availability – Critical Hours**			
2	**Core Service Availability**			
3	**Performance Tools Real-Time Service Availability**			
4	**Performance Tools Historic Service Availability**			
5	**Administration Tools Service Availability**			
6	**Outbound Dialler/Campaign Telephony Service Availability**			
7	**CTI Service**			
8	**Incident Resolution Times P1**			
8	**Incident Resolution Times P2**			
8	**Incident Resolution P3**			
9	**Incident Resolution Times P4 – P5**			
10	**Mean Opinion Score (MOS)**			

**points redacted*

PART I: Key Performance Indicators and SUBSIDIARY Performance Indicators Tables

Redacted

Table 2 - Subsidiary Performance Indicators

Redacted

PART II: Performance Indicator Specific Definitions

Redacted

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SCHEDULE 2.3 | Standards

OFFICIAL

Schedule 2.3 | Standards

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"Standards Hub"	the Government's open and transparent standards adoption process as documented at http://standards.data.gov.uk/; and
"Suggested Challenge"	a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2. GENERAL

2.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier's provision, or the Authority's receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.

2.2 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.

2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then this must be addressed and resolved at the next contract management meeting, in accordance to Schedule 8.1 (Governance). Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

3. TECHNOLOGY AND DIGITAL SERVICES PRACTICE

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government's Technology Code of Practice as documented at
https://www.gov.uk/service-manual/technology/code-of-practice.html

4. OPEN DATA STANDARDS & STANDARDS HUB

4.1 The Supplier shall comply to the extent within its control with UK Government's Open Standards Principles as documented at https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.

4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at http://standards.data.gov.uk/). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.

4.3 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

5. TECHNOLOGY ARCHITECTURE STANDARDS

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.1 or its equivalent, then this shall be deemed acceptable.

6. ACCESSIBLE DIGITAL STANDARDS

The Supplier shall comply with (or with equivalents to):

(a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.0 Conformance Level AA; and

(b) ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

7. SERVICE MANAGEMENT SOFTWARE & STANDARDS

7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

(a) ITIL v3 2011;

(b) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management";

(c) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management";

(d) ISO 10007 "Quality management systems – Guidelines for configuration management";

(e) BS25999-1:2006 "Code of Practice for Business Continuity Management" and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of "IT Service Continuity Strategy" or "Disaster Recovery" plans; and

7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

7.3 The Supplier shall comply with and feed into the Authority's incident and problem management processes and procedures.

8. ENVIRONMENTAL STANDARDS

8.1 The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.

8.2 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).

8.3 The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.

8.4 The Supplier shall comply with the EU Code of Conduct on Data Centres' Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.

8.5 The Supplier shall comply with the Authority and HM Government's objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document "Greening Government: ICT Strategy issue (March 2011)" at https://www.gov.uk/government/publications/greening-government-ict-strategy.

9. HARDWARE SAFETY STANDARDS

9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:

(a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 60950-1:2006+A12:2011 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;

(b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN 60065:2002+A12:2011 or any subsequent replacements;

(c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2007 or any subsequent replacements; and

(d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 41003:2009 or any subsequent replacements.

9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

10. SECURITY STANDARDS

10.1 The Supplier shall comply with the security requirements stipulated by the Authority in Schedule 2.4 (*Security Management*) which shall, as a minimum, be ISO27001 and the government sponsored cyber essentials, (or their equivalent).

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SCHEDULE 2.4 | Security Management

Schedule 2.4 | Security Management

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Breach of Security"	[the occurrence of: (a) any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and/or any IT, information or data (including the Confidential Information and the Authority Data) used by the Authority and/or the Supplier in connection with this Agreement; and/or (b) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement; and/or (c) a failure to comply with the personnel security requirements, as set out in the Security Management Plan, in either case as more particularly set out in the security requirements in Schedule 2.1 (*Services Description*) and the Baseline Security Requirements;
"CCP"	National Cyber Security Centre NCSC Certified Practitioner;
"NCSC"	the UK Government's national technical authority for information assurance;
"CHECK Scheme"	The scheme for penetration testing of data processing systems operated by the NCSC;
"CPA"	the CESG Commercial Product Assurance scheme;
"CPNI"	Centre for Protection of National Infrastructure;
"ISMS"	the information security management system and processes developed by the Supplier in accordance with Paragraph (e) as updated from time to time in accordance with this Schedule;
"Off-Shore Personnel"	The only off-shoring personnel will be support team who are based outside the UK - no data will be stored or accessed offshore.

"Off-Shore Personnel Security Checks"	The Supplier must comply with the Baseline Personnel Security Check Standards (BPSS)
"Security Policy Framework"	the Security Policy Framework published by the Cabinet Office as updated from time to time including any details notified by the Authority to the Supplier;
"Security Management Plan"	is the document produced by the Supplier, a copy of which is at Annex 2;
"Security Questionnaire"	the questionnaire produced by the Authority which, when completed by the Supplier, will form the basis of the Supplier's Security Management Plan; and
"Security Tests"	tests carried out where relevant in accordance with the CHECK Scheme or to an equivalent standard to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2 INTRODUCTION

2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Agreement will be met.

2.2 The Authority shall clearly articulate its high-level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.

2.3 Both Parties shall provide a reasonable level of access to any members of their personnel for the purposes of designing, implementing and managing security.

2.4 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Authority Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Authority Data remains under the effective control of the Supplier at all times.

2.5 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own buildings, organisation and systems and on request shall supply this document as soon as practicable to the Authority.

2.6 The Supplier's own security policy should, align with the contents of the Security Management Plan and incorporate CESG and CPNI best practice.

2.7 The Authority and the Supplier acknowledge that a compromise of either the Supplier or the Authority's security provisions represents an unacceptable risk to the Authority requiring immediate communication and co-operation between the Parties.

(c) [The Supplier acknowledges that the Security Policy applies to Off-shore Locations and that Personal Data will not be held in or accessed from Off-Shore Locations.]

(d) [The Supplier must adhere to the physical, people and technical security controls for Off-Shore Locations which have been agreed with the Authority.]

3 ISMS

3.1 By the date specified in the Transition Plan the Supplier shall develop and submit to the Authority for the Authority's approval in accordance with Paragraph 3.6 an ISMS (information security management system) for the purposes of this Agreement, which:

(a) shall have been tested in accordance with Schedule 6.2 (*Test Procedures*); and

(b) shall comply with the requirements of Paragraphs 3.3 to 3.5.

3.2 The Supplier acknowledges that the Authority places great emphasis on the reliability of the Services and confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and agrees that it shall be responsible for the effective performance of the ISMS.

3.3 The ISMS shall:

(a) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement;

(b) meet the relevant requirements in ISO/IEC 27001 and ISO/IEC 27002 in accordance with Paragraph 7; and

(c) at all times provide a level of security which:

(i) is in accordance with Law and this Agreement;

(ii) as a minimum demonstrates Good Industry Practice;

(iii) complies with the Baseline Security Requirements;

(iv) addresses issues of incompatibility with the Supplier's own organisational security policies;

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

(vi) complies with the security requirements as set out in Schedule 2.1 (*Services Description*);

(vii) complies with the Authority's IT policies; and

(viii) is in accordance with the Security Policy Framework.

(d) document the security incident management processes and incident response plans;

(e) document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Authority approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and

(f) be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the Chief Security Officer, Chief Information Officer, Chief Technical Officer or Chief Financial Officer (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Security Management Plan).

3.4 Subject to Clause 20 (*Authority Data and Security Requirements*) the references to standards, guidance and policies set out in Paragraph 3.3 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.

3.5 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.3, the Supplier shall immediately notify the Authority Representative of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which provision the Supplier shall comply with.

3.6 If the ISMS submitted to the Authority pursuant to Paragraph 3.1 is approved by the Authority, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not approved by the Authority, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and, in any event, no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority. If the Authority does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.3 to 3.5 shall be deemed to be reasonable.

3.7 Approval by the Authority of the ISMS pursuant to Paragraph 3.6 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

4 SECURITY MANAGEMENT PLAN

4.1 Within twenty (20) Working Days after the Effective Date, the Supplier shall prepare and submit to the Authority for approval in accordance with Paragraph 4.3 a fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.

4.2 The Security Management Plan shall:

(a) be based on the Supplier's final response to the Authority's Security Questionnaire;

(b) comply with the Baseline Security Requirements set out in Annex 1;

(c) identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;

(d) detail the process for vetting staff at the appropriate security level with reference to the level of access staff will have to Authority Data, managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;

(e) unless otherwise specified by the Authority in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Authority Confidential Information and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Agreement or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;

(f) set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Schedule (including the requirements set out in Paragraph 3);

(g) demonstrate that the Supplier Solution has minimised the Authority and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offerings from the G-Cloud catalogue);

(h) set out the plans for transiting all security arrangements and responsibilities from those in place at the Effective Date to those incorporated in the ISMS at the date set out in Schedule 6.1 (*Transition*) for the Supplier to meet the full obligations of the security requirements set out in Schedule 2.1 (*Services Description*) and this Schedule;

(i) set out the scope of the Authority System that is under the control of the Supplier;

(j) be structured in accordance with ISO/IEC 27001 and ISO/IEC 27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards;

(k) be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Authority engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule; and

(l) be in accordance with the Security Policy Framework.

4.3 If the Security Management Plan submitted to the Authority Representative pursuant to Paragraph 4.1 is approved by the Authority Representative, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Authority Representative, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Authority and re-submit it to the Authority Representative for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days (or such other period as the Parties may agree in writing) from the date of its first submission to the Authority Representative. If the Authority Representative does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Authority Representative pursuant to this Paragraph 4.3 may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

4.4 Approval by the Authority of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

5 AMENDMENT AND REVISION OF THE ISMS AND SECURITY MANAGEMENT PLAN

5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier within ten (10) Working Days of any Breach of Security and further at least annually to reflect:

(a) emerging changes in Good Industry Practice;

(b) any change or proposed change to the IT Environment, the Services and/or associated processes;

(c) any new perceived or changed security threats; and

(d) any reasonable change in requirement requested by the Authority.

5.2 The Supplier shall provide the Authority with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Authority. The results of the review shall include, without limitation:

(a) suggested improvements to the effectiveness of the ISMS;

(b) updates to the risk assessments;

(c) proposed modifications to respond to events that may impact on the ISMS including the security incident management process, incident response plans and general procedures and controls that affect information security; and

(d) suggested improvements in measuring the effectiveness of controls.

5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, an Authority request, a change to Schedule 2.1 (*Services Description*) or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Authority.

5.4 The Authority may, where it is reasonable to do so, approve and require changes or amendments to the ISMS or 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 Agreement.

6 SECURITY TESTING

6.1 The Supplier shall conduct relevant Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after significant architectural changes to the IT Environment or after any change or amendment to the ISMS, (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. The Supplier shall conduct, document and provide to the Authority a risk assessment to enable the Authority to consider whether a Security Test should be carried out. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.

6.2 The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Authority with the results of such tests (in a form approved by the Authority in advance) as soon as practicable after completion of each Security Test.

6.3 Without prejudice to any other right of audit or access granted to the Authority pursuant to this Agreement, the Authority and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Authority may notify the Supplier of the results of such tests after completion of each such test. If any such Authority test adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Authority test.

6.4 Where any Security Test carried out pursuant to Paragraphs 6.1 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Authority of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Authority's prior written approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Authority.

6.5 If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default for the purposes of Clause 27 (*Rectification Plan Process*).

7 ISMS COMPLIANCE

7.1 The Authority shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and the Baseline Security Requirements.

7.2 If, on the basis of evidence provided by such audits, it is the Authority's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements is not being achieved by the Supplier, then the Authority shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement any necessary remedy. If the Supplier does not become compliant within the required time, then the Authority shall have the right to obtain an independent audit against these standards in whole or in part. The Supplier shall reimburse in full the costs incurred by the Authority in obtaining such audit.

7.3 If, as a result of any such independent audit as described in Paragraph 7.2 the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001, the specific security requirements set out in Schedule 2.1 (*Services Description*) and/or the Baseline Security Requirements then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and, (as said above), shall reimburse in full the costs incurred by the Authority in obtaining such audit.

8 BREACH OF SECURITY

8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or attempted Breach of Security.

8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Supplier shall:

(a) immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority) necessary to:

(i) minimise the extent of actual or potential harm caused by any Breach of Security;

(ii) remedy such Breach of Security to the extent possible and protect the integrity of the IT Environment to the extent within its control against any such Breach of Security or attempted Breach of Security;

(iii) apply a tested mitigation against any such Breach of Security or attempted Breach of Security and, provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to deliver the Services so as to meet the Target Performance Levels, the Supplier shall be granted relief against any resultant under-performance for such period as the Authority, acting reasonably, may specify by written notice to the Supplier;

(iv) prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure; and

(v) supply any requested data to the Authority or the Computer Emergency Response Team for UK Government ("GovCertUK") on the Authority's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and

(b) as soon as reasonably practicable provide to the Authority full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

8.3 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 ISMS with the Baseline Security Requirements or security requirements (as set out in Schedule 2.1 (*Services Description*)) or the requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Authority.

9 VULNERABILITES AND CORRECTIVE ACTION

9.1 The Authority and the Supplier acknowledge that from time to time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Authority Materials.

9.2 The severity of threat vulnerabilities for Supplier Software and Third Party 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 ISMS and using the appropriate vulnerability scoring systems including:

(a) the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST http://nvd.nist.gov/cvss.cfm); and

(b) Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two (2) remaining levels ('Moderate' and 'Low') respectively.

9.3 The Supplier shall procure the application of security patches to vulnerabilities (whether such patches are entirely related to security or related in part to security) within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within fourteen (14) days of release, 'Important' within thirty (30) days of release and all 'Other' within sixty (60) Working Days of release, except where:

(a) the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;

(b) 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 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or

(c) the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.

9.4 The Supplier Solution shall include provisions for major version upgrades of all Supplier Software and Third Party Software to be upgraded within six (6) months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:

(a) where upgrading such Supplier Software and Third Party Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within twelve (12) months of release of the latest version; or

(b) is agreed with the Authority in writing.

9.5 The Supplier shall:

(a) implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;

(b) ensure that the IT Environment (to the extent that the IT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

(c) ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Environment by actively monitoring the threat landscape during the Term;

(d) pro-actively scan the IT Environment (to the extent that the IT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.3(e);

(e) from the date specified in the Security Management Plan (and before the first Operational Service Commencement Date) provide a report to the Authority within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;

(f) propose interim mitigation measures to vulnerabilities in the IT Environment known to be exploitable where a security patch is not immediately available;

(g) remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier Solution and IT Environment); and

(h) inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Environment and provide initial indications of possible mitigations.

9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 9, the Supplier shall immediately notify the Authority.

9.7 A failure to comply with Paragraph 9.3 shall constitute a Notifiable Default, and the Supplier shall comply with the Rectification Plan Process.

ANNEX 1 | Baseline Security Requirements

Higher Classifications

1.1 The Supplier must not handle Authority Materials classified SECRET or TOP SECRET

End User Devices

2.1 When Authority Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the CESG to at least Foundation Grade, for example, under CPA.

2.2 Devices used to access or manage Authority Data and services must be under the management authority of Authority or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Authority. Unless otherwise agreed with the Authority in writing, all Supplier devices are expected to meet the set of security requirements set out in the CESG End User Devices Platform Security Guidance:

(https://www.gov.uk/government/collections/end-user-devices-security-guidance--2).

As a minimum, the security standards must include Assurance Framework, Ten Critical Steps and Requirements. Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Authority and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the CESG guidance, then this should be agreed in writing on a case by case basis with the Authority.

3. Data Processing, Storage, Management and Destruction

3.1 The Supplier and Authority recognise the need for the Authority Data to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Authority the physical locations in which Authority Data may be stored, processed and managed from, and what legal and regulatory frameworks Authority information will be subject to at all times.

3.2 The Supplier shall agree any change in location of Authority Data storage, processing and administration with the Authority in advance where the proposed location is outside the UK. The Authority's agreement to any such change shall be entirely at the Authority's discretion and, in so far as the change in location entails the move of Personal Data to an Off-shore Location, shall only be given if a Change Request is expressly permitted by Clause 23.8 (*Protection of Personal Data*), and such agreement shall in all circumstances be dependent upon the storage, processing and management of any Authority Data being carried out offshore within:

(a) the European Economic Area (EEA);

(b) the US if the Supplier and or any relevant Sub-contractor have signed up to an agreement which ensures a level of protection which has been defined as adequate by the EU Commission; or

(c) another country or territory outside the EEA if that country or territory ensures an adequate level of protection by reason of its domestic law or of the international commitments it has entered into which have been defined as adequate by the EU Commission and approval has been provided by the Authority's Digital Information Officer or Office of Government Serious Information Risk Officer.

3.3 The Supplier shall:

(a) provide the Authority with all Authority Data on demand in an agreed open format;

(b) have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;

(c) securely destroy all media that has held Authority Data at the end of life of that media in line with Good Industry Practice; and

(d) securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority.

4. Networking

4.1 The Authority requires that any Authority Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by CESG, to at least Foundation Grade, for example, under CPA or through the use of pan-government accredited encrypted networking services via the Public Sector Network ("PSN") framework (which makes use of Foundation Grade certified products).

4.2 The Authority requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

5. Security Architectures

5.1 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Authority Materials.

5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a CESG Certified Professional certification (http://www.cesg.gov.uk/awarenesstraining/IA-certification/Pages/index.aspx) for all bespoke or complex components of the Supplier Solution.

6. Personnel Security

6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work (including nationality and immigration status).

6.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Authority Data.

6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Authority Data except where agreed with the Authority in writing.

6.4 All Supplier Personnel that have the ability to access Authority Data or systems holding Authority Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Authority in writing, this training must be undertaken annually.

6.5 Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within 1 Working Day.

6.6 Notwithstanding the Supplier's obligation to ensure that the Security Management Plan is implemented and followed, the Supplier shall ensure that the Supplier Personnel are promptly informed of action taken in relation to any failure to do so.

6.7 The Supplier shall ensure that Supplier Personnel complete the security questionnaire as provided by the Authority from time to time.

6.8 The Supplier shall perform the Off-Shore Personnel Security Checks in relation to any proposed Off-Shore Personnel prior to their engagement to the reasonable satisfaction of the Authority in the delivery of the Services under this Agreement.

7. Identity, Authentication and Access Control

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

8. Audit and Monitoring

8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:

(a) Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Supplier Solution and Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.

(b) Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account logon and logoff events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.

8.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the IT Environment.

8.3 The Supplier shall retain audit records collected in compliance with Paragraph 7.1 for a period of at least six (6) months.

ANNEX 2| Security Management Plan

Redacted

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SCHEDULE 2.5 | Insurance Requirements

Schedule 2.5 | Insurance Requirements

1 OBLIGATION TO MAINTAIN INSURANCES

1.1 Without prejudice to its obligations to the Authority under this Agreement, 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 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:

(a) of good financial standing;

(b) appropriately regulated; and

(c) regulated by the applicable regulatory body and is in good standing with that regulator.

1.4 The Supplier shall ensure that the public and products liability policy that it has or puts in place shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

2 GENERAL OBLIGATIONS

Without limiting the other provisions of this Agreement, the Supplier shall:

(a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;

(b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

(c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3 FAILURE TO INSURE

3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4 EVIDENCE OF INSURANCES

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 the form of a broker's letter or insurance certificate, 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 Agreement.

5 AGGREGATE LIMIT OF INDEMNITY

Where the minimum limit of indemnity required in relation to any of the Insurances is specified as being "in the aggregate":

(a) if a claim or claims which do not relate to this Agreement are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier shall immediately submit to the Authority:

(i) details of the policy concerned; and

(ii) its proposed solution for maintaining the minimum limit of indemnity specified; and

(b) if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to this Agreement are paid by insurers, the Supplier shall:

(i) ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to this Agreement; or

(ii) if the Supplier is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the Authority full

details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

6 CANCELLATION, SUSPENSION, TERMINATION OR NON-RENEWAL

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 purely 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

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

7.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.

7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

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

ANNEX 1 | Required Insurances

PART A: INSURANCE CLAIM NOTIFICATION

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 £100,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1 Insured

The Supplier

2 Interest

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

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

(b) loss of or damage to property;

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

3 Limit of indemnity

Redacted.

4 Territorial limits

Redacted.

5 Period of insurance

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

6 Cover features and extensions

Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

7 Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

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

7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.

7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

PART C: PROFESSIONAL INDEMNITY INSURANCE

1 Insured

The Supplier

2 Interest

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

3 Limit of indemnity

Redacted.

4 Territorial Limits

Redacted.

5 Period of insurance

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

6 Cover features and extensions

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

6.2 The Supplier confirms that its professional indemnity insurance covers (amongst other things) claims relating to breaches by the Supplier of its data protection and security obligations under the Agreement and remediation activities following a data breach, cyber security breach or attack that compromises the Authority's data.

7 Principal exclusions

7.9 War and related perils

7.10 Nuclear and radioactive risks

PART D: UNITED KINGDOM COMPULSORY INSURANCES

The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

PART E: ADDITIONAL INSURANCES

N/A

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SCHEDULE 2.8 | Data Processing and List of Sub-Processors

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Schedule 2.8 | Data Processing and List of Sub-Processors

INTRODUCTION

a) Part A of this Schedule lists the types of Personal Data and categories of Data Subject which the Supplier will Process in its provision of the Services together with a description of the nature, purposes and duration of the Processing, the subject matter of the Processing, and the retention policy in respect of that data, and has been collated in accordance with Clause 23.2(a) and (b).

b) Part B of this Schedule lists the Sub-Processors agreed by the Parties in accordance with Clause 23.5.

Part A | Data Processing

1. The Supplier shall comply with any further written instructions with respect to Processing by the Authority.

2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	*For external customers, it is in relation to all aspects of their UK tax obligations and payments to ensure correct payments are made both to UK tax authorities and also to those customers who require financial support.* *For internal staff, information in relation to their hierarchical place within the organisation will be processed.*
Duration of the processing	*There will be some variables within the requirements to process and store data however 6 years plus the current tax year is usual.*

Nature and purposes of the processing	*Data may be collected, recorded, organisational, structured, stored, adapted or altered, retrieved, consulted, used, disclosed by transmission, disseminated or otherwise made available, aligned or combined, restricted, erased or destroyed (whether or not by automated means) etc. to ensure customer calls can be correctly routed and customer records updated and all data analysed.* *Staff data will be collected, stored and amended to ensure hierarchical structure can be established and skill set understood*
Type of personal data	*Name* *Email Address* *Personal IP Address* *Address* *Telephone Number* *National Insurance Number* *Date of Birth* *Age* *Racial or ethnic origin* *Physical or mental health or condition* *Religious belief* *Gender* *Unique Taxpayer Reference / Other References* *Other Personal Data collected (please list)* *Racial or ethnic origin* *Religious belief* *Trade Union membership*

	Political opinion *Sexual orientation* *Commission or alleged commission of an offence* *Biometric data*
Categories of data subjects	*HMRC Staff* *HMRC Customers*
Plan for return and destruction of the data once the processing is complete UNLESS requirement under UK, EU or member state law to preserve that type of data	*Return and destruction of data will be subject to business rules and in accordance with GDPR* *This could be bulk or case by case.*

Part B | Sub-Processors as at The Effective Date

Redacted.

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SCHEDULE 3 | Authority Responsibilities

Schedule 3 | Authority Responsibilities

1 INTRODUCTION

a) The responsibilities of the Authority set out in this Schedule shall constitute the "Authority Responsibilities" under this Agreement. Any other obligations shall not be "Authority Responsibilities" and the Authority shall have no liability in respect of the same unless they are specifically stated to be “Authority Responsibilities” and cross referenced in the table in Paragraph 2.

b) The responsibilities of the Authority specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2 GENERAL OBLIGATIONS

The Authority shall:

(a) 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;

(b) provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Agreement as defined in the Transition Plan;

(c) 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 Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and

(d) 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 Agreement, 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

The Authority shall, in relation to this Agreement, perform the Authority Responsibilities identified as such in this Agreement the details of which are set out below: **Document**	**Location (Paragraph)**
The Authority shall have its required project teams available from the start of the Agreement and in a position to start delivery from the Effective Date.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority shall ensure any concurrent changes elsewhere in the business and roadmap changes are aligned with the overall Telephony solution.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority is responsible for agreeing migration strategy and cutover plans with the lines of business using supplier input on best practice to help determine strategy.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority is responsible for managing the termination activities with its incumbent supplier (KCom).	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority is responsible for providing a Product Owner/s with suitable business knowledge, empowered to manage and prioritise the Product Backlogs across Lots 1, 2 & 3, notwithstanding that the initial Lot 1 backlog will be based on the scope as defined in Schedule 4.1 (Supplier Solution).	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority shall use reasonable endeavours to resolve issues with Lot 2 and 3 which are commercial in nature via its direct contractual relationships.	In line with the plans provided in Annex 1, Schedule 6.1.

The Authority shall, in relation to this Agreement, perform the Authority Responsibilities identified as such in this Agreement the details of which are set out below: **Document**	**Location (Paragraph)**
The Authority Networks team shall be available to make the necessary changes to integrate the suppliers' platforms into the production environment 30 Working Days from the High Level design being agreed or as jointly agreed in the Transition Plan.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority is responsible for making changes to HMRC systems required to deliver the end-to-end Telephony solution defined and agreed during Transition.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority shall ensure any internal IT governance process provides a timely decision-making, issue resolution and escalation process to prevent delays in the progress of Transition.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority shall provide suitable resources who will be trained in the Odigo configuration set-up and the usage of the Cyara test tooling.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority is responsible for the configuration of the application in the production environment following the necessary Supplier training (with the Supplier providing some initial input, assistance and then supervision for a period).	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority is responsible for export of data for MI/Insight, but will need advice on the data available, and help with interpreting its meaning.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority shall appoint a single point of contact for any questions and for resolving any escalation issues raised by the Supplier as ITDL.	In line with the plans provided in Annex 1, Schedule 6.1.

The Authority shall, in relation to this Agreement, perform the Authority Responsibilities identified as such in this Agreement the details of which are set out below: **Document**	**Location (Paragraph)**
The Authority is responsible for undertaking User Acceptance Testing before data migration / user transition commences.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority shall provide suitable resources to be trained and then roll out the training across the advisors. HMRC is responsible for the training plan for those individuals who have attended the sessions, to ensure that the remaining users are trained to satisfy the jointly agreed Transition milestones.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority shall provide communications channels for informing advisors of the upcoming changes in line with the Transition communication plan.	In line with the plans provided in Annex 1, Schedule 6.1.
The Authority shall provide a Purchase Order by the Effective Date and prior to the commencement of any Services to enable the Supplier to invoice in line with the invoicing schedule as set out in Schedule 7.1.	Clause 10 and as set out in the Financial Model under 'Invoicing'.

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SCHEDULE 4.1 | Supplier Solution

Schedule 4.1 | Supplier Solution

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SCHEDULE 4.2 | Commercially Sensitive Information

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Schedule 4.2 | Commercially Sensitive Information

Redacted

No.	Date	Item(s)	Duration of Confidentiality

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SCHEDULE 4.3 | Notified Sub-Contractors and Key Sub-Contractors

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Schedule 4.3 | Notified Sub-Contractors and Key Sub-Contractors

1) In accordance with Clause 15 (*Supply Chain Rights and Protections*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Sub-Contractors and Key Sub-contractors listed in the table below.

2) The Parties agree that they will update this Schedule periodically to record any Sub-Contractors and Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

3) Notified Key Sub-Contractors

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

**sub-contractors redacted*

4) Notified Sub-Contractors

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

**sub-contractors redacted*

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SCHEDULE 4.4 | Third Party Contracts

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Schedule 4.4 | 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*).

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description
None as of the Effective Date		

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SCHEDULE 4.5 | Assets

Schedule 4.5 | Assets

1 INTRODUCTION

1.1 The Supplier shall use the Supplier Equipment in accordance with Clause 9 (*Assets, Equipment, Maintenance and Accommodation*) of the Agreement in the provision of Services.

1.2 Any Changes to the Assets shall be dealt with in accordance with the Change Control Procedure.

1.3 The Supplier Equipment that will be used at the Authority Premises are set out in the table below:

	Supplier Equipment *[insert name and description]*	**Authority Premises where Supplier Equipment will be located**	**Number of Supplier Equipment at the Authority Premises**
1.	None as of the Effective Date		

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SCHEDULE 5 | Intellectual Property Rights

Schedule 5 | Intellectual Property Rights

1 THE SOFTWARE

1.1 The Software below is licensed to the Authority in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).

1.2 The Parties agree that they will update this Schedule periodically 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 is:

Software	**Supplier (if an Affiliate of the Supplier)**	**Purpose**	**Number of Licences**	**Restrictions**	**Number of Copies**	**Type (COTS or Non-COTS)**	**Term/Expiry**
N/A as at the Effective Date							

3 THIRD PARTY SOFTWARE

The Third-Party Software is:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/Expiry

**third-party software redacted.*

4 OTHER IPR

4.1 The IPR below is licensed to the Authority in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).

4.2 The Parties agree that they will update this Schedule periodically to record any Third Party IPRs subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

5 THIRD PARTY IPRs

The Third-Party IPRs are:

Third Party IPRs	Description

**third-party IPRs redacted.*

6 SUPPLIER BACKGROUND IPRS

The Supplier Background IPRs are:

Supplier Background IPRs	**Description**
N/A as at the Effective Date	

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Annex 1 | Form of Letter Re Sub-Licensing of Supplier Cots Software and Supplier Cots Background IPRs

[Supplier letterhead]

[*insert Authority name and address*]

[*Date*]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

We refer to the agreement between us dated [*insert date*] in respect of [*brief summary of subject of the Agreement*] (the "Agreement"). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Clause 17.2(b) of the Agreement we confirm that:

1. the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the "Appendix") on the terms of the licences identified in the second column of the Appendix (the "Licences"); and

2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.1(b) of the Agreement.

Yours faithfully,

Signed:

On behalf of [*name of the Supplier*]

Annex 2 | Form of Confidentiality Undertaking

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [***date***] 20

BETWEEN:

(1) **[*insert name*]** of [*insert address*] (the "**Sub-licensee"**); and

(2) **[*insert name*]** of [*insert address*] (the **"Supplier"** and together with the Supplier, the **"Parties"**).

WHEREAS:

(A) [*insert name of Authority*] (the "**Authority**") and the Supplier are party to a contract dated [*insert date*] (the "**Contract**") for the provision by the Supplier of [*insert brief description of services*] to the Authority.

(B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the "**Sub-licence**").

(C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

"Confidential Information"	means: (a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to: (i) the Supplier; or (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier; (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, 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 supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and

(d) Information derived from any of the above but not including any Information that:

(i) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;

(ii) the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;

(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

(iv) was independently developed without access to the Confidential Information;

"Information" means 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); and

"Sub-licence" has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

(a) a reference to any gender includes a reference to other genders;

(b) the singular includes the plural and vice versa;

(c) the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";

(d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

(e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

(f) references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

(a) treat all Confidential Information as secret and confidential;

(b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

(c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;

(d) not transfer any of the Confidential Information outside the United Kingdom;

(e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;

(f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

(g) upon the expiry or termination of the Sub-licence:

(i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

(ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information

technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and

(iii) make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

(a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and

(b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and

(c) have agreed to terms similar to those in this Agreement.

3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

(a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

(b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

(a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;

(b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

(c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.

4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).

4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.

4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.

4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

5.1 Any notice to be given under this Agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[*Address*]
Attention: [*Contact name and/or position, e.g. "The Finance Director"]*

if to be given to the Sub-licensee shall be sent to:
[*Name of Organisation*]
[*Address*]
Attention: [ ]

6 Governing law

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [*name of Supplier*]

Signature: Date:

_____

Name: Position:

For and on behalf of [*name of Sub-licensee*]

Signature: Date:

_____

Name: Position:

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SCHEDULE 6.1 | Transition

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Schedule 6.1 | Transition

DEFINITIONS

In this Schedule, the following definitions shall apply:

"Detailed Transition Plan",	means the plan prepared in accordance with paragraph 3.2 of Part A of this Schedule 6.1 (*Transition*);
"Outline Transition Plan",	means the plan in the form set out at Annex 1 to Part A of this Schedule 6.1;
"Supplier Transition Team"	has the meaning given to it at paragraph 5.1(a) of Part A of this Schedule 6.1 (*Transition*);
"Supplier's Transition Manager"	has the meaning given to it at paragraph 5.1(b) of Part A this Schedule 6.1 (*Transition*);
"Transition"	the transition of services from the Incumbent Supplier to the Supplier;
"Transition Plan"	the Outline Transition Plan and the Detailed Transition Plan as described in this Schedule 6.1 (*Transition*);
"Transition Services Commencement Date"	the date on which the Supplier is to commence provision of the first of the Services, being the effective date of the contract.

Part A | Transition

1 INTRODUCTION

1.1 This Schedule:

(a) defines the process for the preparation and implementation of the Outline Transition Plan and Detailed Transition Plan;

(b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate; and

(c) sets out the reporting requirements, governance and management of the Transition Plan.

1.2 The following documents form part of this Schedule:

(a) Annex 1: Outline Transition Plan;

(b) Annex 2: Responsibilities of the Supplier Transition Team.

1.3 The Supplier shall:

(a) provide to the Authority any reasonable assistance requested by the Authority to allow the services provided by the Incumbent Supplier to continue without interruption during Transition and to facilitate the orderly transfer of responsibility for and conduct of the services from the Incumbent Supplier to the Supplier without any adverse impact on current service levels and service delivery provided to the Authority;

(b) use all reasonable endeavours to minimise the risk of Delay in accordance with Clause 6 and/or to service performance during Transition, including the provision of additional resources to carry out the Transition Plan at the Supplier's own cost;

(c) comply with its obligations under the Outline Transition Plan, the Detailed Transition Plan, and this Schedule 6.1 (*Transition*), and the Supplier shall be responsible for the costs associated with any failure by the Supplier to comply with such obligations. Any issue arising from the Supplier's performance of its obligations shall be escalated for resolution at the Entry Transition Board.

2 OUTLINE TRANSITION PLAN

2.1 All changes to the Outline Transition Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 32 (*Authority Cause and Ecosystem Failures*)).

2.2 The Outline Transition Plan is described in Annex 1 and contains a summary of the transition Milestones, Deliverables and due dates.

3 APPROVAL OF THE DETAILED TRANSITION PLAN

3.1 The Supplier shall submit a draft of the Detailed Transition Plan to the Authority for approval within 7 Working Days of the Effective Date. The Supplier shall ensure that the Detailed Transition Plan is developed in accordance with the requirements set out in the Outline Transition Plan.

3.2 The Supplier shall ensure that the draft Detailed Transition Plan:

(a) incorporates all of the Milestones and Milestone Dates set out in the Outline Transition Plan;

(b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:

(i) the completion of any Deliverable;

(ii) the completion of any build activity;

(iii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and

(iv) the completion of any deployment or transition activity;

(c) clearly details all the steps required to implement the Milestones to be achieved up to and including the final Milestone, in conformity with the Authority Requirements;

(d) Not used

(e) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements;

(f) is produced using a software tool as specified, or agreed by the Authority;

(g) clearly details all the Supplier's dependencies on the Authority in order to complete the activities under the Detailed Transition Plan;

(h) all the Supplier's assumptions in setting out the activities and timescales in the Detailed Transition Plan; and

(i) complies with the requirements of Schedule 11 (*Collaboration*).

3.3 Prior to the submission of the draft Detailed Transition Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:

(a) to review any documentation produced by the Supplier in relation to the development of the Detailed Transition Plan, including:

(i) details of the Supplier's intended approach to the Detailed Transition Plan and its development;

(i) copies of any drafts of the Detailed Transition Plan produced by the Supplier; and

(ii) any other work in progress in relation to the Detailed Transition Plan; and

(b) to require the Supplier to include any reasonable changes or provisions in the Detailed Transition Plan.

3.4 Following receipt of the draft Detailed Transition Plan from the Supplier, the Authority shall:

(a) review and comment on the draft Detailed Transition Plan as soon as reasonably practicable; and

(b) notify the Supplier in writing that it approves or rejects the draft Detailed Transition Plan no later than 7 Working Days after the date on which the draft Detailed Transition Plan is first delivered to the Authority.

3.5 If the Authority rejects the draft Detailed Transition Plan:

(a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall then revise the draft Detailed Transition Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Transition 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 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Transition Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3.6 If the Authority approves the draft Detailed Transition Plan, it shall replace the Outline Transition Plan from the date of the Authority's notice of approval.

4 UPDATES TO AND MAINTENANCE OF THE DETAILED TRANSITION PLAN

4.1 Following the approval of the Detailed Transition Plan by the Authority:

(a) the Supplier shall submit a revised Detailed Transition Plan to the Authority every 3 months starting 3 months from the Effective Date until the Operational Service Commencement Date;

(b) without prejudice to Paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Transition Plan at any time by giving written notice to the Supplier. The Supplier shall submit a draft revised Detailed Transition Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

(c) any revised Detailed Transition Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and

(d) the Supplier's performance against the Transition Plan shall be monitored at meetings of the Entry Transition Board (as defined in Schedule 8.1 (*Governance*). In preparation for such meetings, the Supplier shall provide to the Authority not less than 5 Working Days in advance of each meeting of the Entry Transition Board:

(i) the current Detailed Transition Plan; and

(ii) any reports as specified in the Detailed Transition Plan.

4.2 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 Transition Plan shall be subject to the Change Control Procedure provided that:

(a) any amendments to elements of the Detailed Transition Plan which are based on the contents of the Outline Transition Plan shall be deemed to be material amendments; and

(b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 32 (*Authority Cause and Ecosystem Failure*).

4.3 Any proposed amendments to the Detailed Transition Plan shall not come into force until they have been approved in writing by the Authority.

5 RESOURCE COMMITMENTS AND CHARGES

5.1 The Supplier shall:

(a) coordinate and provide sufficient and appropriately skilled resources to carry out the Supplier's obligations under this Schedule including the responsibilities set out in Annex 2 (*Responsibilities of the Supplier Transition Team*) ("**Supplier Transition Team**");

(b) appoint an individual Supplier Personnel in accordance with Clause 14 with the responsibility for managing the Supplier's obligations under this Schedule and provide written notification of such appointment to the Authority within 2 weeks of the Effective Date ("**Supplier's Transition Manager**").

5.2 The Supplier's activities for carrying out its obligations set out in this Schedule shall be charged on the basis of the commercial model provided in The Supplier's tender response.

6 IMPLEMENTATION OF THE DETAILED TRANSITION PLAN

6.1 The Supplier shall plan, prepare for and carry out the Transition activities in accordance with this Schedule, and shall:

(a) comply with the Detailed Transition Plan;

(b) Not used

(c) be responsible for overall management of the activities under the Detailed Transition Plan in order to ensure the timely completion of each task and Milestone;

(d) carry out the Detailed Transition Plan without causing any disruption to the Authority's business operations unless:

(i) the Supplier has procured the Authority's agreement in writing no less than 6 weeks prior to the associated disruption; or

(ii) if the Supplier is unable to provide 6 weeks' notice of such disruption to the Authority, the Supplier has notified the Authority as soon as possible upon becoming aware of the disruption and the Authority has agreed to such disruption through the Fast-Track Change Procedure.

(e) 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 from the Authority and/or the Incumbent Supplier to the Supplier.

6.2 Readiness Review

(a) The Supplier shall cooperate with and assist the Authority in carrying out readiness reviews for the Transition 8 weeks prior to the Operational Service Commencement Date in order to satisfy key Authority stakeholders that the relevant Services can be transferred to the Supplier without impact on business operations ("**Readiness Reviews**").

(b) As part of the Readiness Review the Entry Transition Board shall agree a recovery plan to remedy the issues identified by the Readiness Review that have significant impact on business operations.

(c) The Parties shall define and agree the conditions which form the basis of the Readiness Review reports within 20 Working Days after the Effective Date.

6.3 Third Parties

(a) The Supplier shall cooperate with and provide assistance to the Authority and any relevant third party in order to achieve the transition of Services in accordance with this Schedule and Schedule 11 (*Collaboration*).

6.4 Disputes

(a) The Parties shall escalate any Disputes arising from the Transition Plan to the Entry Transition Board, and the Supplier shall provide to the Authority within 2 Working Days of its request all documentation relevant to the Dispute that is available at that time. Where the Entry Transition Board have been unable to resolve such Dispute, the Parties shall follow the Dispute Resolution Procedure and the Parties agree to use the Expedited Dispute Timetable

6.5 Reporting

(a) The Supplier shall provide to the Authority progress reports on a weekly basis, including a dashboard, against the Detailed Transition Plan, which will set out:

(i) the current status of the transition activities;

(ii) the Supplier's progress against all Milestones and other activities set out in the Detailed Transition Plan, any actual or anticipated delays to the Detailed Transition Plan and anticipated remedial activities in respect of such delay;

(iii) the actual and anticipated delays to the Detailed Transition Plan as a result of any failure or delay by the Authority as set out in Schedule 3 (*Authority Responsibilities*), the impact of such failures on the Supplier and the associated mitigation actions taken by the Supplier; and

(iv) the actual and anticipated risks and issues (including the RAID log as set out in Paragraph 6.8(a)(i)), the impact or likely impact of such risks and issues on the Detailed Transition Plan and the associated mitigation actions being taken by the Supplier.

(b) The Supplier shall promptly provide other progress reports on the Detailed Transition Plan as reasonably requested by the Authority.

(c) The Supplier shall promptly (and in any event, no later than 5 Working Days prior to the relevant governance meeting) provide all reports required in accordance with the Detailed Transition Plan and as reasonably requested by the Authority.

6.6 Security and Safety

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

6.7 Service Documentation

(a) Prior to the Operational Service Commencement Date and as part of the Transition Readiness Signed Off Milestone as set out in Annex 1, the Supplier shall provide to the Authority operational and service delivery documentation, including its operations manual, defining how the Supplier will deliver the Services. This documentation shall include a description of all the operational and service management processes, procedures and tools which will be used by the Supplier in delivering the Services. In preparing this documentation the Supplier shall take into consideration the existing processes and procedures of the Incumbent Supplier in its provision of similar services to the Authority.

6.8 Risks, Assumptions, Issues and Dependencies (RAID) Management

(a) The Supplier shall:

(i) maintain a RAID log which sets out any risks, assumptions, issues and dependencies in carrying out the Detailed Transition Plan, including risk mitigation strategies, preventive measures and contingency plans for rapid recovery from the occurrence of such risks and issues;

(ii) identify and promptly report to the Authority upon becoming aware of any risks, assumptions, issues and dependencies in carrying out the Detailed Transition Plan;

(iii) create and maintain (based upon consultation with and engagement of the Authority) a RAID management plan which will clearly list all technical, commercial, delivery, financial and legal risks, assumptions, issues and dependencies that impact the Parties and the Detailed Transition Plan. The RAID management plan shall be created by the Supplier within 1 month of the Effective Date and provided to the Authority fortnightly; and

(iv) develop contingency plans for each identified risk and any risks that are categorised as 'High Impact and High Likelihood'. Such contingency plans shall be developed within 10 Working Days of being categorised and reported as 'High Impact and High Likelihood' risks and shall be provided to the Authority upon request.

7 ACHIEVEMENT OF MILESTONES

7.1 The Supplier's achievement of the Milestones set out in the Detailed Transition Plan shall be assessed in accordance with Schedule 6.2 (*Testing Procedures*).

8 GOVERNMENT REVIEWS

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 TRANSITION PLAN

Redacted.

ANNEX 2: RESPONSIBILITIES OF THE SUPPLIER TRANSITION TEAM

The Supplier's Transition Team shall be responsible for carrying out the operation of the Transition Plans, including:

(a) execution of the agreed Detailed Transition Plan and associated activities and deliverables;

(b) management of the Detailed Transition Plan and resources and activities pertaining to planning, management and control;

(c) transition of all relevant in-scope personnel from the Authority or the Incumbent Supplier (as applicable) and transfer of Third-Party Contracts as agreed,

(d) communicating with and reporting to the Authority in accordance with the Detailed Transition Plan;

(e) monitoring, reporting and managing risks as set out in this Schedule;

(f) ensuring compliance with the Supplier's obligations under this Agreement;

(g) planning and conducting the Readiness Reviews;

(h) managing conflicts and issues arising under the Detailed Transition Plan.

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SCHEDULE 6.2 | Testing Procedures

Schedule 6.2 | Testing Procedures

1. **DEFINITIONS**

In this Schedule, the following definitions shall apply:

"Component"	any constituent parts of the infrastructure for a Service, hardware or Software;
"Documentary Deliverable"	means any Deliverable that is in the form of a written document;
"E2E Test Provider"	has the meaning set out in Paragraph 1.6;
"Material Test Issue"	a Test Issue of Severity Level 1 or Severity Level 2;
"Product Description"	means an outline of the contents of a Documentary Deliverable in accordance with PRINCE2;
"Severity Level"	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Certificate"	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Exit Criteria;
"Test Completion Review"	a meeting between the Parties to review the Test Completion Report and to confirm that the Test Exit Criteria have been met;
"Test Completion Reports"	the reports to be produced by the Supplier setting out a summary of the results of the Tests as defined in the Test Plan;
"Test Design"	the specification that sets out how Tests will demonstrate that the Test Exit Criteria have been satisfied, as described in more detail in Paragraph 4;
"Test Entry Criteria"	the criteria that must be met before a Deliverable can be submitted for Testing;
"Test Exit Criteria"	in relation to a Test, the test exit criteria for that Test as referred to in Paragraph 3.5 *;*

"Test Issue"	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Exit Criteria);
"Test Issue Threshold"	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
"Test Issue Management Log"	a log for the recording of Test Issues as described further in Paragraph 3.1;
"Test Plan"	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 3;
"Testing Procedures"	the applicable testing procedures and Test Exit Criteria set out in this Schedule.
"Test Strategy"	the Supplier's strategy for the conduct of Testing under this Agreement as described further in Paragraph 2;
"Test Witness"	any person appointed by the Authority pursuant to Paragraph 4.1; and

2. INTRODUCTION

2.1 This Schedule sets out:

(a) for Documentary Deliverables, the procedure for obtaining the Authority's approval of Documentary Deliverables (as set out in Part A of this Schedule);

(b) the components of the Test Strategy, Test Plans and Test Designs (as set out in Part B of this Schedule);

(c) the process for Testing and the issuing by the Authority of Test Certificates (as set out in Part C of this Schedule); and

(d) in respect of a Milestone set out in Annex 1 to Schedule 6.1 (*Transition*), the process for the issuing by the Authority of Milestone Achievement Certificates (as set out in Part D of this Schedule).

3. **GENERAL**

3.1 This Schedule shall apply to all Deliverables provided by the Supplier to the Authority under this Agreement, including any Deliverables set out in a Change Authorisation Note.

3.2 The Supplier shall ensure that any Deliverable provided pursuant to a Change Authorisation Note will not prejudice the effectiveness, operational integrity and/or security of the Services.

3.3 For Parts B and C of this Schedule, the Authority's obligations in relation to the Testing Procedures and Deliverables shall be carried out by the Authority's CDIO IT Delivery Project Manager (unless otherwise notified by the Authority).

Part A | Authority Approval of Documentary Deliverables

1. PRODUCT DESCRIPTIONS

1.1 This Paragraph 1 shall only apply where Product Descriptions are required by the Customer under this Agreement.

1.2 The Supplier shall provide to the Authority a draft Product Description for a Documentary Deliverable no later than 2 months prior to the due date for that Documentary Deliverable.

1.3 The Product Description shall include:

(a) the purpose of the Documentary Deliverable;

(b) the structure and format of the Documentary Deliverable;

(c) an outline of the contents of the Documentary Deliverable, including any criteria notified by the Authority to the Supplier.

1.4 The Parties shall agree the Product Description no later than two 2 months prior to the due date of that Documentary Deliverable, unless otherwise agreed by the Authority.

1.5 The Supplier shall incorporate any changes to the Product Description that are reasonably required by the Authority and shall prepare the Documentary Deliverable in accordance with the agreed Product Description.

2. DOCUMENTARY DELIVERABLES

2.1 The Supplier shall set out all Documentary Deliverables and corresponding Product Descriptions in the Test Plan or the Detailed Transition Plan as defined in Schedule 6.1 (*Transition*) (as applicable).

2.2 The Supplier shall submit the Documentary Deliverable for review by the Authority in accordance with the timeline set out in the Test Plan or the Detailed Transition Plan (as applicable).

2.3 The Authority shall notify the Supplier in writing within ten (10) Working Days of receipt if it:

(a) approves the relevant Documentary Deliverable; or

(b) rejects the relevant Documentary Deliverable in accordance with Paragraph 2.4.

2.4 If the Authority rejects the Documentary Deliverable:

(a) the Authority shall notify the Supplier in writing of its reasons for such rejection; and

(b) the Supplier shall revise the Documentary Deliverable to respond to and/or incorporate the Authority's comments and shall re-submit the revised Documentary Deliverable to the Authority for further review within ten (10) Working Days of the date of notice of rejection.

2.5 The Supplier shall notify the Authority immediately if it is unable to submit a Documentary Deliverable by the date specified in the Test Plan or the Detailed Transition Plan (as applicable). For the avoidance of doubt, such notification shall not waive the Supplier's obligations under this Agreement.

2.6 If the Authority is unable to approve a Documentary Deliverable by the date specified in the Detailed Transition Plan due to the Supplier's failure to comply with the Authority's requirements as set out in the Product Description, the Authority shall notify the Supplier of such delay and without prejudice to the Authority's other rights and remedies, such delay shall constitute a Notifiable Default for the purposes of Clause 27 (*Rectification Plan Process*).

2.7 The Supplier shall not submit any Documentary Deliverable for the Authority's review unless the Supplier is reasonably confident that it will satisfy the Authority's requirements as set out in the Product Description agreed between the Parties in accordance with Paragraph 1.31.4.

Part B | Supplier's Test Documentation

1. **INTRODUCTION**

1.1 The Supplier's Test Strategy, Test Plans, and Test Designs are Documentary Deliverables and shall be approved in accordance with Part A of this Schedule.

2. **TEST STRATEGY**

2.1 The Supplier shall develop the Test Strategy and submit it for the approval of the Authority no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.

2.2 The Test Strategy shall include as a minimum:

(a) an overview of the Testing to be conducted in accordance with the Detailed Transition Plan and includes the Test scope, objectives, assumptions, principles, governance and controls;

(b) the definition of all test activities including planning, preparation, design, execution and closure stages;

(c) a summary of the Testing lifecycle which will define the different Test stages;

(d) the generic Test Entry Criteria and Test Exit Criteria;

(e) the approach to Test data;

(f) the Test Issue management process;

(g) the Supplier's dependencies on third parties and on the Authority;

(h) the process to be used to capture and record Test results and the categorisation of Test Issues;

(i) the method for mapping the expected Test results to the Test Exit Criteria;

(j) the procedure to be followed if a Deliverable fails to satisfy the Test Exit Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;

(k) the procedure to be followed to sign off each Test;

(l) the process for the production of Test Completion Reports and a summary of how test information will be communicated to the Authority;

(m) the Industry Standards on which the Supplier's test products and processes are based;

(n) the legal and regulatory constraints relevant to the testing;

(o) the test environments;

(p) the strategy for Security testing;

(q) the test compatibility with Particular Needs software used to meet the needs of users with accessibility and assistive requirements;

(r) how customers and stakeholders will be involved in testing;

(s) the names and contact details of the Supplier's Test representatives; and

(t) a high level identification of the resources required for Testing, including Authority and/or third party involvement in the conduct of the Tests.

2.3 The Supplier shall comply with the HMRC Test Principles as described in the HMRC Organisational Test Strategy set out in Annex 4 (or as updated by the Authority from time to time and notified to the Supplier) when developing the Test Strategy.

2.4 The Supplier shall, throughout the Term review, maintain, and update the Test Strategy, at least once a quarter.

3. **TEST PLANS**

3.1 The Supplier shall develop Test Plans and submit these for the approval of the Authority no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing.

3.2 Each Test Plan shall include as a minimum:

(a) the relevant purpose and scope of the Test, the Milestone to which it relates, the requirements being tested, the approach to be undertaken, and, for each Test, the specific Test Entry Criteria and Test Exit Criteria to be satisfied, the requirements in relation to the environment, tools to support testing, risks that may occur, approach to communications and stakeholder engagement;

(b) a detailed procedure for the Tests to be carried out, including:

(i) the timetable for the Tests, including start and end dates;

(ii) the Testing mechanism;

(iii) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Exit Criteria have been met;

(iv) the mechanism for ensuring the quality, completeness and relevance of the Tests;

(v) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;

(vi) the process which the Authority will use to review Test Issues and the Supplier's process in resolving these in a timely basis;

(vii) the Test Gantt chart;

(viii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and

(c) the process for escalating Test Issues from a re-Test situation to the taking of specific remedial action to resolve the Test Issue.

3.3 The Supplier shall comply with the HMRC Test Principles as described in the current HMRC Organisational Test Strategy and set out in Annex 4 when developing the Test Plans.

3.4 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

3.5 The Test Exit Criteria for:

(a) each Test that must be Achieved for the Supplier to Achieve the Milestones are set out in Annex 1 to Schedule 6.1 (*Transition*) shall be as set out in the Detailed Transition Plan; and

(b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 3.

4. TEST DESIGN

4.1 Following approval of a Test Plan, the Supplier shall develop the Test Design for the relevant Deliverables and submit the Test Design for the approval of the Authority at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing.

4.2 Each Test Design shall include as a minimum:

(a) a description of the test conditions;

(b) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;

(c) a plan to make the resources available for Testing;

(d) Test scripts/cases;

(e) Test pre-requisites and the mechanism for measuring them; and

(f) expected Test results, including:

(i) a mechanism to be used to capture and record Test results; and

(ii) a method to process the Test results to establish their content.

Part C | Testing Procedures

1. TESTING OVERVIEW

1.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Designs.

1.2 The Supplier shall not submit any Deliverable for Testing:

(a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Exit Criteria;

(b) until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s) (unless otherwise agreed by the Parties); and

(c) until the Parties have agreed the Test Plan and the Test Design relating to the relevant Deliverable(s).

1.3 The Supplier shall submit each Deliverable for Testing or re-Testing by or before the date set out in the Test Plan or the Detailed Transition Plan (as applicable) for the commencement of Testing in respect of the relevant Deliverable.

1.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Completion Reports and the Test Issue Management Log.

1.5 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

1.6 The Supplier shall cooperate with and provide assistance to the Authority's third party test provider which carries out end to end test management and system integration on behalf of the Authority ("**E2E Test Provider**") in accordance with this Agreement and Annex **5**.

2. TESTING

2.1 The Supplier shall manage the Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Design. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 4.

2.2 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Test.

2.3 The Supplier shall provide to the Authority and, at the Authority's request, any third party, with all reasonable assistance and information necessary for conducting the Tests.

2.4 The Authority may raise and close Test Issues during the Test witnessing process.

2.5 The Supplier shall provide to the Authority in relation to each Test the final Test Completion Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.

2.6 Each Test Completion Report shall provide a report on the Testing conducted in respect of the relevant Deliverables, including as a minimum:

(a) an overview of the Testing conducted;

(b) a summary of the Test results, including all Test Issue reports;

(c) identification of the relevant Test Exit Criteria that have been satisfied;

(d) identification of the relevant Test Exit Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;

(e) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

(f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing; and

(g) analysis of result information to allow management decisions, based upon risk, on whether to proceed to the next stage.

2.7 The Supplier shall hold Test Completion Reviews to demonstrate to the Authority that the Test Exit Criteria have been successfully completed and met.

3. TEST ISSUES

3.1 Where a Test Completion Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

3.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.

3.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4. **TEST WITNESSING**

4.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

4.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.

4.3 The Test Witnesses:

(a) shall review the Test documentation;

(b) shall attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;

(c) shall not be involved in the execution of any Test;

(d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Exit Criteria and the relevant Test Plan and Test Design;

(e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;

(f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and

(g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

5. **TEST COMPLIANCE REVIEW**

5.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Authority may perform on-going compliance/quality audits in respect of any part of the Testing (each a "**Test Compliance Review**") subject to the provisions set out in the agreed Quality Plan.

5.2 The focus of the Test Compliance Reviews shall be on:

(a) adherence to an agreed methodology;

(b) adherence to the agreed Testing process;

(c) adherence to the Quality Plan;

(d) review of status and key development issues; and

(e) identification of key risk areas.

5.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Test Compliance Review can be provided.

5.4 The Authority will give the Supplier at least 5 Working Days' written notice of the Authority's intention to undertake a Test Compliance Review and the Supplier may request, following receipt of that notice, that any Test Compliance Review be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Test Compliance Review at the time specified by the Authority will materially and adversely impact the Test Plan or Detailed Transition Plan (as applicable).

5.5 A Test Compliance Review may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Test Compliance Review shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Test Compliance Review.

5.6 If the Test Compliance Review gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:

(a) discuss the outcome of the Test Compliance Review with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and

(b) subsequently prepare a written report for the Supplier detailing its concerns,

and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority's report.

5.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and, where applicable, consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

6. OUTCOME OF TESTING

6.1 The Authority shall issue a Test Certificate when the Deliverables satisfy all applicable Test Exit Criteria in respect of that Test.

6.2 The Authority shall notify the Supplier of a Test failure if the Authority deems the Deliverables (or any relevant part) do not satisfy all applicable Test Exit Criteria and:

(a) the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;

(b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

(c) where the failure to satisfy the Test Exit Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process).*

6.3 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Exit Criteria for that Deliverable to be satisfied.

Part D | Procedures for Milestone Achievement Certificate

1. **ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE**

1.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:

(a) the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

(b) performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Detailed Transition Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentary Deliverables or other Documentation).

1.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).

1.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:

(a) the applicable Test Issues; and

(b) any other reasons for the relevant Milestone not being Achieved.

1.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.

1.5 Without prejudice to the Authority's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*) and the Authority shall refuse to issue a Milestone Achievement Certificate where:

(a) there is one or more Material Test Issue(s); or

(b) the information required under Schedule 8.2 (*Reports and Records*) Annex 4 (*Records to Upload to Virtual Library*) has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.

1.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate

conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

(a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to Paragraph 1.3); and

(b) where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

2. **RISK**

2.1 The issue of a Test Certificate, Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

(a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or

(b) affect the Authority's right subsequently to reject:

(i) all or any element of the Deliverables to which a Test Certificate relates; or

(ii) any Milestone to which the Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:

(a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;

(b) the Services are implemented in accordance with this Agreement; and

(c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

Annex 1 | Test Issues – Severity Levels

1.1. Severity Level 1 Test Issue: a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss.

1.2. Severity Level 2 Test Issue: a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:

(a) causes a Component to become unusable;

(d) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or

(e) has an adverse impact on any other Component(s) or any other area of the Services.

1.3. Severity Level 3 Test Issue: a Test Issue which:

(a) causes a Component to become unusable;

(f) causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or

(g) has an impact on any other Component(s) or any other area of the Services;

(h) but for which, as reasonably determined by the Authority, there is a practicable workaround available.

1.4. Severity Level 4 Test Issue: a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services.

1.5. Severity Level 5 Test Issue: a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

Annex 2 | Test Certificate

To: [***NAME OF SUPPLIER***]

FROM: [***NAME OF AUTHORITY***]

[***Date***]

Dear Sirs,

TEST CERTIFICATE

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

We refer to the agreement (the **"Agreement"**) relating to the provision of the Services between the [***name of Authority***] (the **"Authority"**) and [***name of Supplier***] (the **"Supplier"**) dated [***date***].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 ([*Testing Procedures]*) of the Agreement.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 6.1 of Schedule 6.2 ([*Test and Assurance])* of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[***Name***]

[***Position***]

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

Annex 3 | Milestone Achievement Certificate

To: [***NAME OF SUPPLIER***]

FROM: [***NAME OF AUTHORITY***]

[***Date***]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

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

We refer to the agreement (the **"Agreement"**) relating to the provision of the Services between the [***name of Authority***] (the **"Authority"**) and [***name of Supplier***] (the **"Supplier"**) dated [***date***].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 ([*Test and Assurance]*) of the Agreement.

[We confirm that all the Deliverables relating to Milestone [***number***] have been [tested successfully in accordance with the Test Plan relevant to this Milestone] or [that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Exit Criteria] or [been approved by the Authority.]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 1.1 of Schedule 6.2 (*Test and Assurance*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*)]*

**delete as appropriate*

Yours faithfully

[***Name***]

[***Position***]

acting on behalf of ***[Authority***]

Annex 4 | HMRC's Test Principles from HMRC Organisational Test Strategy Document Version 1.0 Dated 16 February 2016

Ref	Test Principle (TP)
TP1	**Agile By Default** - HMRC will use Agile techniques as the preferred delivery approach and take on board GDSM concepts of building quality in, everyone is responsible for quality, fast feedback, tests are an asset of the product, faster delivery into production, clear and consistent view of testing and optimise value. It is recognised that waterfall methodology may be the approved Test Approach in some instances.
TP2	**Early engagement of testing** - testing representatives need early sight of IT change to ensure they are properly assessed for testing requirements in terms of scope, timescales and budget, as well as for ensuring clear and unambiguous acceptance criteria.
TP3	**Test early** - run Test Driven Development (TDD), Behaviour Driven Development (BDD) and Acceptance Test Driven Development (ATDD) techniques as early as possible in the testing lifecycle to mitigate risk in the later stages of testing.
TP4	**Allow sufficient time for testing** - give due consideration to the risks associated with a test, ensuring sufficient iterations/cycles are planned and that there is time for defect detection, defect resolution and retest.
TP5	**Risk Based Testing** - focus testing on the highest risk areas according to a documented testing risk assessment. Predictive testing will support the Risk Based Testing approach through historical project data relating to defect trends.
TP6	**Defect Prevention** - HMRC expect the test process to evolve and improve through post implementation analysis, root cause analysis and test process improvement. By doing this, improved defect prevention can be achieved.
TP7	**Test Automation** - automate as much as possible. Automated testing will be at the forefront of our drive to make substantial cost savings by implementing an automation first policy.
TP8	**Test Stage containment** - fix defects within iteration/ test stage where they are detected wherever possible rather than defer the risk until a later iteration/test stage.

TP9	**Test Entry Reviews & Test Exit Reviews & Agile equivalent** - all tests under the control of a formal test plan must be subjected to a test entry review to ensure the entry criteria have been met i.e. testing starts when the entry criteria have been met so if the scheduled start date is missed, management action is needed to maintain the test schedule or slippage will occur; all tests must be subjected to a test exit review to ensure that the exit criteria have been met and the test can be formally declared as complete.
TP10	**Suspension & resumption of testing** - under circumstances set out in a test plan, testing may be suspended and then later resumed; such actions will be recorded and may result in project risks and/or issues being raised, depending on the nature of the interruption to testing.
TP11	**Test Completion** - every test will have an associated test completion condition to formally close the test activity. For Waterfall this will be through the Test Completion Report.
TP12	**Re-testing and Regression testing** - when defects are fixed they will be subjected to re-test to confirm that the fix is effective; consideration must also be given to the need to administer regression tests, based on the balance of risk for the underlying changes made for the fix and any other changes made in the release.
TP13	**Consider the timing of non-functional testing** - non-functional testing can be expensive so there is a need to avoid retesting due to functional changes wherever possible and practicable to do so.
TP14	**Re-use of test artefacts** - to maintain value in testing the management of test assets for re-use is key.
TP15	**User Centred Testing** - HMRC puts the user at the forefront of all products it delivers. User testing must be integrated into the Test Lifecycle to ensure that the system satisfies the needs of the customer as specified in the business and functional requirements (for Agile User Stories and Epics) and provides confidence in its use.
TP16	**Defect Management Process** - incidents that occur during any testing process need to be managed properly. It is expected that robust Defect Management Procedures will be applied during test execution.
TP17	**Test Environments/Virtualisation** - HMRC expect appropriate test environments to be available in a timely fashion to allow near live like testing to be completed. HMRC has a drive towards Virtualised Environments but recognises other environments may be used in the interim.

TP18	**Use of test management tools** - all categories of test tools will be considered for use by each project/service team.
TP19	**Testing must be measurable** – this ensures the value of testing can be established in terms of time, cost and quality.
TP20	**Adoption of standards** - wherever possible use existing corporate, national and international standards, as well as tracking emerging standards to ensure on-going use of industry best practice. Any deviation from standards must be justified and documented.

Annex 5 | Test Service Requirements

1.1 The Supplier shall:

(a) provide sufficient, appropriate and empowered resource to review and approve the Authority's end to end test strategy ("**E2E Test Strategy**") and/or end to end test plan ("**E2E Test Plan**");

(b) confirm agreement to the Authority's E2E Test Strategy and/or E2E Test Plan in accordance with the timelines stipulated by the E2E Test Provider;

(c) provide to the E2E Test Provider the Supplier's Test Strategy and Test Plan (based on the E2E Test Strategy and/or Plan) detailing the testing they will deliver and how it will be executed;

(d) provide sufficient, appropriate and empowered resource to input to test workshops and discussions;

(e) provide appropriate live service resource to input to decisions in relation to operational acceptance testing (OAT) and system integration testing (SIT) requirements;

(f) provide test progress and test completion metrics to the E2E Test Provider's test manager on a weekly basis;

(g) supply details of any defects in Testing to the E2E Test Provider and provide sufficient, appropriate and empowered resource to input to the Authority's and the E2E Test Provider's problem review forums, also adhering to the defect management process as defined in the E2E Test Strategy and/or Plan;

(h) complete their delivery activities on time and in accordance with the E2E Test Strategy and/or Plan including meeting the exit criteria for system testing;

(i) undertake the execution of any operational testing which has been sub-contracted to the Supplier by the Authority;

(j) execute performance and volume testing;

(k) undertake Component testing, Component integration testing and system testing;

(l) provide and maintain the requisite test environments in a timely manner as defined in the E2E Test Strategy and/or Plan;

(m) provide test data to be used in SIT; and

(n) provide sufficient, appropriate and empowered resource to provide technical support for the resolution of defects during SIT.

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SCHEDULE 6.3 | Projects and Ordering

Schedule 6.3 | Projects and Ordering

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"Estimate"	has the meaning given in paragraph 12 below;
"Intended Project"	means a Project proposed by either Party which is under consideration by the Parties but for which a Project Work Order is yet to have been executed by the Parties;
"Project Initiation Process"	has the meaning set out in Paragraph 3.1 of Schedule 6.3 *(Projects and Ordering)*;
"Project Request"	means a request for a Project issued by the Authority or an Ecosystem Supplier in accordance with Paragraph 3 of Schedule 6.3 *(Projects and Ordering)* (or equivalent) of the relevant Ecosystem Supplier services agreement, the format of which is set out in Annex 3 of Schedule 6.3 *(Projects and Ordering)* (or equivalent);
"**Project Work Order"**	means a written document setting out details of each Project in such form as may be agreed between the Authority and Supplier from time to time, the format of which is set out in Annex 1 of Schedule 6.3 *(Projects and Ordering)* (or equivalent); and
"Rough Order of Magnitude" or **"ROM"**	has the meaning given in paragraph 4.1 of Schedule 6.3 *(Projects and Ordering)* (or equivalent) of the relevant Ecosystem Supplier services agreement; and
"**Supplier Proposal**"	means a proposal issued by an Ecosystem Supplier in accordance with Paragraph 5 of Schedule 6.3 *(Projects and Ordering)* (or equivalent) of the relevant Ecosystem Supplier services agreement, the format of which is set out in Annex 2 of Schedule 6.3 *(Projects and Ordering)* (or equivalent) of the relevant Ecosystem Agreement.

2. INTRODUCTION

This schedule sets out the principles and procedures applicable to the proposal, agreement and implementation of Projects.

3. PROJECT REQUEST

3.1 The Authority or the Supplier may from time to time during the Term issue a Project Request to the other Party which shall initiate the process of Project consideration as described in Paragraphs 3, 5 and 6 of this Schedule ("Project Initiation Process").

3.2 Each Project Request shall, unless otherwise agreed by the Parties, be in accordance with the structure outlined in Annex 3 (Project Request) and shall include the following (to the extent relevant):

(e) a brief context, identifying the positioning of the Intended Project in the Authority's IT strategy, targets and objectives;

(f) a detailed and unambiguous statement of the requirements for the Intended Project (including scope);

(g) the objectives and goals of the Intended Project and its contribution to the collaboration objectives set out in Schedule 11 (Collaboration);

(h) the charging basis proposed for the Intended Project which unless otherwise agreed within a Project Work Order shall be by reference to Paragraph 4 of Part A of Schedule 7.1 (Charges and Invoicing) and any guidance in respect of funding and/or pricing mechanisms;

(i) the proposed delay payments which unless otherwise agreed within a Project Work Order shall be in accordance with paragraph 1.3 of Part C of Schedule 7.1 (Charges and Invoicing) which shall apply with the necessary changes to the Intended Project;

(j) any known technical, time or any other constraints;

(k) key assumptions and any known risks;

(l) the Test Success Criteria proposed for the Intended Project (including user acceptance testing where appropriate);

(m) any anticipated dependencies;

(n) the desired level of progress reporting; and

(o) those parts of the Authority's gated review process which the Authority or the Supplier (as applicable) anticipates will apply to the Intended Project.

3.3 The Authority may at its discretion, at any time prior to the execution of a Project Work Order for an Intended Project terminate the Project Initiation Process for such Intended Project by providing written notice to that effect to the Supplier.

3.4 The Party receiving the Project Request shall provide the Party which has issued the Project Request with written details of any failings of a Project Request to comply with the requirements of Paragraph 3.1 and the Parties shall seek to agree the most appropriate means of remedying such failures.

4. ROUGH ORDER OF MAGNITUDE REQUEST (ROM REQUEST)

4.1 Where requested by the Authority, the Supplier shall provide the Authority with a high-level rough order of magnitude estimate of the total charges for implementing a Project Request (**"Rough Order of Magnitude"** or **"ROM"**) within five (5) Working Days of receiving such a request or within such timescale as may otherwise be agreed in writing between the Parties.

4.2 For each ROM, the Supplier shall provide a reasonable level of detail explaining the basis for the ROM and any assumptions that apply to the ROM.

5. PROJECT REQUESTS AND SUPPLIER PROPOSALS

5.1 Where the Authority has issued a Project Request, the Supplier shall provide to the Authority a Supplier Proposal within such time period as is reasonably requested by the Authority (taking into account the nature and complexity of the Project Request in question).

5.2 Where the Supplier has submitted a Project Request, the Authority shall notify the Supplier whether it wishes to receive a Supplier Proposal and an Estimate from the Supplier and shall (acting reasonably) specify the date by which the Authority requires receipt of the Supplier Proposal and the Estimate (taking into account the nature and complexity of the Project Request in question).

5.3 Each Supplier Proposal shall, unless otherwise agreed by the Parties, be in accordance with the structure as outlined in Annex 2 (Supplier Proposal). Each Supplier Proposal shall be clear and unambiguous and set out, in sufficient detail to allow a preliminary assessment by the Authority of the relevant Intended Project, the following information as a minimum:

a) outline approach, work breakdown structure (i.e. the appropriate phases, key deliverables, timescales and estimated number of each type of resource required), and Project Plan;

b) an Estimate of the expected charges to the Authority for delivering the Project which will be prepared in accordance with paragraph 12 below;

c) the identity of any Sub-contractors or Ecosystem Suppliers who will be utilised and/or who will be impacted in the delivery of the Intended Project;

d) key assumptions (including any cost assumptions) and anticipated risks and contingency;

e) Authority dependencies (if any);

f) an assessment as to whether:

i. any element of the services which would be required in respect of that Intended Project are already being provided by the Supplier under this Agreement;

ii. the Supplier's assessment is that the Intended Project would be best delivered by an alternative means (for example, by a Service Request), details of the Supplier's recommendations as to the most appropriate means of delivery for the Intended Project; and

iii. the options (including any option requested by the Authority under Paragraph (d) above) upon which the Supplier could price and charge for undertaking the Intended Project where relevant by reference to Schedule 7.1 (*Charges and Invoicing*) (on such basis as may be agreed between the Parties) and the charges which would be payable by the Authority in respect of the Intended Project under each such option. Such charges shall include the costs of ensuring that where any Ecosystem Supplier is to take on ongoing responsibility for the operation and / or maintenance of any of the deliverables and / or services which would arise from an Intended Project, that such services and / or deliverables are able to meet the criteria such Ecosystem Supplier require to be met in order to accept such responsibilities;

g) any proposals in respect of funding or alternative pricing or new pricing mechanisms that the Supplier wishes the Authority to consider;

h) comments upon the Test Success Criteria proposed by the Authority or the Supplier for the Intended Project;

i) any comments of the Supplier upon the gated review process proposed by the Authority or the Supplier for the Intended Project in question;

j) outline details of the possible impact of the Intended Project upon the Transition Plan and the Transition Portfolio Plan together with details of the Supplier's recommendations for addressing such possible impact; and

k) any comments upon or revisions or additions to the information set out in the Supplier Proposal for the Intended Project.

5.4 Each Supplier Proposal shall, where requested by the Authority, include details (including names of individuals) of the resource profile the Supplier intends to use to deliver the Intended Project to the extent that the Supplier is able to provide such information having regard to: (1) the length of time between the date of the Supplier Proposal and the proposed start date of the Intended Project; and (2) the duration of the Intended Project. The names of individuals are provided for assurance purposes only and shall not be included within the relevant Project Work Order. The Supplier shall be entitled to change the resource profile unless the Parties have agreed to use specific key named individuals.

5.5 Where any Supplier Proposal fails to set out in sufficient detail the information required by Paragraphs 5.3 and 5.4 to enable the Authority to carry out its initial assessment of an Intended Project, the Supplier shall remedy any such failing within such time-scales as are reasonably requested by the Authority.

6. PROJECT WORK ORDERS

6.1 Following review of a Supplier Proposal, the Authority shall within a reasonable period notify the Supplier whether it wishes to consider the Project further, and if so shall authorise the Supplier to produce a draft Project Work Order.

6.2 Following the notification under Paragraph 6 and within such reasonable time-period as may be agreed by the Parties, the Supplier shall with the reasonable assistance of a nominee or nominees appointed by the Authority, produce a draft Project Work Order for agreement by the Authority. As part of the production of each such Project Work Order, the Parties shall also seek to establish the impact of the Intended Project in question upon the other Ecosystem Suppliers.

6.3 Each Project Work Order shall, unless otherwise agreed by the Parties, be in accordance with the structure as outlined in Annex 1.

6.4 All draft Project Work Orders shall be reviewed at the Strategic Board with a view to agreeing and approving the contents of the draft Project Work Order in question, together with any other issues relating to the Intended Project as are reasonably raised by the Authority.

6.5 The Strategic Board may require changes to a relevant draft Project Work Order to be considered at a subsequent meeting of the Strategic Board. In these circumstances the Supplier shall submit a revised draft Project Work Order as soon as practicable after the meeting. This process shall be repeated as necessary until a draft Project Work Order is agreed and formal recommendation is made to the relevant Authority approval board for ratification.

7. PROJECT COMMITMENT

7.1 Neither Party shall become contractually committed in respect of any Project unless and until such time as a Project Work Order has been executed by both Parties.

8. PROJECT KICK OFF

8.1 Following the agreement of a Project Work Order, a Project kick off meeting shall take place between the Parties prior to any work being undertaken on that Project (unless the Parties agree otherwise).

9. CHANGES TO AGREED PROJECT WORK ORDER

9.1 Following the agreement of any Project Work Order, any changes to such proposed by either Party shall only become effective once they have been agreed by both Parties in writing.

9.2 In the event that any proposed change would result in an impact on this Agreement and / or any Referenced Document such changes shall be processed by the Parties in accordance with the Change Control Procedure.

10. PROJECT MILESTONES

10.1 Unless otherwise agreed within a Project Work Order, the provisions of schedules 6.1 (*Transition*) and 6.2 (*Testing Procedures*) shall apply to Project Milestones with the necessary changes.

11. COSTS

11.1 Save as may be otherwise provided in this schedule, each Party shall be responsible for its own costs (including those of its related third parties) incurred in proposing, preparing, discussing, negotiating and agreeing any Project up to and including the point at which a Project Work Order is agreed for that Project.

12. ESTIMATES

12.1 Where this Schedule 6.3 (*Projects and Ordering*) makes reference to the Supplier providing the Authority with of an estimate, the Supplier shall provide such an estimate:

a) on either or both of a fixed price and time and materials (as such terms are referred to in Schedule 7.1 (*Charges and Invoicing*) basis as requested by the Authority including, where required by the Authority, full and accurate detail as to:

   i. the number and seniority of Supplier Personnel; and

   ii. the Man Hours or Man Days

   required to deliver the relevant Project (**"Estimate"**), and

b) in accordance with Good Industry Practice.

12.2 If requested by the Authority, the Supplier shall provide reasonable details of the applicable estimation tool the Supplier has used to produce the Estimate.

12.3 The Supplier shall promptly notify and discuss with the Authority any errors, omissions, contradictions or ambiguities in an Estimate of which it becomes aware.

13. AUDIT OF A PROJECT

13.1 Without limitation to the Authority's rights under Schedule 7.5 (*Financial Reports and Audit Rights*), the Authority reserves the right to verify throughout each Project that the level of skill and experience of individuals assigned remains consistent with the Supplier Personnel Rate Card set out in Annex 1 to Schedule 7.1 (*Charges and Invoicing*) upon which the Supplier bases its charges for the Project prior to inception of the Project. The Supplier shall provide to the Authority such information as the Authority may reasonably request to enable it to exercise its rights under this Paragraph 13.

14. PROJECT PERFORMANCE

14.1 The Supplier shall record and report to the Authority its performance against the Reporting Measures specified in each Table in this Paragraph 14. Such reporting shall be carried out at the end of each Service Period. Such Reporting Measures will not be subject to Schedule 2.2 (*Performance Levels*).

Reporting Measure 1 **On-Time Project Completion**	
Definition	To measure the percentage of Projects completed by the Supplier in accordance with the forecast project completion time as specified in each agreed Project Plan.
Data Capture	The Supplier will gather and report on Project timelines during the meeting of the Strategic Board. Depending upon duration and subject to Authority's prior approval, will be tracked, managed and reported based on staff hours, staff days or Key Milestones.

Reporting Measure 2 **On-Budget Project Completion**	
Definition	To measure the percentage of Projects completed by the Supplier where the price paid by the Authority did not exceed that specified in each agreed Project Work Order.
Data Capture	The Supplier will collect relevant information on Project charges to the Authority against those specified in agreed Project Work Orders and report in respect of each Project during the meeting of the Strategic Board.

15. PRECEDENCE

15.1 In the event and only to the extent of any inconsistency between any agreed term of any Project Work Order and any term of this Agreement then the term of this Agreement shall prevail.

16. ORDERING OF NON-PROJECT RELATED GOODS AND SERVICES

16.1 Non-project related goods and services shall only be ordered through the change control procedure and must not contravene the Public Contract regulations.

Annex 1 | Template Project Work Order

TEMPLATE PROJECT WORK ORDER (Reference Number: [*Insert reference number*])

1. Introduction

1.1 This Project Work Order constitutes an addition to (and to the extent detailed in this Project Work Order a change) to the agreement between the [insert Authority name] (**"Authority"**) and [insert Supplier name] (**"Supplier"**) ("**Agreement"**) from the date of the execution of this Project Work Order.

1.2 Save as may be otherwise provided in this Project Work Order, defined terms and phrases set out in the Agreement shall apply to this Project Work Order. In the event of any contradiction between the terms of this Project Work Order and the terms of the Agreement, the terms of the Agreement shall take precedence.

1.3 In this Project Work Order, references to "Sections" are to sections contained within this Project Work Order.

2. Description and consequences of Project Work Order

2.1 This Project Work Order is for the delivery of [*name of project*] Project.

2.2 This Project Work Order contains the following sections, each of which must be completed by the Supplier if requested by the Authority:

2.2.1 Project/Programme Name

2.2.2 Linked Project Work Orders

2.2.3 Project Manager

2.2.4 Service Line/Delivery Group

2.2.5 Commencement Date

2.2.6 Business Context Document

2.2.7 Authority requirements

2.2.8 Supplier Solution

2.2.9 Project Plan

2.2.10 Milestones

2.2.11 Supplier Team Structure

2.2.12 Authority Responsibilities

2.2.13 Estimation Model

2.2.14 Charging Mechanism

2.2.15 Invoicing Schedule

2.3 The Business Context Document is set out in Section 6.

2.4 The Milestone Criteria are Set out in Appendix A.

2.5 The Authority Requirements are set out in Appendix B.

2.6 The Supplier Solution is set out in Appendix C.

2.7 The Estimate is set out in Appendix D.

Project Work Order

Project Reference Number:	

The Parties hereto, each by a duly authorised representative, have executed this Project Work Order as of the date set out below and this Project Work Order is effective as of the Commencement Date set out in section 5:	
Authority	**Supplier**
By:	By:
Signed:	Signed:
Title:	Title:
Date:	Date:

1	**Project Name / Description of Project**	
	Project Name:	**Programme Name:**
	Description of Project	

2	**Linked Project Work Orders**		
	PWO Reference	**PWO / Project Name**	**Date**

3	**Project Managers**
	Authority Project Manager
	Supplier Project Manager

4	Lead Service Line / Delivery Group

5	Key Dates	
	Project Commencement	
	Live Implementation Date	

6	Business Context Document
	The Business Overview attached hereto provides a description of the project that can be shared with the Authority.

7	Authority Requirements
	Sets out the Authority business and technical requirements for the Project. These are set out in Appendix B. This includes the following as the case may be: Business Requirements Non Functional Requirements Technical/ Product Requirements including cloud hosting assumptions. Required Timelines Milestones where relevant Specific Location Requirements. Development Methodology Decisions Waterfall/ Agile/ Mixed Any prescribed development Tooling. Any other specific requirements

8	Supplier Solution
	Sets out the Supplier's solution that is being contracted for specifying its key components.

9	Project Plan

	The below plan gives an overview of the plan for the Project as agreed by the Authority and the Supplier including milestones and links to other Projects

10	**Milestones** ***Description of the deliverables Should be documented in Appendix***			
	Stage /Phase	**Milestones**	**Date**	**Delay Payments (against LID)**
		[Milestone X1]		
		[Milestone X2]		
		[Milestone X3]		

11	**Supplier Team Structure and Key Supplier Positions**

12	**Authority Responsibilities**		
	Responsibility	**Date Required**	**Impact of Not Delivered**

13	**Estimation Model**	
	The Supplier has completed the Estimation Template (yes/no)	
	Reference for Estimation Template	
	Reference for Technology Estimating Tool Used	
	Reference for Document (if applicable) setting out basis for Experience based Estimate.	

14	**Charging Mechanism**	
	Man-Day Pricing (Pure T&M)	
	T&M waterfall delivery	
	Team Run Rate (T&M)	
	Fixed Price with Milestones	

15	**Invoicing Schedule for Fixed Price with Milestone Payments (as part of a fixed price)**				
	Date	**Milestone**	**Milestones Payment**	**Monthly payment**	**Total Charges Due**
	[***date***] of [***Month***]	[Milestone X1]			[***Month's charges***] OR [***amount***]
	[***date***] of [***Month***]	[Milestone X2]			
	[d***ate***] of [***Month***]	[Milestone X3]			
	Total Project Work Order Charges				[***Amount***] [***Fixed***]

16	**Estimated Monthly Invoicing Schedule for T&M** ***This box specifies the estimated payments will become due under this Project Work Order for T&M Projects.***	
	Date	**Estimated Charges**
	[***date***] of [***Month***]	[***Month's charges***] [***amount***]
	[***date***] of [***Month***]	
	[d***ate***] of [***Month***]	
	TOTAL T&M Charges	[***Amount***] [***Estimated***]

APPENDIX A | Milestones Criteria

16	**Milestone Criteria** The table below sets out the criteria and due date for each Milestone.			
	Milestone	**Deliverable Name**	**Date Due**	**Criteria**

APPENDIX B | Authority Project Requirements

[*Insert*]

APPENDIX C | Supplier Solution

[***Insert***]

APPENDIX D | Estimates

[*Insert*]

ANNEX 2: Supplier Proposal

TEMPLATE SUPPLIER PROPOSAL (Reference Number: [*Insert reference number*])

1	Title of Intended Project	**[Insert title of Intended Project.]**
2	Originator	**[Insert name of originator.]**
3	Date of Supplier Proposal	**[Insert date of Supplier Proposal.]**

1. Introduction

1.1 This Supplier Proposal has been developed pursuant to the agreement between the [insert name of Authority] (**"Authority"**) and [insert name of supplier] (**"Supplier"**) ("**Agreement**").

2. Outline Approach

2.1 *[Insert details of the outline approach and proposed work breakdown structure for the Intended Project (i.e. the appropriate phases, key deliverables, timescales and estimated number of each type of resource required)]*

3. Transition

3.1 *[Insert details of the possible impact of the Intended Project upon the Transition Plan and the Transition Portfolio Plan together with details of the Supplier's recommendations for addressing such possible impact]*

4. Price and Payment and Delay Payments

4.1 *[Insert details of the options upon which the Supplier could price and charge for undertaking the Intended Project, the proposed delay payments and the charges which would be payable by the Authority in respect of the Intended Project under each such option]*

4.2 *[Insert any proposals in respect of funding or alternative pricing or new pricing mechanisms that the Supplier wishes the Authority to consider]*

5. Project Plan

5.1 *[Insert details of the proposed timetable for the Intended Project]*

6. Test Success Criteria

6.1 *[Insert comments upon the Test Success Criteria and Test Plan(s) proposed by the Authority or the Supplier for the Intended Project]*

7. Project roles and responsibilities

7.1 *[Insert details of the proposed roles and responsibilities of the Supplier and the Authority in respect of the Intended Project.]*

8. Resource Profile

8.1 *[Where requested by the Authority, insert details (including names of individuals) of the resource profile the Supplier intends to use to deliver the Intended Project to the extent that the Supplier is able to provide such information]*

9. Risks, Assumptions and Dependencies

9.1 *[Insert details of:*

- *Authority dependencies (if any);*
- *key assumptions (including any cost assumptions) and anticipated risks and contingency; and*
- *the proposed outline arrangements for risk and issue management]*

10. Sub-contractors and Other Ecosystem Suppliers

10.1 *[Insert details of the Sub-contractors and/or* Ecosystem *Suppliers who the Supplier proposes will be utilised in the delivery of the Intended Project]*

11. Existing services

11.1 *[Insert details of the Supplier's assessment as to whether any element of the services which would be required in respect of the Intended Project are already being provided by the Supplier under this Agreement]*

12. Alternatives

12.1 *[If the Supplier's assessment is that the Intended Project would be best delivered by an alternative means (for example, by a Service Request), insert details of the Supplier's recommendations as to the most appropriate means of delivery for the Intended Project]*

13. Project reporting

13.1 *[Insert details of the desired level of progress reporting in respect of the Intended Project.]*

14. Project Governance

14.1 *[Insert details of the proposed governance procedures applicable to the Intended Project and the Authority and the Supplier's obligations in respect of the same]*

15. Comments upon the Project Request

15.1 *[Insert any comments upon or revisions or additions to the information set out in the Project Request for the Intended Project.]*

16. Business Change approach

16.1 *[Insert details of the business change required to deliver the benefits of the Intended Project]*

ANNEX 3: PROJECT REQUEST

TEMPLATE PROJECT REQUEST (Reference Number: [*Insert reference number*])

1	Title of Intended Project	**[Insert title of Intended Project.]**
2	Originator	**[Insert name of originator.]**
3	Date of Project Request	**[Insert date of Project Request.]**

1. Introduction

1.1 This Project Request has been developed pursuant to the agreement between the [insert name of Authority] ("**Authority**") and [insert name of Supplier] ("**Supplier**") ("**Agreement**").

2. Strategic Case

[Insert details of:

- *the existing arrangements in place in relation to the Intended Project and the positioning of the Intended Project in the Authority's IT strategy, targets and objectives;*
- *the objectives and goals of the Intended Project and its contribution to the Fundamental Business Objectives;*
- *the requirements for the Intended Project (including scope);*
- *the main benefits of the Project (e.g. cost savings and efficiencies, service delivery improvements, meeting priorities, responding to statutory requirements);*
- *the anticipated risks if the Intended Project is not implemented; and*
- *dependencies between the Intended Project and other existing Projects or programmes]*

3. Proposed charging mechanism

3.1 *[Insert details of the charging basis proposed for the Intended Project by reference to Schedule 7.1 (Charges and Invoicing) and any guidance in respect of funding and/or pricing mechanisms and full details of agreed delay payment mechanism]*

4. Proposed implementation timescales

4.1 *[Insert details of the proposed implementation timescale]*

5. Test Success Criteria

5.1 [Insert details of the Test Success Criteria and Test Plan(s) proposed for the Intended Project (including user acceptance testing where appropriate)]

6. Project roles and responsibilities

7. *[Insert details of the proposed roles and responsibilities of the Supplier and the Authority in respect of the Intended Project.]*

8. Risks, Assumptions and Dependencies

[Insert details of:

- *any anticipated dependencies;*
- *any known technical, time or other constraints;*
- *key assumptions and any known risks; and*
- *the proposed outline arrangements for risk and issue management]*

9. Project reporting

9.1 *[Insert details of the desired level of progress reporting in respect of the Intended Project.]*

10. Project Governance

10.1 [Insert details of the proposed governance procedures applicable to the Intended Project and the Authority and the Supplier's obligations in respect of the same.]

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SCHEDULE 7.1 | Charges and Invoicing

Schedule 7.1 | Charges and Invoicing

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Achieved Profit Margin"	the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year;
"Active call"	A call with an established connection between caller and the operational HMRC telephony services provided under the Agreement (The connection could be to an automated system or person)
"Anticipated Contract Life Profit Margin"	the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model;
"Baseline Supplier Personnel Costs"	means the Costs associated with those Supplier Personnel who the Supplier would use to provide the Services if the Supplier did not use the Transferring Former Supplier Employees as set out in the Contract Inception Report;
"Capped ADR"	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism and as set out in the Financial Model
"Certificate of Costs"	a certificate of costs signed 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 certificate) and substantially in the format set out in ANNEX 3 | Pro-forma Certificate of Costs;
"Chargeable Call Minute"	Active Calls will be charged based on the duration of the call. The unit basis shall be per call minute (or part thereof) for the duration of the call. For the avoidance of doubt, the chargeable call minutes include active test calls, and automated services at the beginning or end of any call.

When PSTN or Mobile network are used to connect remote advisers to the Odigo service, rather than the HMRC provided Virtual Private Network, extra charges will apply for the duration during which PSTN or Mobile Network will be used.

"Costs" 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 Key Sub-contractor (as the context requires), calculated per Man Day, 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) work place IT equipment and tools reasonably necessary to perform 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 (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;

(d) Forecast Contingency Costs;

(e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;

but excluding:

(i) Overhead;

(ii) financing or similar costs;

(iii) 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;

(iv) taxation;

(v) fines and penalties;

(vi) amounts payable under Schedule 7.3 (*Value For Money*); and

(vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"Delay Payment Rate" has the meaning given in Paragraph 1.1(a) of Part C;

"Discrete Redundancy Cap" means, in respect of each individual Transferring Former Supplier Employee, the estimated redundancy costs as would be applicable at 23 January 2021 in respect of such individual (as set out in the relevant information available from the Former Supplier immediately prior to the transfer of such individual);

"European Standard" in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

"Forecast Contingency Costs"	the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed 'Forecast Contingency Costs' in the Risk Register (as such costs are updated from time to time);
"Guaranteed Maximum Price"	in relation to a Milestone, 110% of the Target Price for the relevant Milestone;
"Incurred Costs"	in relation to a Milestone, the sum of: (a) the fixed day costs set out in Table 3 of Annex 1 multiplied by the number of Man Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and (b) any amount that would fall within limbs (b) or (c) of the definition of "Costs" (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;
"Indexation" and "Index"	the adjustment of an amount or sum in accordance with Paragraph 9 of Part C;
"Man Day"	7.5 Man Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Man Hours"	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Maximum Permitted Profit Margin"	the Anticipated Contract Life Profit Margin plus 5%;
"Milestone Group"	has the meaning given in Paragraph 1.5 of Part B;
"Milestone Retention"	has the meaning given in Paragraph 1.3 of Part B;
"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key 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" or the day cost set out in Table 3 of Annex 1;
"Reimbursable Expenses"	reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including: (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
"Supplier Profit"	in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
"Supplier Profit Margin"	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supporting Documentation"	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information

	are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
"Target Cost"	has the meaning given in Paragraph 4.1 of Part A;
"Target Price"	the Target Price for the relevant Milestone as set out in Table 4 of Annex 1;
"Verification Period"	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 10 in the table in Annex 5;

PART A | Pricing

1 INTRODUCTION

1.1 This Schedule 7.1 (*Charges and Invoicing*) is to set out the provisions relating to:

(a) Milestone Payments;

(b) Service Charges;

(c) expenses and capital assets;

(d) adjustments to the Charges, including Service Credits, Delay Payments, payments for Delays due to Authority Cause and Allowable Assumptions;

(e) changes to the Charges;

(f) Charges for the provision of Termination Services; and

(g) invoicing and payment terms.

1.2 The total forecasted Service Charges under the Agreement at the Authority's baseline volumes and initial scope of Services (excluding any Extension Period) at the Effective Date are £29,742,010 as set out in the Financial Model.

1.3 The Supplier confirms that each Sub-contract has been agreed on an arm's-length basis.

2 APPLICABLE PRICING MECHANISM

2.1. Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.

2.2. Table 1 of Annex 2 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:

(a) "Time and Materials", in which case the provisions of Paragraph 3 shall apply;

(b) "Guaranteed Maximum Price with Target Cost", in which case the provisions of Paragraph 4 shall apply;

(c) "Fixed Price", in which case the provisions of Paragraph 5 shall apply; or

(d) "Firm Price", in which case the provisions of Paragraph 6 shall apply.

2.3. Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each

Service Charge, which shall be one or more of the following:

(a) "Time and Materials", in which case the provisions of Paragraph 3 shall apply;

(b) "Volume Based" pricing, in which case the provisions of Paragraph 7 shall apply; or

(c) "Fixed Price" in which case the provisions of Paragraph 5 shall apply.

3 TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

3.1. Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:

(a) the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:

(i) not be entitled to include any uplift for risks or contingencies within its day rates;

(ii) not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of Annex 1 unless the Supplier has obtained the Authority's prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed;

(iii) unless otherwise agreed by the Authority in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:

(A) the total number of days expended by the Supplier in relation to the relevant Milestone; or

(B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,

by the Capped ADR; and

(iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and

(b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such

records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority's request.

4 GUARANTEED MAXIMUM PRICE WITH TARGET COST INCENTIVE MILESTONE PAYMENTS

4.1. Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the "Target Cost") and the Target Price for the relevant Milestone shall be as set out in Table 4 of Annex 1.

4.2. If the Incurred Costs relating to a Milestone are lower than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be shared equally between the Authority and the Supplier (resulting in the Supplier receiving a higher Supplier Profit Margin in relation to that Milestone), and the Milestone Payment shall be calculated as follows:

Milestone Payment = TP – ((TC – IC)/2)
where:

TP	is the Target Price for the relevant Milestone;
TC	is the Target Cost for the relevant Milestone; and
IC	is the Incurred Costs relating to the relevant Milestone.

4.3. If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Authority and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone), provided that the maximum Milestone Payment payable by the Authority for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as set out in Table 4 of Annex 1 (the "Guaranteed Maximum Price") Represented numerically:

(b) if:

(i) IC > TC; and

(ii) TP + ((IC - TC)/2) < GMP,

then Milestone Payment = TP + ((IC - TC)/2); or

(c) if:

(i) IC > TC; and

(ii) TP + ((IC - TC)/2) ≥ GMP,

then Milestone Payment = GMP

where:

IC	is the Incurred Costs relating to the relevant Milestone;
TC	is the Target Cost for the relevant Milestone;

TP	is the Target Price for the relevant Milestone; and
GMP	is TP * 1.1, being the Guaranteed Maximum Price for the relevant Milestone.

5 FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

5.1. Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.

5.2. Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.

6 FIRM PRICE MILESTONE PAYMENTS

6.1. Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 6 of Annex 1.

6.2. Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increase by way of Indexation.

7 VOLUME BASED SERVICE CHARGES

7.1. Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Annex 1.

7.2. In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Annex 1, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.

8 EXPENSES

8.1. Where:

(a) Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and

(b) the Authority so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

8.2. The Authority shall provide a copy of its current expenses policy to the Supplier upon request.

8.3. Except as expressly set out in Paragraph 8.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Agreement 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:

(a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

(b) any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

9 CAPITAL ASSETS

9.1. If the Supplier procures on behalf of the Authority any capital assets from third parties on a pass-through basis, the Supplier shall not be entitled to apply any margin to the costs charged by such third parties to the Supplier in its pass-through charge to the Authority.

PART B | Charging Mechanisms

1 MILESTONE PAYMENTS

1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Authority for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.

1.4 Each invoice relating to a Milestone Payment shall be supported by:

(a) a Milestone Achievement Certificate; and

(b) where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.

1.5 The "**Milestone Retention**" for each Milestone shall be calculated as follows:

(a) where the Milestone Payment for the relevant Milestone is determined by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, 10% of the Target Price for the Milestone;

(b) where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, Fixed Price or Firm Price pricing mechanism, 10% of the Charges for that Milestone,

and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

Guaranteed Maximum Price with Target Cost pricing mechanism

1.6 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

(a) upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and

(b) no later than 60 Working Days after the invoice referred to in Paragraph 1.4(a) has been issued, the Supplier shall:

(i) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;

(ii) issue to the Authority an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone (in each case, after deducting the applicable Milestone Retention);

(iii) where a credit note is to be issued to the Authority pursuant to Paragraph 1.4(b)(ii), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and

(iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.7 Where Milestones are stated in Table 4 of Annex 1 to constitute a group of Milestones (a "**Milestone Group**") and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

(a) in respect of each Milestone within the Milestone Group, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the associated Milestone Achievement Certificate; and

(b) no later than 60 Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:

(i) submit to the Authority a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;

(ii) issue to the Authority an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);

(iii) where a credit note is to be issued to the Authority pursuant to Paragraph 1.5(b)(ii), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and

(iv) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.8 If the Supplier does not repay any such sum as is referred to in Paragraph 1.4(b)(ii) or 1.5(b)(ii) within 10 Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including)

the due date up to (but excluding) the date of actual payment, whether before or after judgment.

1.9 Following the issue of a Certificate of Costs in accordance with Paragraph 1.2, 1.4(b)(ii) or 1.5(b)(ii), the Supplier shall not be entitled to invoice the Authority for any additional Charges relating to the Milestone or Milestone Group (as applicable) save as provided in Paragraph 1.8.

Release of Milestone Retentions

1.10 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice the Authority for an amount equal to all Milestone Retentions that relate to Milestones identified in the *"CPP Milestone Charge Number"* column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 4) of Annex 2 and corresponding CPP Milestone Charge Number as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

2 SERVICE CHARGES

2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the "*Service Charge Trigger Event*" column of Table 2 of Annex 2.

2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.

2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:

(a) commences on a day other than the first day of a month; and/or

(b) ends on a day other than the last day of a month,

the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.

2.4 Any Service Credits that accrue during a Service Period shall be calculated in the next following Service Period and shall be deducted from the Services Charges in such next Service Period. For the avoidance of doubt, by way of a worked example, in respect of the Services performed in Service Period 1, the total number of Service Points accumulated in Service Period 1 shall be calculated during Service Period 2 and the resulting Service Credits shall be deducted from the invoice relating to Service Period 2. Where any Service Credits would have otherwise been due in the final Service Period, the Supplier shall issue a credit note to the Authority in the month following the final Service Period and make payment to the Authority to the value of such credit note within 10 Working Days of issue of the credit note. An invoice for a Service Charge shall not be payable by the Authority unless all adjustments (including Service Credits)

relating to the Service Charges for the immediately preceding Service Period have been agreed.

3 CHARGES FOR PROJECTS

3.1 To be agreed on a project by project basis, as per the provisions in Schedule 6.3 (*Projects and Ordering*).

4 CHARGES FOR TERMINATION SERVICES

4.1 The charges for Termination Services will be agreed in the Exit Plan, which will be provided by the Supplier within three months of the Effective Date, as per Schedule 8.5 (*Exit Management*).

5 OPTIONAL SERVICES

If the Authority gives notice pursuant to Clause 5.9 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:

(a) the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Annex 2; and

(b) the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Annex 2,

in both cases using the relevant rates and prices specified in Annex 1.

PART C | Adjustments to the Charges and Risk Register

1 DELAY PAYMENTS

1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to the Authority in respect of that Key Milestone. Delay Payments shall accrue:

(a) at the daily rate (the "**Delay Payment Rate**") determined in accordance with Paragraph 1.2;

(b) from (but excluding) the relevant Milestone Date to (and including) the earlier of:

(i) the date on which the Key Milestone is Achieved; and

(ii) the expiry of the Delay Deduction Period; and

(c) on a daily basis, with any part day's Delay counting as a day.

1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:

(a) where the Supplier has given the Authority less than three (3) months' prior notice of the Delay, the amount set out in column 4 of Table 1 of ANNEX 2 | Charging mechanism and adjustments for the Key Milestone;

(b) where the Supplier has given the Authority between three (3) months' and 6 months' prior notice of the Delay, the amount set out in column 5 of Table 1 of Annex 2 for the Key Milestone; or

(c) where the Supplier has given the Authority more than six (6) months' prior notice of the Delay, the amount set out in column 6 of Table 1 of ANNEX 2 | Charging mechanism and adjustments for the Key Milestone.

1.3 Where the Supplier serves a notice pursuant to Paragraph 1.2(b) or 1.2(c), the Supplier shall, within five (5) Working Days of the date the notice is served:

(a) pay to the Authority in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.4) an amount equal to:

(i) in the case of a notice served pursuant to Paragraph 1.2(b), 5 days of Delay Payments; or

(ii) in the case of a notice served pursuant to Paragraph 1.2(c), 10 days of Delay Payments in accordance with paragraph 1.4,

in each case calculated at the applicable Delay Payment Rate; and

(b) issue a credit note to the Authority in respect of the relevant amount.

Failure to make payment within ten (10) Working Days of the Supplier's notice shall invalidate the notice.

1.4 Any amounts paid to the Authority pursuant to Paragraph 1.3 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the Supplier's notice:

(a) does not occur; or

(b) does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.3(a) or 1.3(b) as the case may be.

1.5 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates:

(a) in each case a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date; and

(b) do not impose a detriment on the Supplier out of all proportion to the legitimate interests of the Authority.

1.6 Delay Payment Rates are stated exclusive of VAT.

1.7 The Delay Payment in respect of a Key Milestone (net of any payment made in respect of that Key Milestone pursuant to Paragraph 1.3) shall be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within ten (10) Working Days of expiry of the Delay Deduction Period, then the Supplier shall within ten (10) Working Days of expiry of the Delay Deduction Period:

(a) issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and

(b) pay to the Authority as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2 PAYMENTS FOR DELAYS DUE TO AUTHORITY CAUSE AND COLLABORATION FAILURE

2.1 If the Supplier is entitled in accordance with Clause 32.1(iii)(D) (*Authority Cause and Ecosystem Failure*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 25 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:

(a) the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:

(i) can demonstrate it has incurred solely and directly as a result of the Authority Cause; and

(ii) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 32.1 (*Authority Cause*)

together with an amount equal to the Anticipated Contract Life Profit Margin thereon;

(b) the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause;

(c) where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:

(i) the Target Price for the Milestone shall be increased in accordance with the following formula:

$$NTP = TP + (AC\ x\ 1.\mathrm{x})$$

where:

NTP	is the revised Target Price for the relevant Milestone;
TP	is the original Target Price for the relevant Milestone;
AC	is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Authority Cause; and
x	is the Supplier Profit Margin that the Supplier would have received in respect of the relevant Milestone on the basis of the unadjusted Target Cost and unadjusted Target Price for that Milestone, as set out in Table 4 of Annex 1, expressed as a decimal; and

(ii) the Guaranteed Maximum Price shall be increased to an amount equal to 110% of the Target Price as adjusted pursuant to Paragraph 2.1(c)(i);

(d) where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestone in Table 5 or Table 6 of Annex 1;

(e) where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Authority paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Authority Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap; and

(f) under no circumstances shall compensation payments allow the Supplier to recover the Incentive Payments.

2.2 Not used If the Supplier is due compensation for failure to Achieve a Milestone by its Milestone Date where the Supplier Non-Performance would not have occurred but for a Ecosystem Failure, then, subject always to Clause 25 (Limitations on Liability), such compensation shall not exceed the amount recovered by the Authority from the relevant Other Ecosystem Supplier as a result of the Ecosystem Failure.

2.3 The Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation.

3 SERVICE CREDITS

3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

3.2 For each Service Period:

(a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a 1% deduction in the Service Charges; and

(b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = \text{TSP } x \text{ X } x \text{ AC}$$

where:

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

TSP	is the total Service Points that have accrued for the relevant Service Period;
X	is 1%; and
AC	is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.2(b) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).

3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

3.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate in accordance with Paragraph 2.4 of Part B of this Schedule 7.1 (*Charges and Invoicing*).

4 CHANGES TO CHARGES

4.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.3 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:

(a) be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report); and

(b) in no event exceed the Maximum Permitted Profit Margin.

4.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

5 ALLOWABLE ASSUMPTIONS

5.1 The Parties acknowledge and agree that this paragraph 5 and Annex 5 (Allowable Assumptions) only apply if Part B (Transferring Former Supplier Employees at commencement of Services) of Schedule 9.1 (Staff Transfer) applies. The Parties acknowledge and agree that Allowable Assumptions are intended to cover the Supplier's costs, in accordance with this paragraph 5, regarding Transferring Former Supplier Employees who transfer to the Supplier in relation to the following terms and condition of employment to the extent they transfer to the Supplier with those employees under TUPE:

(a) contractual redundancy payments (including any statutory redundancy payments); and

(b) PILON – Pay In Lieu of Notice; and

(c) PILOB – Pay In Lieu of Benefits (including without limit car allowance and payment in lieu of fuel card); and

(d) payment for holiday accrued but not taken;

or,

(e) salary and benefits to the extent these are greater than the cost of salary and benefits associated with the Baseline Supplier Personnel Costs.

5.2 The Supplier shall only be able to rely on the Allowable Assumptions to the extent that each of them are:

(a) Applicable to a Transferring Former Supplier Employee who has transferred to the Supplier under TUPE;

(b) specific;

(c) measurable;

(d) time constrained;

(e) reasonably mitigated by the Supplier;

(f) subject to a financial cap as set out in Column 6 of Annex 5;

(g) and in the case of any redundancy payments, where they are triggered by a genuine redundancy situation pursuant to section 139 Employment Rights Act 1996 ,

and have a clear description of the impact on any aspect of this Agreement in the event that the Allowable Assumption is not accurate to include the impact on:

(h) the Services (including any impact on the Transition Plan and/or Project Plan (as appropriate)); and

(i) the Charges (including the basis of calculation of any cost impact).

5.3 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.

5.4 During each Verification Period, the Authority shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable

control and which the Authority deems is relevant to the Allowable Assumption being verified.

5.5 Within ten (10) Working Days of the end of each Verification Period, the Supplier shall provide the Authority with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Contract Inception Report require adjustment.

5.6 Within ten (10) Working Days of the end of each Service Period, the Supplier shall provide the Authority with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption during the Service Period, including whether a proportion of the Allowable Assumption is payable and in which case, the Supplier shall provide to the Authority:

(a) anonymised lists of Transferring Former Supplier Employees who have transferred to the Supplier under TUPE;

(b) accurate details of payments made in respect of such employees together with details explaining the same;

(c) evidence of appropriate mitigation of costs;

(d) an opportunity for the Authority to review the raw data against which the anonymised information has been prepared; and

(e) any other information or evidence which the Authority may reasonably require to enable the Authority to verify the proportion of the Allowable Assumption which is requested.

5.7 Where the Parties have agreed that the proportion of an Allowable Assumption as set out in the written report in paragraph 5.6 is payable, the Supplier may invoice the Authority in respect of the Allowable Assumptions at the end of the Service Period to which they relate. For the avoidance of doubt, the Authority shall not be liable to pay Allowable Assumptions in respect of each individual Transferring Former Supplier Employee which exceed the relevant Discrete Redundancy Cap (irrespective of whether payments made are in respect of redundancy or in respect of costs associated with the ongoing employment of the Transferring Former Supplier Employees which are greater than Baseline Supplier Personnel Costs).

5.8 Where the Parties do not agree that the proportion of an Allowable Assumption as set out in the written report in paragraph 5.6 is payable, the Parties shall seek to resolve the matter using the Dispute Resolution Procedure.

6 RISK REGISTER

The Parties shall review the Risk Register set out in Annex 4 from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

7 CHARGING MODEL

7.1 The Supplier shall comply with its obligations with respect to Financial Management set out in Paragraph 1 of Schedule 7.5 (*Financial Reports and Audit Rights*).

7.2 The Supplier shall on written demand indemnify the Authority, and keep the Authority indemnified, against all Losses incurred by, awarded against or agreed to be paid by the Authority arising from a breach by the Supplier of its Financial Management obligations set out in Paragraph 1 of Schedule 7.5 (*Financial Reports and Audit Rights*)] including without limitation any Losses which may arise as a consequence of any erroneous payments made by the Authority following instructions received by the Supplier.

8 INCENTIVE PAYMENT

8.1 The Supplier acknowledges and agrees that:

(a) ensuring that the provision of the Interim Services on or before the Interim Service Commencement Date is of critical importance to the Authority; and

(b) ensuring the provision of all of the Services by the Operational Services Commencement Date is of critical importance to the Authority.

8.2 To incentivise timely delivery of the Services, the Authority shall pay two additional amounts as follows (each an **"Incentive Payment"**):

(a) in respect of Interim Services:

(i) where the Interim Services are provided on or before the Interim Services Operational Date, the Authority shall pay to the Supplier an Incentive Payment equivalent to seven (7) per cent of the sum referred to as the "Total Transition Resource Charges" under Service ID 2.1as set out in the Financial Model; or

(ii) where the Interim Services are provided after but not later than one (1) week following the Interim Services Operational Date, the Authority shall pay to the Supplier an Incentive Payment equivalent to five (5) per cent of the sum referred to as the "Total Transition Resource Charges"under Service ID 2.1 as set out in the Financial Model; or

(iii) where the Interim Services are provided after the time period set out in paragraph 8.2(a)(ii) above but not later than two (2) weeks following the Interim Services Operational Date, the Authority shall pay to the Supplier an Incentive Payment equivalent to two (2) per cent of the sum referred to as the "Total Transition Resource Charges" under Service ID 2.1 as set out in the Financial Model;

and

(b) in respect of Services other than the Interim Services, where the Services are provided on or before the Operational Services Commencement Date the Authority shall pay to the Supplier an Incentive Payment equivalent to three per cent of the sum referred to as the ""Total Transition Resource Charges" under Service ID 2.1 as set out in the Financial Model.

8.3 The Supplier acknowledges and agrees that the Incentive Payments reflect the benefit to the Authority of a timely implementation of the Interim Services and the Services. However, the Interim Payments shall only be due in the circumstances set out in paragraph 8.2 above and shall not be payable where such circumstances have not been met, irrespective of the reason as to why such circumstances have not been met (including an act or omission of the Authority).

9. INDEXATION

9.1 Any amounts or sums in this Agreement which are expressed to be "subject to Indexation" shall be adjusted in accordance with the provisions of this Paragraph 9 to reflect the effects of inflation.

9.2 Where Indexation applies, the relevant adjustment shall be:

(a) applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an "adjustment date"); and

(b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the twelve (12) months ended on the 31 January immediately preceding the relevant adjustment date.

9.3 Except as set out in this Paragraph 9, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

PART D | Excessive Supplier Profit Margin

1 LIMIT ON SUPPLIER PROFIT MARGIN

1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.

1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 1 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) shall apply to the approval of the Annual Contract Report.

2 ADJUSTMENT TO THE CHARGES IN THE EVENT OF EXCESS SUPPLIER PROFIT

2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 1 of Part B of Schedule 7.5 (*Financial Reports and Audit Rights*)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:

(a) the Supplier shall, within five (5) Working Days of delivery to the Authority of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;

(b) the Authority (acting reasonably) may agree or reject the proposed adjustments; and

(c) if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within ten (10) Working Days of receiving those reasons.

2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

PART E | Invoicing and Payment Terms

1 SUPPLIER INVOICES

1.1. The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.

1.2. If the Supplier proposes to submit for payment an invoice that does not comply with the European Standard the Supplier shall comply with the requirements of the Authority's e-invoicing system. In the alternative the Supplier shall:

(a) prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 1.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and

(b) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (a) is not approved by the Authority.

1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's chosen electronic transaction system and/or that it contains the following information:

(a) the date of the invoice;

(b) a unique invoice number;

(c) the Service Period or other period(s) to which the relevant Charge(s) relate;

(d) the correct reference for this Agreement;

(e) the reference number of the purchase order to which it relates;

(f) the dates between which the Services that are the subject of each of the Charges detailed on the invoice were performed;

(g) a description of the Services;

(h) the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials etc);

(i) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;

(j) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the

Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;

(k) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;

(l) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);

(m) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;

(n) 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

(o) where the Services have been structured into separate Service lines, the information at (a) to (n) of this paragraph 1.3 shall be broken down in each invoice per Service line.

1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within five (5) Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.

1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.

1.6 The Supplier shall submit all invoices and Supporting Documentation through the Authority's chosen electronic transaction system with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

1.8 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Authority's requirements set out in this Part E, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

1.9 If the Authority fails to consider and verify an invoice in accordance with Paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2.3 (*Payment in 30 days*) after a reasonable time has passed.

2 PAYMENT TERMS

2.3 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.

2.4 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

ANNEX 1 | Pricing Mechanism

1 TABLE 1: SUPPLIER PERSONNEL RATE CARD FOR CALCULATION OF TIME AND MATERIALS CHARGES

The Supplier rates - are based on the Skills Framework for the Information Age (SFIA), and are set out in the Financial Model.

2 TABLE 2: MAXIMUM TIME AND MATERIALS CHARGES

The Supplier's time and materials Charges in relation to Integration are set out in the Financial Model.:

The following table is not used:

Charge Number	**Maximum Time and Materials Charges (the cap) (£)**
Integration and Support	
Not used	

3 TABLE 3: DAY COST FOR CALCULATION OF GUARANTEED MAXIMUM PRICE WITH TARGET COST CHARGES

Per Financial Model

4 Table 4: GUARANTEED MAXIMUM PRICE WITH Target COSTS CHARGES

Per Financial Model

5 Table 5: FIXED PRICES

The Supplier's fixed Charges in relation to Integration are set out in the Financial Model

TABLE 6: FIRM PRICES

The Supplier's firm Charges in relation to Transition and Implementation are set out in the Financial Model

6 TABLE 7: VOLUME CHARGES

The Supplier's volume charges will be calculated by reference to the Financial Model, by multiplying the prevailing rates for the period by the applicable total variable units.

ANNEX 2 | Charging mechanism and adjustments.

1 TABLE 1: MILESTONE PAYMENTS AND DELAY PAYMENTS

This table is not used

Charge Number	**Pricing Mechanism (FIX / FIRM / GMPTC / T&M)**	**CPP Milestone Charge Number**	**Delay Payments (if Key Milestone) (£ per day)**		
			<3 months' notice	**3-6 months' notice**	**>6 months' notice**
Not used					

2 TABLE 2: SERVICE CHARGES

Charge Number	**Pricing Mechanism (VOL / FIX / T&M)**	**Service Charge Trigger Event**	**Service Charge Expiration Trigger Event**

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event

**Service charges redacted*

3 TABLE 3: OPTIONAL SERVICES MILESTONE PAYMENTS

The following table is not used

Charge Number	Pricing Mechanism (FIX / FIRM / GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)
Not used			

4 TABLE 4: OPTIONAL SERVICES SERVICE CHARGES

The following table is not used

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
Not used			

ANNEX 3 | Pro-forma Certificate of Costs

I **[*name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Authority*]** of Capgemini UK PLC certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the Contact Engagement Programme – Telephony Services (Lot 1 – Core Telephony, Carrier Services & Systems Integration) (**the** "**Agreement**") in relation to the following [Milestone/Milestone Group]:

[***Insert details of Milestone/Milestone Group***]

1 has been reasonably and properly incurred in accordance with Capgemini UK PLC's books, accounts, other documents and records;

2 is accurate and not misleading in all key respects; and

3 is in conformity with the Agreement and with all generally accepted accounting principles within the United Kingdom.

Signed [***Director of Finance or equivalent***]

Capgemini UK PLC

ANNEX 4 | Risk Register

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12
Risk Number	Risk Name	Description of risk	Timing	Likelihood	Impact (£)	Impact (description)	Mitigation (description)	Cost of mitigation	Post-mitigation impact (£)	Forecast Contingency Costs	Owner

ANNEX 5 | Allowable Assumptions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Ref	Description of proposed Allowable Assumption	Impact on the Transition Plan or Project Plan if the Allowable Assumption is not accurate	Cost Impact (description of the cost impact)	Basis of Calculation of Cost Impact	Maximum Charge Impact (maximum value if the Allowable Assumption is not accurate above which Authority is not liable)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)
TUPE and/or redundancy costs in relation to Transferring Former Supplier Employees	The Supplier assumes that there are no Transferring Former Supplier Employees who will transfer to the Supplier under TUPE on or around the Service	None	If there are Transferring Former Supplier Employees who transfer to the Supplier under TUPE, the Supplier may incur costs relating to the ongoing employment of the Transferring Former Supplier Employees if the costs associated with the	Actual redundancy costs incurred by the Supplier relating to redundancy payments in relation to Transferring Former Supplier Employees or actual increased costs of using Transferring	In respect of each individual Transferring Former Supplier Employee who transfers to the Supplier under TUPE, the relevant cap shall be the	Through discussion with the Former Supplier the Supplier will establish which, if any, Former Supplier Employees will transfer to the Supplier under TUPE and shall establish all associated employment	Actual ongoing employment or redundancy costs incurred in relation to Transferring Former Supplier Employees. In the event such actual cost is less than the stated maximum impact in Column 6 the Authority will incur only such actual cost. In the event the actual	Until such time as the cost has been verified.	Service Commencement Date +6 months

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Ref	Description of proposed Allowable Assumption	Impact on the Transition Plan or Project Plan if the Allowable Assumption is not accurate	Cost Impact (description of the cost impact)	Basis of Calculation of Cost Impact	Maximum Charge Impact (maximum value if the Allowable Assumption is not accurate above which Authority is not liable)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)
	Commencement Date.		ongoing employment of the Transferring Former Supplier Employees are greater than Baseline Supplier Personnel Costs. Alternatively, the Supplier may also incur redundancy costs in relation to Transferring Former Supplier Employees who transfer to the Supplier under TUPE	Former Supplier Employees compared to the Baseline Supplier Personnel Costs. Note that only costs arising as a result of payments made pursuant to contractual terms of employment that have transferred	Discrete Redundancy Cap (irrespective of whether payments made are in respect of redundancy or in respect of costs associated with the ongoing employment of the	and redundancy costs in relation to such employees.	costs are higher the than the state maximum impact in column 6, Authority will incur charges up to (but no more than) such stated maximum value.		

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10
Ref	Description of proposed Allowable Assumption	Impact on the Transition Plan or Project Plan if the Allowable Assumption is not accurate	Cost Impact (description of the cost impact)	Basis of Calculation of Cost Impact	Maximum Charge Impact (maximum value if the Allowable Assumption is not accurate above which Authority is not liable)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)
				with the Transferring Former Supplier Employee to the Supplier under TUPE shall be considered payable as part of this Allowable Assumption.	Transferring Former Supplier Employees which are greater than Baseline Supplier Personnel Costs)				

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
VERSION 2.1 (NOVEMBER 2019)

SCHEDULE 7.2 | Payments on Termination

Schedule 7.2 | Payments on Termination

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Applicable Supplier Personnel" any Supplier Personnel who:

(i) at the Termination Date:

a) are employees of the Supplier;

b) are Dedicated Supplier Personnel;

c) 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

(ii) are dismissed or given notice of dismissal by the Supplier within:

a) forty (40) Working Days of the Termination Date; or

b) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and

c) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and

d) the Supplier can demonstrate to the satisfaction of the Authority:

i) are surplus to the Supplier's requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;

ii) are genuinely being dismissed for reasons of redundancy; and

iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled

to reimbursement under this provision in respect of such employees;

"Breakage Costs Payment"	an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;
"Contract Breakage Costs"	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
"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;
"Profit Already Paid"	the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
"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 his or her transfer to the Supplier under the Employment Regulations;

"Request for Estimate"	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment that would be payable if the Authority exercised its right under Clause 34.1(a) (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date;
"Termination Estimate"	has the meaning given in Paragraph 10.2;
"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 4.4 (*Third Party Contracts*);
"Total Costs Incurred"	the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;
"Unrecovered Costs"	the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model;
"Unrecovered Payment"	an amount equal to the lower of:

(a) the sum of the Unrecovered Costs and the Unrecovered Profit; and

(b) the amount specified in Paragraph 4; and

"Unrecovered Profit" (Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid + Milestone Retentions remaining unpaid at the Termination Date.

2. TERMINATION PAYMENT OVERVIEW

The Termination Payment payable pursuant to Clause 35.3 (Payments by the Authority) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3. BREAKAGE COSTS PAYMENT

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

(a) would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;

(b) are unavoidable, proven, reasonable, and not capable of recovery;

(c) are incurred under arrangements or agreements that are directly associated with this Agreement;

(d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and

(e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

(a) the relevant limit set out in Annex 1; and

(b) one hundred and twenty per cent (120%) of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, 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 Sterling (£30,000) per relevant member of the Supplier Personnel.

Contract Breakage Costs

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third-Party Contracts or Sub-contracts which:

(a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and

(b) the Supplier can demonstrate:

(i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and

(ii) have been entered into by it in the ordinary course of business.

3.6 The Supplier shall seek to negotiate termination of any Third-Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:

(a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or

(b) Assets not yet installed at the Termination Date.

4. UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

(a) the relevant limit set out in Annex 1;

(b) one hundred and twenty per cent (120%) of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and

(c) the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

5. MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

(a) the appropriation of Assets, employees and resources for other purposes;

(b) in relation to Supplier Personnel, seeking to redeploy Supplier Personnel within the Supplier organisation;

(c) 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

(d) in relation Third Party Contracts and Sub-contract 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.

5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. 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 8.4 (*Dispute Resolution Procedure*).

6. FULL AND FINAL SETTLEMENT

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 34.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 34.6(a) (*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.

7. INVOICING FOR THE PAYMENTS ON TERMINATION

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 7.1 (*Charges and Invoicing*).

8. SET OFF

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.

9. NO DOUBLE RECOVERY

9.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

9.2 The value of the Termination Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.

9.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

10. ESTIMATE OF TERMINATION PAYMENT

10.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than two (2) Requests for Estimate may be issued in any six (6) month period.

10.2 The Supplier shall within twenty (20) Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the "**Termination Estimate**"). The Termination Estimate shall:

(a) be based on the relevant amounts set out in the Financial Model;

(b) include:

(i) details of the mechanism by which the Termination Payment is calculated;

(ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and

(iii) such information as the Authority may reasonably require; and

(c) state the period for which that Termination Estimate remains valid, which shall be not less than twenty (20) Working Days.

10.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

10.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the

10.5 Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

ANNEX 1 | Maximum Payments on Termination

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment and Breakage Costs Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

Termination Date	Maximum combined Unrecovered Costs and/or Breakage Costs Payment
Anytime in the first Contract Year	100% of the anticipated Year 1 contract value
Anytime in the second Contract Year	100% of the anticipated Year 2 contract value
Anytime in the third Contract Year	100% of the anticipated Year 3 contract value
Anytime in the fourth Contract Year	100% of the anticipated Year 4 contract value

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 7.3 | Value for Money

Schedule 7.3 | Value for Money

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Benchmarked Service"	a Service that the Authority elects to include in a Benchmark Review under Paragraph 1.4;
"Benchmarker"	the independent third party appointed under Paragraph 2.1;
"Benchmark Report"	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 4;
"Benchmark Review"	a review of one or more of the Services carried out in accordance with Paragraph 3 to determine whether those Services represent Good Value;
"Comparable Service"	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance) and performed within the UK or Europe;
"Comparison Group"	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 3.8 which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be (in the Benchmarker's professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;

"Equivalent Services Data"	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 3.8(a) and 3.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than thirty six (36) months prior to the date of the appointment of the Benchmarker;
"Good Value"	in relation to a Benchmarked Service, that: (a) having taken into account the Performance Indicators and Target Performance Levels, the value for money of the Charges attributable to that Benchmarked Service is at least as good as the value for money of the Upper Quartile; and (b) any Performance Indicators and Target Performance Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and
"Upper Quartile"	the top twenty five per cent (25%) of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

PART A | BENCHMARKING

1 FREQUENCY, PURPOSE AND SCOPE OF BENCHMARK REVIEW

1.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.

1.2 The Authority shall not be entitled to carry out a Benchmark Review of any Services during the twelve (12) month period from the Effective Date, nor (subject always to Paragraph 1.3) at intervals of less than twelve (12) months after the completion of any previous Benchmark Review relating to the same Services.

1.3 The Authority shall be entitled to initiate a Benchmark Review in determining whether to extend the Term of this Agreement in accordance with Clauses 3.2 to 3.5 (inclusive) of this Agreement.

1.4 The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under Paragraph 1.1.

2 APPOINTMENT OF BENCHMARKER

2.1 The Authority shall appoint as the Benchmarker to carry out the Benchmark Review such organisation as the Authority, acting reasonably, deems appropriate. The Authority shall confirm the identity of the Benchmarker by written notice to the Supplier. If the Supplier, acting reasonably, disagrees with the identity of the Benchmarker that the Authority has selected, it shall notify the Authority in writing no later than five (5) days following the date of the Authority's written notification of the identity of the Benchmarker, giving reasons for its objection and proposing one or more alternatives. The Authority shall consider the Supplier's objection (and shall act reasonably in doing so) and shall seek to reach an agreement with the Supplier as to an alternative benchmarker, however the final decision as to the Benchmarker to be appointed shall rest with the Authority.

2.2 The Authority shall, at the written request of the Supplier, require the Benchmarker to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in the Annex to this Schedule.

2.3 The costs and expenses of the Benchmarker and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarker shall not be compensated on a contingency fee or incentive basis.

2.4 The Authority shall be entitled to pay the Benchmarker’s costs and expenses in full and to recover the Supplier’s share from the Supplier.

3 BENCHMARK REVIEW

3.1 The Authority shall require the Benchmarker to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within ten (10) Working Days after the date of the appointment of the Benchmarker, or such longer period as the Benchmarker shall reasonably request in all the circumstances. The plan must include:

(a) a proposed timetable for the Benchmark Review;

(b) a description of the information that the Benchmarker requires each Party to provide;

(c) a description of the benchmarking methodology to be used;

(d) a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 1.1;

(e) an estimate of the resources required from each Party to underpin the delivery of the plan;

(f) a description of how the Benchmarker will scope and identify the Comparison Group;

(g) details of any entities which the Benchmarker proposes to include within the Comparison Group; and

(h) if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 1.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.

3.2 The Parties acknowledge and agree that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment, but will be requested to consider the following:

(a) Information from other service providers to the Authority;

(b) Survey information;

(c) Market intelligence;

(d) The Benchmarker's own data and experience;

(e) Relevant published information;

(f) Information from consultancies and/or other vendors or purchasers of Comparable Services; and

(g) Information from "in-house" providers to the Authority to the extent that the Benchmarker considers that they are valid comparators.

3.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within ten (10) Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 3.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 3.1 and this Paragraph 3.3 shall apply to any amended draft plan.

3.4 Failure by a Party to give notice under Paragraph 3.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within thirty (30) Working Days of its first being sent to them pursuant to Paragraph 3.1 then the Benchmarker shall prescribe the plan.

3.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier causes any delay or fails to provide any information requested from it by the Benchmarker whether described in the plan or reasonably requested by the Benchmarker, such failure or delay shall constitute a material Default for the purposes of Clause 27.1(c) (*Rectification Plan Process*).

3.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.

3.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.

3.8 Once it has received the information it requires, the Benchmarker shall:

(a) finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;

(b) derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 3.9 and from an analysis of the Comparable Services;

(c) derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;

(d) derive the median service levels relating to the Comparable Services using the Equivalent Services Data;

(e) compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target Performance Levels) to the value for money of the Upper Quartile;

(f) compare the Performance Indicators and Target Performance Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and

(g) determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.

3.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:

(a) the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);

(b) any front-end investment and development costs of the Supplier;

(c) the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;

(d) the extent of the Supplier's management and contract governance responsibilities;

(e) any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

4 BENCHMARK REPORT

4.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 3, setting out its findings. The Benchmark Report shall:

(a) include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;

(b) include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;

(c) if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and

(d) illustrate the method used for any normalisation of the Equivalent Services Data

4.2 The Benchmarker shall act as an expert and not as an arbitrator.

4.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraph 4.5) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than three (3) months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.

4.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.

4.5 The Supplier shall only be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.

4.6 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 4.5, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Agreement and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.

4.7 On conclusion of the Expert Determination:

(a) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 4.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

(b) if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:

(i) the Supplier shall immediately implement the relevant changes;

(ii) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 4.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

(iii) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes only of formalising and documenting the relevant change or amendment for the purposes of this Agreement (it being acknowledged and agreed that the decision as to whether and what changes are to be made has already been finalised by the Expert).

4.8 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 4.3 (unless the provisions of Paragraph 4.6 apply) or in accordance with Paragraph 4.7 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

PART B | SAVINGS INITIATIVES

1 SAVINGS INITIATIVES

1.1 The Parties agree that it is their intention to operate a gain share mechanism under this Agreement (**"Gain Share Mechanism"**).

1.2 The Supplier shall no less than three times in each twelve-month period provide a detailed proposal to identify and report to the Authority (**"Gainshare Report"**) all efficiency gain proposals that might be applied to the Services to reduce the Charges payable under this Agreement and/or achieve savings to the Authority elsewhere.

1.3 The Supplier shall include within the Gainshare Report:

(a) details of how the savings are calculated and the time period to which it relates. All savings set out in the Gainshare Report must be based in fact (and net of any costs incurred by the Authority) and incorporate a baseline measure, the costs necessary for each Party to achieve the savings (if any), budget forecast and measures to actualise the savings. The savings identified in the Gainshare Report shall be proven and auditable savings and not based on estimated or deemed savings; and

(b) an equitable and reasonable proposal as to how the savings to be achieved should be shared between the Authority and the Supplier.

1.4 Within four (4) weeks of receipt of the Gainshare Report, the Authority shall be entitled to accept or reject a proposal contained within a Gainshare Report by giving written notice to the Supplier.

1.5 The proposals contained within a Gainshare Report shall be implemented through the Change Control Procedure.

1.6 Unless otherwise agreed between the Parties, the savings achieved through the proposals contained within a Gainshare Report and implemented through the Change Control Procedure shall:

(a) be apportioned between the Parties in accordance with the proposal suggested by the Supplier in accordance with paragraph 1.3(b) above.

ANNEX | Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on **[*date*]**
BETWEEN:

(1) **[insert name] of [insert address]** (**the "Supplier"**); and

(2) **[*insert name*]** of **[*insert address*]** (the **"Benchmarker"** and together with the Supplier, the **"Parties"**).

WHEREAS:

(A) **[*insert name of Authority*]** (the **"Authority"**) and the Supplier are party to a contract dated **[*insert date*]** (the **"Contract"**) for the provision by the Supplier of **[*insert brief description of services*]** to the Authority.

(B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the "**Permitted Purpose**").

IT IS AGREED as follows:

1 Interpretation

1.1 In this agreement, unless the context otherwise requires:

"Confidential Information" means:

a) Information, including all personal data within the meaning of the Data Protection Act 1998, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:

(i) the Supplier; or

(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

b) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Benchmarker's attention or into the Benchmarker's possession in connection with the Permitted Purpose;

c) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

d) Information derived from any of the above,

but not including any Information that:

e) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;

f) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;

g) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or

h) was independently developed without access to the Confidential Information;

"Information"	means 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); and
"Permitted Purpose"	has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this agreement:

(a) a reference to any gender includes a reference to other genders;

(b) the singular includes the plural and vice versa;

(c) the words "include" and cognate expressions shall be construed as if they were immediately followed by the words "without limitation";

(d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this agreement) and any prior or subsequent subordinate legislation made under it;

(e) headings are included for ease of reference only and shall not affect the interpretation or construction of this agreement; and

(f) references to Clauses are to clauses of this agreement.

2 Confidentiality Obligations

2.1 In consideration of the Supplier providing Confidential Information to the Benchmarker, the Benchmarker shall:

(a) treat all Confidential Information as secret and confidential;

(b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

(c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or, if relevant, other owner or except as expressly set out in this agreement;

(d) not transfer any of the Confidential Information outside the United Kingdom;

(e) not use or exploit any of the Confidential Information for any purpose whatsoever other than the Permitted Purpose;

(f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

(g) once the Permitted Purpose has been fulfilled:

(i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

(ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Benchmarker) from any computer, word processor, voicemail system or any other device; and

(iii) make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Benchmarker may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

(a) reasonably need to receive the Confidential Information in connection with the Permitted Purpose; and

(b) have been informed by the Benchmarker of the confidential nature of the Confidential Information; and

(c) have agreed to terms similar to those in this agreement.

3.2 The Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to in paragraph 4.6 of Schedule 7.3 (*Value for Money*) to the Contract.

3.3 The Benchmarker shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Benchmarker.

3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:

(a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

(b) ask the court or other public body to treat the Confidential Information as confidential.

4 General

4.1 The Benchmarker acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.

4.2 This agreement does not include, expressly or by implication, any representations, warranties or other obligations:

(a) to grant the Benchmarker any licence or rights other than as may be expressly stated in this agreement;

(b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or

(c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of this agreement.

4.3 The rights, powers and remedies provided in this agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this agreement. Accordingly, the Benchmarker acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.

4.5 The maximum liability of the Benchmarker to the Supplier for any breach of this agreement shall be limited to ten million pounds Sterling (£10,000,000).

4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this agreement.

4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this agreement.

4.8 This agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5 Notices

5.1 Any notice to be given under this agreement (each a "**Notice**") shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[*Address*]
Attention: **[*Contact name and/or position, e.g. "The Finance Director"*]**

(b) if to be given to the Benchmarker shall be sent to:

[*Name of Organisation*]
[*Address*]
Attention: **[ ]**

6 Governing law

6.1 This agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [*name of Supplier*]

Signature: Date:

_____

Name: Position:

For and on behalf of [*name of Benchmarker*]

Signature: Date:

_____

Name: Position:

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
VERSION 2.1 (NOVEMBER 2019)

SCHEDULE 7.4 | Financial Distress

Schedule 7.4 | Financial Distress

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Applicable Financial Indicators"	means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule;
"Board"	means the Supplier's board of directors;
"Board Confirmation"	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
"Credit Rating Level"	a credit rating level as specified in Annex 1 of this Schedule;
"Credit Rating Threshold"	the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 3 of this Schedule;
"FDE Group"	means the [Supplier, Key Sub-contractors, and the [Monitored Suppliers]];
"Financial Indicators"	in respect of the Supplier and Key Sub-contractors, means each of the financial indicators set out at paragraph 5.1 of this Schedule; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
"Financial Target Thresholds"	means the target thresholds for each of the Financial Indicators set out at paragraph 5.1 of this Schedule;
"Monitored Suppliers"	means those entities specified at paragraph 5.2 of this Schedule;
"Rating Agencies"	the rating agencies listed in Annex 1 of this Schedule.

2 WARRANTIES AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:

(a) the long-term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 3 of this Schedule; and

(b) the financial position or, as appropriate, the financial performance of each of the Supplier and Key Sub-contractors satisfies the Financial Target Thresholds.

2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly 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 (and in any event within 5 Working Days of the occurrence of the downgrade).

2.3 The Supplier shall:

(a) regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;

(b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year promptly after the publication of the Supplier's audited financial statements; and

(c) 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 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).

2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a), and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:

(a) any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or

(b) a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 3 of this Schedule ceases to hold a Credit Rating for that entity.

2.5 Each report submitted by the Supplier pursuant to paragraph 2.3(b) shall:

(a) be a single report with separate sections for each of the FDE Group entities;

(b) contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;

(c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;

(d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an Accounting Reference Date, on unaudited management accounts prepared in accordance with their normal timetable; and

(e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3 FINANCIAL DISTRESS EVENTS

3.1 The following shall be Financial Distress Events:

(a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;

(b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;

(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;

(d) an FDE Group entity committing a material breach of covenant to its lenders;

(e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;

(f) any of the following:

(i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;

(ii) Not used

(iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;

(iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or

(v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement; and

(g) any [one] of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4 CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a 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 4.3 to 4.6.

4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:

(a) rectify such late or non-payment; or

(b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

4.3 The Supplier shall (and shall procure that any Monitored Supplier and/or any relevant Key Sub-contractor shall):

(a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and

(b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a)) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:

(i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and

(ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier, any Monitored Supplier and/or Key Sub-contractors as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation 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 Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5.

4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.

4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:

(a) on a regular basis (which shall not be less than fortnightly):

(i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and

(ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

(b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and

(c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.

4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:

(a) obtaining in advance written authority from Key Sub-contractors and/or Monitored Suppliers authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;

(b) agreeing in advance with the Authority, Key Sub-contractors and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;

(c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and

(d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymization and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5 FINANCIAL INDICATORS

5.1 Subject to the calculation methodology set out at Annex 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 follows:

Financial Indicator	Calculation [1]	Financial Target Threshold:	Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 2.3(b)]
Operating Margin	*Operating Margin = Operating Profit / Revenue*	<5%	Tested and reported yearly in arrears promptly after the publication of the Supplier's audited financial statements based upon figures for the 12 months ending on the relevant Accounting Reference Date
Net Debt to EBITDA Ratio	*Net Debt to EBITDA ratio = Net Debt / EBITDA*	>3.5x	Tested and reported yearly in arrears promptly after the publication of the Supplier's audited financial statements based upon EBITDA for the 12 months ending on, and Net Debt at, the relevant Accounting Reference Date

Key: [1] – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

5.2 Monitored Suppliers

Monitored Supplier	Applicable Financial Indicators (these are the Financial Indicators from the table in Paragraph 5.1 which are to apply to the Monitored Suppliers)
n/a	

6 TERMINATION RIGHTS

If:

(a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c);

(b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or

(c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c),

(d) then the Parties shall hold an Escalation Meeting in accordance with Clause 29 (Escalation Process), and if after such escalation the Authority (in good faith) has reasonable grounds to believe such failure could have a material adverse impact on the Supplier's ability to provide the Services during the Term, then the Authority shall be entitled to terminate this Agreement under Clause 34.1(b) (Termination by the Authority).

7 PRIMACY OF CREDIT RATINGS

7.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(g), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 3 of this Schedule, then:

(a) the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and

(b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3(b)(ii).

8 BOARD CONFIRMATION

8.1 If this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within 120 days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 5 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:

(a) that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or

(b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.

8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.

8.3 In respect of the first Board Confirmation to be provided under this Agreement, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.

8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

ANNEX 1: Rating Agencies AND THEIR STANDARD RATING SYSTEM

1 Dun & Bradstreet

1.1 The Credit Rating and Credit Rating Threshold will be based on the composite Worth/ Credit Rating indicators:

Financial Strength Indicator	Tangible Net Worth in £		Composite Credit Appraisal			
	From	To	High	Good	Fair	Limited
5A	35,000,000	And above	1	2	3	4
4A	15,000,000	34,999,999	1	2	3	4
3A	7,000,000	14,999,999	1	2	3	4
2A	1,500,000	6,999,999	1	2	3	4
1A	700,000	1,499,999	1	2	3	4
A	350,000	699,999	1	2	3	4
B	200,000	349,999	1	2	3	4
C	100,000	199,999	1	2	3	4
D	70,000	99,999	1	2	3	4
E	35,000	69,999	1	2	3	4
F	20,000	34,999	1	2	3	4
G	8,000	19,999	1	2	3	4
H	-	7,999	1	2	3	4
N	Negative net worth					
O	Net worth undetermined (accounts unavailable or older than 2 years)					

Risk Indicator	Probability of Failure	Guide to Interpretation
1	Minimum Risk	Proceed with transaction - offer extended terms if required
2	Lower than average risk	Proceed with transaction
3	Higher than average risk	Proceed with transaction but monitor closely
4	High risk	Take suitable assurances before extending credit
5	Undetermined	Insufficient Information to assign a risk indicator

ANNEX 2: Not Used

ANNEX 3: Credit Ratings And credit rating thresholds

Entity	**Credit Rating (long term)** (Dun & Bradstreet rating) *(insert credit rating issued for the entity at the Effective Date)*	**Credit Rating Threshold**

**entities' credit ratings redacted*

ANNEX 4: Calculation Methodology for Financial Indicators

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

1. ***Terminology***: The terms referred to in this Annex are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
2. ***Groups***: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
3. ***Foreign currency conversion***: Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
4. ***Treatment of non-underlying items***: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
1 Operating Margin	The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements. Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates. Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.

2 <u>Net Debt to EBITDA Ratio</u>	*"**Net Debt**" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable - Cash and cash equivalents* *"**EBITDA**" = Operating profit + Depreciation charge + Amortisation charge* The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements. The calculation of EBITDA shall exclude exceptional items. • <u>*Net Debt*</u>: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing. Cash and cash equivalents should include short-term financial investments shown in current assets. Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met. • <u>*EBITDA*</u>: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. *The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).]*

ANNEX 5: Board Confirmation

Supplier Name:
Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 8 of Schedule 7.4 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.
The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or

b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair ……
Signed ……
Date ……

Director ……
Signed ……
Date ……

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 7.5 | Financial Reports and Audit Rights

Schedule 7.5 | Financial Reports and Audit Rights

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Annual Contract Report"	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
"Audit Agents"	(a) the Authority's internal and external auditors; (b) the Authority's statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
"Contract Amendment Report"	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
"Final Reconciliation Report";	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
"Financial Model"	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;
"Financial Reports"	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
"Financial Representative"	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 Sterling (£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"	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
"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; and (iv) Reimbursable Expenses; (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.

PART A | Financial Transparency Objectives and Open Book Data

1 FINANCIAL TRANSPARENCY OBJECTIVES

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:

Understanding the Charges

(a) 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;

(b) 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;

(c) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7.1 (*Charges and Invoicing*));

Agreeing the impact of Change

(d) 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;

(e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

(f) for the Parties to challenge each other with ideas for efficiency and improvements; and

(g) 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

(a) 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 are calculated.

(b) During the Term, and for a period of seven (7) years following the end of the Term, the Supplier shall:

(i) maintain and retain the Open Book Data; and

(ii) 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 the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement 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 (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:

(a) An initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;

(b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;

(c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;

(d) details of any other options which could be put in place to remove the designation of the Agreement 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 Programme Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.

3.3 The Programme Board shall meet within 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 Relevant Supplier; representatives from any Monitored Suppliers; 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 Programme Board on an information only basis and the Authority and Programme 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 Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B | Financial Reports AND FINANCIAL MODEL

1 FINANCIAL REPORTS

1.1 The Supplier shall provide

(a) the Contract Inception Report at least five days before the Effective Date; and

(b) during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
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, 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 Agreement. 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:

(a) be completed by the Supplier using reasonable skill and care;

(b) incorporate and use the same defined terms as are used in this Agreement;

(c) quote all monetary values in pounds sterling;

(d) quote all Costs as exclusive of any VAT; and

(e) 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:

(a) being accurate and not misleading;

(b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;

(c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and

(d) compliant with the requirements of Paragraph 1.6.

1.6 The Supplier shall:

(a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;

(b) 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;

(c) the Final Reconciliation Report is a true and fair reflection of the Costs; and

(d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

1.7 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:

(a) the Costs incurred (or those forecast to be incurred) by the Supplier; and/or

(b) 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 1.7 shall not have the effect of amending any provisions of this Agreement.

1.8 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.

1.9 Notwithstanding Paragraph 1.8, following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

(a) 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;

(b) 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

(c) the Authority shall either within ten (10) Working Days of the meeting referred to in Paragraph 1.9(a) notify the Supplier that:

(i) 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 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

(ii) the Authority has approved the relevant Financial Report.

1.10 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 1.9(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Report for the purposes of this Agreement, 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.

1.11 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.4 (*Dispute Resolution Procedure*).

2 FINANCIAL MODEL

2.1 Unless otherwise agreed in writing between the parties, any updates to the Financial Model shall reflect, be consistent with and be made only in accordance with the provisions of this Agreement and shall in all cases be subject to the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed).

2.2 The initial Financial Model submitted by the Supplier and approved by the Authority as at the Effective Date is attached to the Annex of this Schedule 7.5. Each iteration of the Financial Model shall be in the same layout and format as the Financial Model subject to the Authority's final approval.

2.3 All changes to the Financial Model should be auditable and implemented and documented under formal version control.

2.4 A copy of the Financial Model shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Model, the Authority's copy of the relevant Financial Model shall be authoritative.

2.5 Each iteration of the Financial Model shall:

(a) be completed by the Supplier using reasonable skill and care;

(b) incorporate and use the same defined terms as are used in this Agreement;

(c) quote all monetary values in pounds sterling; and

(d) quote all Costs as exclusive of any VAT.

2.6 The Supplier shall adhere to and apply the following principles when preparing an updated Financial Model:

(a) any amendment which is made in order to evaluate the impact of a Material Change shall relate only to such inputs, modification or other adjustment; and

(b) no amendment shall affect, in any way whatsoever, the performance of the Services, save as agreed in accordance with the Change Control Procedure.

2.7 Each Material Change iteration of the Financial Model and the prevailing version of the Financial Model in existence as at each anniversary of the Effective Date 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 iteration of the Financial Model or certification), acting with express Authority, as:

(a) being accurate and not misleading;

(b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;

(c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and

(d) compliant with the requirements of Paragraph 2.8.

2.8 The Supplier shall:

(a) prepare each iteration of the Financial Model using the same methodology as that used for the initial financial model agreed by the Supplier and the Authority in writing on or before the Effective Date;

(b) ensure that each iteration to the Financial Model (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier; and

(c) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

2.9 The Financial Model shall:

(a) provide sufficient detail for the Authority to have visibility of all the costs to be incurred by the Supplier and of the Charges to be paid in respect of the provision of the Services;

(b) be constructed in relation to Milestone Payments and the Service Charges on a monthly basis:

(c) provide visibility of the input costs for providing the Services throughout the Term, excluding mark-up, which shall include without limitation at least the following:

(i) labour costs broken down by each job title (for example project manager), with the number of days and daily rate shown for each job title. For work undertaken on a Project basis, labour shall also be broken down and sub-totalled by the major phases of the Project;

(ii) hardware and software costs;

(iii) depreciation policy applicable to Assets (including software and hardware);

(iv) licence costs;

(v) Sub-contractor costs;

(vi) accommodation costs (if applicable);

(vii) Overheads separately identified and their calculation explained;

(viii) pricing of risk, including a detailed explanation and quantification supported by a risk matrix;

(ix) financing costs (if applicable), showing the interest rate and calculation and including an explanation (supported by evidence) of the need to apply financing costs; and

(x) any other miscellaneous costs;

(d) provide a reasonably skilled and experienced individual with a full analysis of the Supplier's capital and operating costs and the assumptions used to develop and modify the Charges set out in Schedule 7.1 (*Charges and Invoicing*);

(e) be constructed in a format and using a software tool as specified by the Authority;

(f) not have any parts which are hidden, protected, locked or made otherwise inaccessible or obscured to review or alteration;

(g) be laid out in a clear and logical manner. The overall flow of information in the Financial Model shall flow from inputs, to calculations, to outputs, with the final output being in tables. Any formulae in the Financial Model shall not contain a mixture of inputs and calculations. Any column labelling in the Financial Model shall be consistent between worksheets;

(h) include a cash flow statement that shows the timing and relationship between the planned costs and the revenue which the Supplier expects to receive;

(i) clearly show the calculation of any financing charges associated with outstanding balances (between costs incurred and revenue received); and

(j) provide visibility of profit (and the calculation of profit) both as a value and as a percentage.

2.10 The Supplier shall, if requested by the Authority, provide (or procure the provision of) the above level of information in relation to the costs and expenses to be incurred by any of its Sub-contractors or third party suppliers.

Visibility through the Financial Reports and Financial Model

2.11 The Supplier shall, if requested by the Authority, promptly provide to the Authority details of the elements used to make up any Charges, including:

(a) the Supplier's total fixed price for the Services and/or Deliverables;

(b) the margin included in that total fixed price;

(c) a list of the agreed prices against each manpower grade in the Financial Model;

(d) a list of the costs underpinning those prices for each manpower grade in the Financial Model, being the price less the margin;

(e) a summary of the costs broken down against each Service and/or Deliverable;

(f) details of any other manpower costs, not already included in these rates, for all activities to be undertaken;

(g) explanation of any underlying assumptions regarding:

(i) overtime rates;

(ii) standard hours;

(iii) accommodation charges; and

(iv) discounts applied;

(h) a resource estimating model to support the Charges and any Changes (if applicable);

(i) a breakdown of manpower resources by the number and type of Supplier Personnel (including any Sub-contractors) required for each Deliverable and/or Service and free of any contingency. This should also apply to third party costs;

(j) the total price of Deliverables broken down by volume, unit cost and margin;

(k) any additional activities, costs and, risks that may impact the Authority and which are not already covered by the Charges;

(l) an explanation of the type and value of risk associated with the provision of Services, including the amount of money attributable to each risk;

(m) an explanation and supporting details of any financing costs applicable to the Agreement;

(n) a statement of the Supplier's anticipated cashflow for the Term;

(o) the actual Charges profile for each Service Period; and

(p) any additional information as the Authority reasonably requires.

Implementation of a Change to the Financial Model due to a Material Change

2.12 The Supplier shall, within one (1) month of a Material Change being agreed between the Supplier and the Authority, revise the Financial Model and deliver the revised Financial Model to the Authority for approval.

2.13 Following the delivery by the Supplier of each revised Financial Model:

(a) 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;

(b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the updated Financial Model and the version immediately preceding and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and

(c) the Authority shall either within ten (10) Working Days of the meeting referred to in Paragraph 2.13(a) notify the Supplier that:

(i) the Financial Model 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 Model 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 Model and/or supporting information, approve or reject such Financial Model; or

(ii) the Authority has approved the relevant Financial Model.

2.14 Following approval by the Authority of the relevant Financial Model in accordance with Paragraph 2.13(c)(ii), 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 Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding the correct version of the Financial Model, the Authority's copy of the relevant Financial Model shall be authoritative.

2.15 If the Parties are unable to reach agreement on any revisions to the Financial Model within thirty (30) Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with the 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:

(a) 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

(b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:

(i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and

(ii) 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 Agreement, including for the following purposes:

(a) to verify the integrity and content of any Financial Report;

(b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);

(c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);

(d) to verify the Certificate of Costs and/or the Open Book Data;

(e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;

(f) 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;

(g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Key Sub-contractors or their ability to perform the Services;

(h) 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;

(i) NOT USED

(j) 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;

(k) 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;

(l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;

(m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services;

(n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);

(o) to review the accuracy and completeness of the Registers;

(p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;

(q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);

(r) to review the Supplier's compliance with the Standards;

(s) to inspect the Authority Assets, and the Supplier Background 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

(t) to review the integrity, confidentiality and security of the Authority Data.

1.2 Except where:

(a) an audit is imposed on the Authority by a regulatory body;

(b) the Authority has reasonable grounds for believing that the Supplier has materially, in the Authority's reasonable view, not complied with its obligations under this Agreement; or

(c) an audit is required to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security,

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

1.3 Nothing in Paragraph 1.2 shall prevent or restrict the Authority's right to require that the Supplier provide financial Management Information at such frequency as determined by the Authority and on a free of charge basis.

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

2 CONDUCT OF AUDITS

2.1 The Authority shall during each audit comply with those security, privacy, sites, systems and facilities operating procedures of the Supplier that are notified to the Authority 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:

(a) all information (other than the Supplier's internal reports and/or information relating to the Supplier's other customers) requested by the Authority within the scope of the audit;

(b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;

(c) access to the Supplier System; and

(d) access to Supplier Personnel.

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 provide at least ten 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.

2.6 Any auditor (or similar representative) identified by the Authority in connection with the Agreement (including any Audit Agent) will not be appointed by the Authority where a conflict of interest is identified by the Parties, unless any such conflict of interest can be mitigated by entering into a reasonable confidentiality agreement with the Supplier protecting the Supplier's confidential information.

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:

(a) the resultant audit reports; and

(b) 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:

(a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;

(b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;

(c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:

(i) the amount overpaid;

(ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and

(iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

(d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

ANNEX | INITIAL FINANCIAL MODEL

Financial Model included in Schedule 8.2, Annex 4, Virtual Library

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 8.1 | Governance

Schedule 8.1 | Governance

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Board Member"	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
"Boards"	the Entry Transition Board, Operational Board, Strategic Board and Executive Board and "**Board**" shall mean any of them;
"Entry Transition Board"	the body described in Paragraph 4;
"Executive Board"	the body described in Paragraph 7
"Operational Board"	the body described in Paragraph 5;
"Project Managers"	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2; and
"Strategic Board"	the body described in Paragraph 6.

2 MANAGEMENT OF THE SERVICES

2.1 The Supplier and the Authority shall each appoint a Project Manager for the purposes of this Agreement through whom the Services shall be managed at a day-to-day level.

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

3 BOARDS

Establishment and structure of the Boards

3.1 The Boards shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.

3.2 In relation to each Board, the:

(a) Authority Board Members;

(b) Supplier Board Members;

(c) frequency that the Board shall meet (unless otherwise agreed between the Parties);

(d) location of the Board's meetings; and

(e) planned start date by which the Board shall be established,

shall be as set out in Annex 1.

3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:

(a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and

(b) that he/she is debriefed by such delegate after the Board Meeting.

3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:

(a) scheduling Board meetings;

(b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;

(c) chairing the Board meetings;

(d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;

(e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and

(f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.

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

3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

3.8 The provisions of this Schedule are without prejudice to other provisions of this Agreement which require regular meetings to take place between the Parties in connection with the delivery of the Services (including Performance Review Meetings). For the avoidance of doubt, such meetings shall also form part of the governance of this Agreement.

3.9 In addition to those meetings specified in this Schedule 8.1 (*Governance*) and in the remaining provisions of this Agreement, the Supplier shall ensure that an appropriate representative attends, on the Supplier's behalf, such other meetings which may be held with Other Suppliers and/or other third parties that the Authority may request from time to time.

4 ROLE OF THE ENTRY TRANSITION BOARD

The Entry Transition Board shall be responsible for the executive management of the Transition Plan and shall:

(a) be accountable to the Strategic Board for comprehensive oversight of the Transition Plan and for the senior management of the operational relationship between the Parties as regards the activities carried out under the Transition Plan;

(b) report to the Strategic Board on significant issues and risks arising under the Transition Plan requiring decision and resolution by the Strategic Board, including on progress against the Outline Transition Plan, Detailed Transition Plan and related Milestones;

(c) receive and review reports from the Supplier's Transition Manager and Supplier's Transition Team on matters such as issues relating to the delivery of the Detailed Transition Plan;

(d) review and report to the Strategic Board on management, co-ordination of individual projects and any integration issues arising from the Transition Plan;

(e) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the activities under the Transition Plan) in the first instance and if necessary escalate the Dispute to the Strategic Board;

(f) manage the resources required for the delivery of the Detailed Transition Plan, including the [Charges, resources, roles and responsibilities of staff];

(g) provide guidance and authorisation to the Operational Board on relevant Changes to the Outline Transition Plan and Detailed Transition Plan;

(h) carry out the Readiness Reviews with the Supplier; and

(i) agree the documentation for deposit in the documentation repository as described in Paragraph 6.5(d) of Schedule 6.1 (*Transition*).]

5 ROLE OF THE OPERATIONAL BOARD

5.1 The Operational Board shall be responsible for the executive management of the Services and shall:

(a) be accountable to the Strategic Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;

(b) receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Transition Plan or a Project Plan and possible future developments;

(c) review and report to the Strategic Board on service management, co-ordination of individual projects and any integration issues;

(d) deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;

(e) in accordance with the provisions of Paragraph 4 (*Commercial Negotiation*) of Schedule 8.4 (*Dispute Resolution Procedure*), consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Strategic Board; and

(f) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

Change management

5.2 If the Parties are unable to agree a Change in accordance with Schedule 8.3 (*Change Control Procedure*), the Operational Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Strategic Board.

5.3 Where required in accordance with paragraph 5.2, the Operational Board shall:

(a) analyse and record the impact of all Changes, specifically whether the proposed Change:

(i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;

(ii) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;

(iii) will raise any risks or issues relating to the proposed Change; and

(iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;

(b) consider all contract management activities and version control of the Agreement;

(c) provide recommendations, seek guidance and authorisation from the Strategic Board as required; and

(d) approve or reject (close) all proposed Changes.

Risk management

5.4 The Operational Board shall identify and manage risks relating to the performance of the Services.

5.5 The Operational Board shall:

(a) provide assurance to the Strategic Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Strategic Board on a monthly basis;

(b) identify the risks to be reported to the Strategic Board via the regular risk reports;

(c) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;

(d) ratify or refuse requests to close risks on the Risk Register; and

(e) identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

Technical oversight

5.6 The Operational Board shall be accountable to the Strategic Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.

5.7 The Operational Board shall:

(a) ensure compliance with the Standards;

(b) grant dispensations for variations from such compliance where appropriate;

(c) assure the coherence and consistency of the systems architecture for the Supplier Solution;

(d) monitor developments in new technology and reporting on their potential benefit to the Services;

(e) provide advice, guidance and information on technical issues; and

(f) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority.

6 ROLE OF THE STRATEGIC BOARD

6.1 The Strategic Board shall:

(a) provide senior level guidance, leadership and strategy for the overall delivery of the Services;

(b) be the point of escalation from the Operational Board and Entry Transition Board, ; and

(c) carry out the specific obligations attributed to it in Paragraph 6.2.

6.2 The Strategic Board shall:

(a) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;

(b) receive and review reports from the Operational Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;

(c) determine business strategy and provide guidance on policy matters which may impact on the implementation of the Services or on any Optional Services;

(d) authorise the commissioning and initiation of, and assess opportunities for, Optional Services;

(e) provide guidance and authorisation to the Operational Board on relevant Changes; and

(f) consider and resolve Disputes referred to it by the Operational Board and, where necessary, escalate Disputes to the Executive Board.

7 ROLE OF THE EXECUTIVE BOARD

7.1 The Executive Board shall consider and resolve Disputes escalated to it by the Strategic Board and shall provide executive level guidance, leadership and strategy for the delivery of the Services when required by the Strategic Board.

8 CONTRACT MANAGEMENT MECHANISMS

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

8.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:

(a) the identification and management of risks;

(b) the identification and management of issues; and

(c) monitoring and controlling project plans.

8.3 The Risk Register shall be updated by the Supplier and submitted for review by the Operational Board.

9 ANNUAL REVIEW

9.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.

9.2 The meetings shall be attended by the [***insert role***] of the Supplier and the ***[insert role***] of the Authority and any other persons considered by the Authority necessary for the review.

ANNEX 1 | Board Representation and Structure

Operational Board Representation and Structure

Authority Members of Operational Board	[ ] [Chairperson]
Supplier Members of Operational Board	
Start Date for Operational Board meetings	
Frequency of Operational Board meetings	[Weekly/Monthly, or at any other frequency as required by the Authority acting in its sole discretion]
Location of Operational Board meetings	

Strategic Board Representation and Structure

Authority members of Strategic Board	[ ] [Chairperson]
Supplier members of Strategic Board	
Start date for Strategic Board meetings	
Frequency of Strategic Board meetings	[Monthly/Quarterly, or at any other frequency as required by the Authority acting in its sole discretion]
Location of Strategic Board meetings	

Executive Board Representation and Structure

Authority Members of Executive Board	[ ] [Chairperson]
Supplier Members of Executive Board	
Start Date for Executive Board meetings	
Frequency of Executive Board meetings	[Biannual, or at any other frequency as required by the Authority acting in its sole discretion]
Location of Executive Board meetings	

Entry Transition Board Representation and Structure

Authority Members of Entry Transition Board	[ ] [Chairperson]
Supplier Members of Entry Transition Board	
Start Date for Entry Transition Board meetings	
Frequency of Entry Transition Board meetings	[Weekly/Monthly, or at any other frequency as required by the Authority acting in its sole discretion]
Location of Entry Transition meetings	

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 8.2 | Reports and Records

Schedule 8.2 | Reports and Records

1 TRANSPARENCY REPORTS

1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft transparency reports in accordance with Annex 1 (**"Transparency Reports"**).

1.2 If the Authority rejects any proposed Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.

1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.

1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.

1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.

2 OTHER REPORTS

2.1 The Supplier shall provide to the Authority:

(a) the reports listed in Annex 1 to this Schedule 8.2 (*Reports and Records*) at the frequencies set out in Annex 1; and

(b) any or all of the following reports at the Authority's request:

(i) delay reports;

(ii) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);

(iii) Performance Monitoring Reports;

(iv) reports which the Supplier is required to supply as part of the Management Information;

(v) annual reports on the Insurances;

(vi) security reports;

(vii) an SME report, which contains information in relation to Sub-contractors including (without limitation): the name, postal address and registration number of the relevant Sub-contractor; the commencement and expiry dates of the relevant Sub-contract; the relevant Sub-contract value and spend in the relevant quarter; and the number of apprentices employed in relation to that Sub-contract; and

(viii) Force Majeure Event reports.

2.2 Notwithstanding the provisions of paragraph 3.2, in relation to the transition reports to be produced pursuant to paragraph 6.5 of Schedule 6.1 (*Transition*), the Supplier shall maintain a shared document repository that can be accessed by both Parties for the deposit of documentation related to and produced as part of the Detailed Transition Plan and as agreed with the Authority. A document naming convention will be used to ensure version control is used for all documents.

2.3 In addition to any other Transparency Reports requirements set out in this Agreement, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information ("MI Reports") to the Authority which incorporate the data described in the MI Reporting template which is:

(a) the total contract revenue received directly on a specific contract;

(b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and

(c) the total value of sub-contracted revenues to SMEs and VCSEs.

2.4 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Authority from time to time. The Supplier shall use the initial MI Reporting Template which is set out in the Annex to this Schedule and which may be changed from time to time (including the data required and/or format) by the Authority by issuing a replacement version. The Authority shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.

2.5 The Supplier further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Authority.

3. RECORDS

3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in this Agreement including those referred to in Paragraph 1 and Annex 2 (together **"Records"**):

(a) in accordance with the requirements of the Public Records Office (PRO) and Good Industry Practice;

(b) in chronological order;

(c) in a form that is capable of audit; and

(d) at its own expense.

3.2 The Supplier agrees that it shall:

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

(b) comply with such guidance as the Authority may issue or provide in relation to the Document Repository from time to time.

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

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

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

3.5 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.

3.6 The Supplier shall, during the Term and a period of at least seven years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.

3.7 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least seven years after the expiry or termination of this Agreement.

3.8 Subject to Paragraph 3.9, following the expiry of seven years after the expiry or termination of this Agreement, the Supplier shall:

(a) securely dispose of or provide to the Authority all Records without keeping any copies; and

(b) ensure, so far as reasonably practicable, that all Records held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Supplier) from any computer, word processor, voicemail system or any other device containing such Records,

and if required to do so by the Authority, the Supplier shall provide written confirmation of compliance with this Paragraph 3.8.

3.9 The provisions of Paragraph 3.8 shall not apply to the extent that the Supplier is required to retain the Records by any applicable Law or for the purposes of any audit.

3.10 Without prejudice to the foregoing, the Supplier shall provide the Authority:

(a) as soon as they are available, and in any event within sixty (60) Working Days tafter the end of the first six (6) months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such six (6) month period; and

(b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than one hundred and thirty (130) Working Days after the end of each Accounting Reference Period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

4 Virtual Library

4.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Service Commencement Date and without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Agreement available in in accordance with the requirements outlined in this Schedule.

4.2 The Supplier shall ensure that the Virtual Library is:

(a) capable of holding and allowing access to the information described in Annex 4 of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;

(b) structured so that each document uploaded has a unique identifier which is automatically assigned;

(c) readily accessible by the Authority at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time,

(d) structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);

(e) structured and maintained in accordance with the security requirements as set out in this Agreement including those set out in Schedule 2.4 (Security Management);

(f) created and based on open standards in Schedule 2.3 (Standards); and

(g) backed up on a secure off-site system.

4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Clause 16.6 (Project Specific IPR) of this Agreement.

4.4 The Supplier shall upload complete and accurate information specified in Annex 4 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case by the date at which the Virtual Library is made available in accordance with Paragraph 4) onto Virtual Library in the format specified.

4.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address at:

Paul.mccarrick@hmrc.gov.uk

4.6 Except for notices under Clause 45.4 or items covered under Clause 45.6, where the Supplier is under an obligation to provide information to the Authority in a provision under this Agreement, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.

4.7 Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 4 shall not take precedence over any other obligation to provide information in this Agreement and the Supplier shall refer to the applicable clause for further details as to the requirement.

4.8 The Suppler shall provide each specified person (as set out in column 6 of the table at Annex 4) access to view and download the specified information in the Virtual Library in Annex 4 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 4 to this Schedule.

4.9 Where Access Permission is not listed (in column 6 of the table at Annex 4) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 4) from the Initial Upload Date.

4.10 Where Access Permission is specified as being granted to the Authority's Third Party Auditor (prior to the Authority being granted access) it shall:

(a) be entitled to access, view and download information specified in Annex 4 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under Paragraph 4.10(b) of this Schedule); and

(b) report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.

4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 4. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.

4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Agreement at the date of upload.

4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within 14 days unless already due to be updated beforehand due to an Update Requirement specified in Annex 4.

4.14 In the event of a conflict between any requirement in this Agreement (excluding Annex 4) for the Supplier to provide information to the Authority and the requirements set out in Annex 4 of this Schedule, the requirement elsewhere in this Agreement shall prevail.

4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.

4.16 No later than one (1) Month prior to the Operational Service Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.

4.17 On request by the Authority the Supplier shall provide the Authority's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.

4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

ANNEX 1 | TRANSPARENCY REPORTS

TITLE	CONTENT	FORMAT	FREQUENCY
Performance	Performance against SLAs and KPIs, including availability, responsiveness, change management, incidents and problems	Service Review Pack and reports in the event of priority incidents	Monthly or as required in the event of priority incidents
Charges	Breakdown of charges for the period, with reference to the service and/or change request for each charge as appropriate	Template to be agreed with supplier	Monthly
Major sub-contractors			Monthly
Technical	Performance against SLAs and KPIs. Utilisation. Design/solution changes in the period. Certificate expiry dates	Service Review Pack	Monthly
Performance management	Performance management	Service Review Pack	Monthly

	information. Enhancement opportunities		
Supply Chain visibility Schedule 8.2 (2.2-2.5)	SME MI Reports	MI Reporting Template	Monthly

ANNEX 2 | REPORTS TO BE PROVIDED BY THE SUPPLIER

Reference	Report Title	Report Frequency	Report Content
Schedule 6.1 (*Transition*), paragraph 6.5	Transition Report	Weekly	See paragraph 6.5 in Schedule 6.1 (*Transition*)

ANNEX 3 | RECORDS TO BE KEPT BY THE SUPPLIER

The records to be kept by the Supplier are:

1. This Agreement, its Schedules and all amendments to such documents.

2. All other documents which this Agreement expressly requires to be prepared.

3. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.

4. Notices, reports and other documentation submitted by any Expert.

5. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.

6. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.

7. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.

8. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.

9. Documents prepared by the Supplier in support of claims for the Charges.

10. Documents submitted by the Supplier pursuant to the Change Control Procedure.

11. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.

12. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.

13. Invoices and records related to VAT sought to be recovered by the Supplier.

14. Financial records, including audited and un-audited accounts of the Supplier.

15. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.

16. All documents relating to the insurances to be maintained under this Agreement and any claims made in respect of them.

17. All journals and audit trail data referred to in Schedule 2.4 (*Security Management*).

18. A complete set of records to trace the supply chain of all Services provided to the Authority in connection with this Agreement, in order to monitor any actual or suspected slavery or human trafficking in those supply chains in compliance with the Suppliers' obligation in Clause 36.5.

19. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement. This should include

    a) Any certificates associated with the solution and their expiry dates

    b) All incident management and problem management records and any other relevant information required as part of service management

ANNEX 4: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl.5.4 (e), (f) 16.6(a), 16.7(a)(ii)	Documentation	As appropriate and agreed by the Authority	Within seven days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Authority
Cl 14.3	Key Personnel	Sch 9.2	Effective Date	On replacement of Key Personnel	Authority
Sch 2.2,Part B Para 1	Performance Monitoring Report and the Balanced Scorecard Report	Sch 2.2, Part B	Service Commencement	Within 10 Working Days of the end of each Service Period	Authority
Sch 2.4, Para 4	Security Management Plan	As appropriate and agreed by the Authority	Within twenty (20) Working Days after the Effective Date	Within 10 Working Days of any Breach of Security and further at least annually.	Authority
Sch 2.5, Para 4	Evidence of Insurances	Sch 2.5	Effective Date	Within 15 days after policy renewal or replacement	Authority
Cl 22	Commercially Sensitive Information	Sch 4.2	Effective Date	Upon Agreement by the Authority to vary the information	Authority and Auditor
Cl 15.7	Notified Key Sub-contractors	Sch 4.3	Effective Date	On replacement of key sub-contractor	Authority
Cl 15.5	Third Party Contracts	Sch 4.4	Effective Date	On appointment of sub-contract	Authority
Cl 15.6	Notified Key Sub-Contractors	Sch 4.3	Effective Date	With each approved appointment or variation	Authority
Cl 15.30	Supply chain Transparency Information Reports	Sch 8.2, Annex 4	thirty days prior to the of the end of each financial year	Every 12 months	Authority

Cl 16 and 17	Software	Sch 5	Operational Service Commencement Date	Upon Agreement by the Authority to vary the information	Authority
Cl 6.5	Detailed Transition Plan	Sch 6.1	Within 20 working days of Effective Date	Every 3 months from Effective Date	Authority
Sch 6.2, Para 7	Test Strategy	As appropriate and agreed by the Authority	Within 20 working days of Effective Date	Upon update to the test strategy	Authority
Sch 6.2, Para 8	Test Plan	As appropriate and agreed by the Authority	20 prior working days of relevant test	Upon update to the test plan	Authority
Sch 6.2, Para 9	Test Design	As appropriate and agreed by the Authority	10 prior working days of relevant test	Upon update to the test specification	Authority
Sch 7.1, Annex 4	Risk Register	Sch 7.1, Annex 4	Effective Date	Upon Agreement by the Authority to vary the by the Risk Management Board	Authority
Sch 7.3, Para 5	Benchmarking Plan	Sch 7.3	Upon receipt from Benchmarker	Approval of Plan	Authority and Auditor
Sch 7.3, Para 5	Benchmarking report	Sch 7.3	Upon receipt from Benchmarker	Any update	Authority and Auditor
Sch 7.4 Para 2.3(b)	Financial Indicator Reports	Sch 7.4 para 2.5	As specified in para 2.3(b) of Sch 7.4	As specified in para 2.3(b) of Sch 7.4	Authority
Sch 7.4 Para 4.3(b)	Financial Distress Remediation Plan	As appropriate and agreed by the Authority	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)	Authority
Sch 7.5, Part B, para 1.2	Contract Amendment Report	Sch 7.5, Part B, para 1.2	Within 1 month of a material change being agreed		Authority

Sch 7.5, Part B, para 1.1	Quarterly Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of each Quarter		Authority
Sch 7.5, Part B, para 1.1	Annual Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of the Contract Year to which that report relates		Authority
Sch 7.5 Part B, para 1.1	Final Reconciliation Reports	Sch 7.5,Part B, para 1.2	Within 6 months after the end of the Term		Authority
Sch 7.5	Initial Financial Model	Sch 7.5, Part B	Effective Date		Authority
Sch 8.1, Para 3.3	Representation and Structure of boards	Sch 8.1 Annex 1	Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority		Authority
Sch 8.1, Para 3.5(e)	Minutes of governance meetings (all boards)	As appropriate and agreed by the Authority	Within 7 days of receipt from chairperson		Authority
Sch 8.3 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 working days of date of receiving change request.		Authority
Sch 8.3 Para 5	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Authority to update under Schedule 8.3 Para 5.4	Authority
Sch 8.3, Para 2.6	Update full copy of the Agreement and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Authority

Sch 8.3, Para 4	Change Request	Sch 8.3, Annex 1	Within 10 working days of Authority issuing the Change Request		Authority
Sch 8.4, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 working days from an unresolved dispute arising	Any variation	Authority
Sch 8.4, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Authority
Sch 8.2, Para 1 and 2	Reports and Records Provisions	Sch 8.2, Annex 1 and 2	Within 3 months of the Effective Date	Frequency specified in Sch 8.4, Annex 1 and 2	Authority
Sch 8.5, Para 3.1 (a)	Register of All Assets, Sub-contracts and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 8.5, Para 3.1 (b)	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 8.5, Para 4.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 working days of Authority's written request	Authority and its potential Replacement Suppliers
Sch 8.5, Para 5.1	Exit Plan	Sch 8.5, Para 5.3	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by the Authority following a Financial Distress Event Within 20 days after service of Termination Notice or 6 months prior to expiry of the Agreement.	Authority
Sch 8.5, Para 6.7	Authority Data (handback)	Sch 8.5, Para 6.7(b) and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-	Authority

Sch 8.5, Annex 1, Para 1, Para 1.3 & Para 1.4	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Authority	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Authority	
Schedule 8.5, Annex 2	Data Matrix	Schedule 8.5, Annex 2	In line with the Exit Plan	In line with the Exit Plan, when applicable	Authority
Sch 8.6 Service Continuity	Service Continuity Plan	Sch 8.6, Para 2.2	Within 40 days from the Effective Date	Sch 8.6, Para 7.1	Authority
Sch 8.6, Para 6.2	Insolvency Continuity Plan	Sch 8.6, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.		
Sch 8.6	Corporate Resolution Planning Information	Sch 8.6, Para 11.3	Schedule 8.6 Part 2 Para 11.2	Sch 8.6, Para 11.8	Authority
Sch 7.4 Para 8	Board Confirmation	As set out at Annex 5 of Sch 7.4	Within 120 days of the first Accounting Reference Date to occur	Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting Reference Date (whichever is the earlier)	Authority
Sch 9.1, Part D, Para 1.1	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Authority	Sch 9.1, Part D, Para 1.1 A-D	At such intervals as are reasonably requested by the Authority	Authority
Sch 9.1, Part D, Para 1.2	Supplier's Final Supplier Personnel List	As appropriate and agreed by the Authority	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees	Authority and, at the discretion of the Authority, the Replacement Supplier sub-contract
Sch 9.1, Part D, Para 1.6	Information relating to the manner in which the services are organised	As appropriate and agreed by the Authority	Effective Date		Authority

Sch 9.1, Part D, Para 1.7	Payroll and benefits information	As appropriate and agreed by the Authority	Within 5 Working Days following the Service Transfer Date	-	Authority, any Replacement Supplier and/or Replacement Sub-contractor
Sch 9.1, Annex	List of Notified Sub-contractors	As appropriate and agreed by the Authority	Effective Date	Upon any change	Authority
Sch 9.2	Key Personnel	Sch 9.2	Effective Date	As amended from time to time	Authority

ANNEX 5 | SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

	Financial Year 20[ ]			
	Under this Agreement		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Financial Year				
Total value of Sub-contracted revenues (3) in this Financial Year				
Total value of Sub-contracted revenues to SMEs (3) in this Financial Year				
Total value of Sub-contracted revenues to VCSEs (3) in this Financial Year				

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 8.3 | Change Control Procedure

Schedule 8.3 | Change Control Procedure

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"Authority Change Manager"	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
"Change Request"	a written request for a Contract Change which shall be substantially in the form of Annex 1;
"Change Communication"	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
"Costs"	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 Key Sub contractor (as the context requires), calculated per Man Day, 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) work place IT equipment and tools reasonably necessary to perform 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 (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the delivery of the Services;

(d) Forecast Contingency Costs;

(e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;

but excluding:

(i) Overhead;

(ii) financing or similar costs;

(iii) 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;

(iv) taxation;

(v) fines and penalties;

(vi) amounts payable under Schedule 7.3 (Value For Money); and

	(vii) non cash items (including depreciation, amortisation, impairments and movements in provisions);
"Fast-track Change"	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
"Impact Assessment"	an assessment of a Change Request in accordance with Paragraph 5;
"Impact Assessment Estimate"	has the meaning given in Paragraph 4.3;
"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key 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
"Receiving Party"	the Party which receives a proposed Contract Change; and
"Supplier Change Manager"	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.
"Supplier Profit Margin"	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;

2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes, except:

(a) changes to Schedule 11 (*Collaboration*);

(b) changes that require a change to Schedule 11 (*Collaboration*); or

(c) changes that impact upon an Ecosystem Supplier but do not impact Schedule 11 (*Collaboration*),

which shall be managed in accordance with Schedule 11 (*Collaboration*).

2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

(a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;

(b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;

(c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;

(d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;

(e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and

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

2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

2.6 unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and

2.7 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.

2.8 The Supplier shall:

(a) within ten (10) Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and

(b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3. COSTS

3.1 Subject to Paragraph 3.3:

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

(b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:

(i) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or

(ii) such costs exceed those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in 7.1(*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4 CHANGE REQUEST

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.

4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) working days of the date of receiving the Change Request an estimate ("Impact Assessment Estimate") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

(a) the nature of the request for clarification; and

(b) the reasonable justification for the request;

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

5 IMPACT ASSESSMENT

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

(a) details of the proposed Contract Change including the reason for the Contract Change; and

(b) details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Agreement;

(c) any variation to the terms of this Agreement that will be required as a result of that impact, including changes to:

(i) the Services Description, the Performance Indicators and/or the Target Performance Levels;

(ii) the format of Authority Data, as set out in the Services Description;

(iii) the Milestones, Transition Plan or Project Plan and any other timetable previously agreed by the Parties;

(iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;

(d) details of the cost of implementing the proposed Contract Change;

(e) details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

(f) a timetable for the implementation, together with any proposals for the testing of the Contract Change;

(g) details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and

(h) such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).

5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.

5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied

that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and 5.1(e) shall:

(a) be based on the Financial Model;

(b) facilitate the Financial Transparency Objectives;

(c) include estimated volumes of each type of resource to be employed and the applicable rate card;

(d) include full disclosure of any assumptions underlying such Impact Assessment;

(e) include evidence of the cost of any assets required for the Change; and

(f) include details of any new Sub-contracts necessary to accomplish the Change.

(g) Include an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin.

6 AUTHORITY'S RIGHT OF APPROVAL

6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Supplier or within ten (10) Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

(a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;

(b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or

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

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

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

7 SUPPLIER'S RIGHT OF REJECTION

7.1 Following an Impact Assessment, if:

(a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

(i) materially and adversely affect the risks to the health and safety of any person; and/or

(ii) require the Services to be performed in a way that infringes any Law; and/or

(b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

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

8 FAST-TRACK CHANGES

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

8.2 If:

(a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed four (4) in any twelve (12) month period; and

(b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed a figure to be agreed between The Authority and The Supplier within 60 working days of the contract effective date, and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

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

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

9 OPERATIONAL CHANGE PROCEDURE

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

(a) have an impact on the business of the Authority;

(b) require a change to this Agreement;

(c) have a direct impact on use of the Services; or

(d) involve the Authority in paying any additional Charges or other costs.

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

9.3 The RFOC shall include the following details:

(a) the proposed Operational Change; and

(b) the time-scale for completion of the Operational Change.

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

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

10 COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 45 (*Notices*) shall apply to a Change Communication as if it were a notice.

ANNEX 1 | Change Request Form

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

ANNEX 2 | Change Authorisation Note

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: [*if any*]]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		

SIGNED ON BEHALF OF THE AUTHORITY:	SIGNED ON BEHALF OF THE SUPPLIER:
Signature:_____	Signature:_____
Name:_____	Name:_____
Position:_____	Position:_____
Date:_____	Date:_____

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
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SCHEDULE 8.4 | Dispute Resolution Procedure

Schedule 8.4 | Dispute Resolution Procedure

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"**Counter Notice**"	has the meaning given in Paragraph 7.2;
"Expert"	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
"Expert Determination"	determination by an Expert in accordance with Paragraph 6;
"Mediation Notice"	has the meaning given in Paragraph 4.2;
"Mediator"	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
"Related Third Party Dispute"	a Dispute which involves the Parties and one or more Related Third Parties;
"**Related Third Party Dispute Representatives**"	has the meaning given in Paragraph 9.6;
"**Related Third Party Dispute Resolution Board**"	has the meaning given in Paragraph 9.6;
"Related Third Party"	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Agreement (provided that it is not an Ecosystem Agreement); or (b) a Sub-contract; and
"Supplier Request"	a notice served by the Supplier requesting that the Dispute be treated as a Related Third Party Dispute, setting out its grounds for that request and specifying each Related Third

Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2. DISPUTE NOTICES

2.1 If a Dispute arises then:

(a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

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

2.2 A Dispute Notice:

(a) shall set out:

(i) the material particulars of the Dispute;

(ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

(iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

(b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Related Third Party Dispute, in which case Paragraph 2.3 shall apply.

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

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

(b) if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

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

(a) first by commercial negotiation (as prescribed in Paragraph 4);

(b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in

Paragraph 5); and

(c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 48 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Related Third Party Dispute Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3. EXPEDITED DISPUTE TIMETABLE

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 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 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:

(a) in Paragraph 4.2, ten (10) Working Days;

(b) in Paragraph 5.2, ten (10) Working Days;

(c) in Paragraph 6.2, five (5) Working Days; and

(d) in Paragraph 7.2, ten (10) Working Days.

3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the **subsequent stages by the period agreed in the extension.**

4 COMMERCIAL NEGOTIATION

4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Related Third Party Dispute Initiation Notice in respect of the relevant Dispute, the Parties shall refer the Dispute to the Operational Board for consideration

and resolution. If the Parties are unable to resolve the Dispute within fifteen (15) Working Days of escalation to the Operational Board, the Dispute shall be escalated to the Strategic Board. If the Parties are unable to resolve the Dispute within ten (10) Working Days of escalation to the Strategic Board then the Authority may, at its sole discretion, escalate any Dispute to the Executive Board for resolution. If the Parties are unable to resolve the Dispute within five (5) Working Days of escalation to the Executive Board then the provision of paragraph 4.2 shall apply.

4.2 If the Parties have not settled the Dispute in accordance with Paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice, either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a **"Mediation Notice"**).

5 MEDIATION

5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Agreement which is current at the time the Mediation Notice is served (or such other version as the Parties may agree) and which shall be deemed to be incorporated by reference into this Agreement.

5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

6 EXPERT DETERMINATION

6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT technical, financial technical or other technical nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 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 pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

(a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

(b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or

(c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a)) or 6.2(b), on the instructions of the president (or equivalent) of:

(i) an appropriate body agreed between the Parties; or

(ii) if the Parties do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

(a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

(b) the Expert's determination shall (in the absence of fraud or manifest error) be final and binding on the Parties, unless within 20 Working Days of that decision a Party serves notice on the other Party referring the Dispute to either arbitration or court proceedings pursuant to Paragraphs 7 and 8;

(c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;

(d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the Parties;

(e) the process shall be conducted in private and shall be confidential; and

(f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7 ARBITRATION

7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 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 of England and Wales. 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:

(a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or

(b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

7.4 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:

(a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 7.5(e), (f) and (g));

(b) the arbitration shall be administered by the LCIA;

(c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

(d) if the Parties fail to agree the appointment of the arbitrator within 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;

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

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the seat of the arbitration shall be London.

8 URGENT RELIEF

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

(a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or

(b) where compliance with Paragraph 2 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

9.1 All Related Third Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Related Third Party Dispute Resolution Procedure**").

9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Related Third Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Related Third Party Dispute and specifies the Related Third Parties which are to be involved in the Related Third Party Dispute Resolution Procedure, such notice a "**Related Third Party Dispute Initiation Notice**".

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination in accordance with paragraph 6 or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall

determine within five (5) Working Days whether the Dispute is:

(a) a Related Third Party Dispute, in which case the Authority shall serve a Related Third Party Dispute Initiation Notice on the Supplier; or

(b) not a Related Third Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.

9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Related Third Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

9.6 Following service of a Related Third Party Dispute Initiation Notice a Related Third Party Dispute shall be dealt with by a board (in relation to such Related Third Party Dispute, the "**Related Third Party Dispute Resolution Board**") comprising representatives from the following parties to the Related Third Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Related Third Party Dispute:

(a) the Authority;

(b) the Supplier;

(c) each Related Third Party involved in the Related Third Party Dispute; and

(d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together "**Related Third Party Dispute Representatives**").

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

(a) the Parties shall procure that their Related Third Party Dispute Representatives attend, and shall use their best endeavours to procure that the Related Third Party Dispute Representatives of each Related Third Party attend, all meetings of the Related Third Party Dispute Resolution Board in respect of the Related Third Party Dispute;

(b) the Related Third Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Related Third Party Dispute Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within five (5) Working Days of service of the relevant Related Third Party Dispute Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00 am and 5.00 pm on a Working Day; and

(c) in seeking to resolve or settle any Related Third Party Dispute, the members of the Related Third Party Dispute Resolution Board shall have regard to the principle that a Related Third Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Related Third Party Dispute.

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

(a) either Party may serve a Mediation Notice in respect of the Related Third Party Dispute in which case Paragraph 5 shall apply;

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

(c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Related Third Party Dispute,

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

9.9 If a Related Third Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Related Third Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

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SCHEDULE 8.5 | Exit Management

Schedule 8.5 | Exit Management

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"Application Programming Interface" or "API"	means a piece of software that facilitates access to the Supplier's application(s) to provide access to business functionality and/or Authority Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at: https://www.gov.uk/guidance/gds-api-technical-and-data-standards
"Assistance Commencement Date"	has the meaning set out in Paragraph 5.1(e) of Schedule 8.5 (*Exit Management*);
"Data Matrix"	means the Authority's data requirements and associated timeframes for data provision as set out in Annex 2 (*Data Matrix*) of Schedule 8.5 (*Exit Management*), as may be amended from time to time by the written agreement of the Parties;
"Emergency Exit"	any termination of this Agreement which is a: (a) termination of the whole or part of this Agreement in accordance with Clause 34 (*Termination Rights*), except where the period of notice given under that Clause is less than 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 34 (*Termination Rights*); or (c) wrongful termination or repudiation of this Agreement by either Party;
"Exclusive Assets"	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in

	the provision of the Services to the Authority;
"Exit Information"	has the meaning given in Paragraph 3.1;
"Exit Manager"	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
"Government Controlled Company"	means any body governed by public law, including as created pursuant to Regulation 12 of the Public Contracts Regulations 2015 or such other body created through or derived through public law;
“Fair Market Value”	means the transfer value of any applicable assets or consumables, as determined with reference to assets of a similar in type and condition, bought and sold in ‘arms length’ transactions in an open market. In the absence of agreement between the Parties, Fair Market Value shall be determined by an independent valuation expert appointed by the Parties
"Net Book Value"	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
"Non-Exclusive Assets"	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
"Ordinary Course of Business"	means either: a) any acts, omissions or conduct which is consistent in all respects with the prevailing pattern, or course of conduct, or management used by the

	Supplier in the fulfilment of the Services or undertaken in order to comply with the applicable obligations under the Agreement; or b) acts, omissions or conduct which a well-managed company would undertake (assuming that such company is acting in a prudent and reasonable manner) in relation to the fulfilment of the Services, or in order to comply with all applicable obligations under the Agreement;
"Ordinary Exit"	any termination of the whole or part of this Agreement which occurs: a) pursuant to Clause 34 (*Termination Rights*) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or b) as a result of the expiry of the Initial Term or any Extension Period;
"Public Procurement Process"	means the acquisition by public means of a public contract of works, suppliers or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, suppliers or services are intended for a public purpose, as the same is defined (as 'procurement') in section 2 of the Public Contracts Regulations 2015;
"Registers"	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
"Services Transfer Date"	means the date on which the Services are transferred from the control of and provision by the Supplier to the control of and provision by a Replacement Supplier;

"Transferring Assets"	has the meaning given in Paragraph 1.1(a);
"Transferring Contracts"	has the meaning given in Paragraph 5.9(e) .
"Transferring Services"	means the Services or parts of a Service which are removed by the Authority in accordance with the provisions of the Agreement including on termination of the Agreement (in whole or in part);

2 OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 The Supplier shall, within three (3) months following the Effective Date and during the Term:

(a) create and maintain a register of all:

(i) Assets, detailing their:

(A) make, model and asset number;

(B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;

(C) Net Book Value;

(D) condition and physical location; and

(E) use (including technical specifications); and

(ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

(b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

(c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan;

(d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services;

(e) make available the Registers to the Authority on request; and

(f) warrant the accuracy of the content of such Registers in accordance with Paragraph 3.7.

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

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 Agreement and all matters connected with this Schedule and each Party's compliance with it.

3 OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority such reasonable assistance as the Authority may require to enable the Authority to retender for Replacement Services and shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:

(a) details of the Service(s);

(b) a copy of the Registers (including details of where and how the Registers are held), updated by the Supplier up to the date of delivery of such Registers;

(c) an inventory of Authority Data in the Supplier's possession or control;

(d) a populated Data Matrix and all accompanying materials relating to the Data Matrix, including organograms, (to the extent such data and materials are available to the Supplier at the time of the Authority's request for such information and as agreed between the Parties) in a readable and agreed format, in accordance with the timescales set out in the Data Matrix;

(e) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

(f) a list of on-going and/or threatened disputes in relation to the provision of the Services;

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

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

(together, the "**Exit Information**").

3.2 The Supplier acknowledges that the Authority may request the Exit Information specified in Paragraph 3.1 above more than once during the Term

3.3 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 3.3 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs, commercially sensitive information, and/or IPR).

3.4 The Supplier shall:

(a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely affect the financial condition, business or operations of the Authority or adversely impact upon the potential transfer and/or continuance of any Services, and shall consult with the Authority regarding such proposed material changes;

(b) promptly update the Exit Information in respect of a material change as described in Paragraph 3.4(a);

(c) ensure that the Exit Information is up to date every 3 months; and

(d) provide 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.

3.5 The Exit Information and all accompanying materials shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

(a) prepare an informed offer for those Services; and

(b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

3.6 The Supplier shall provide the Exit Information to the Authority and/or its Replacement Supplier in a specific format (which shall be agreed by the Parties) to assist the Authority and/or its Replacement Supplier with the orderly transition of the Services from the Supplier to the Replacement Supplier.

3.7 The Supplier warrants and undertakes that all information included in the Exit Information and all accompanying materials shall be accurate and the Authority and/or its Replacement Supplier shall be entitled to rely on the accuracy of Exit Information provided. In the event that the Exit Information is found to be materially inaccurate, the Supplier shall rectify and correct such data and provide such rectified and correct data to the Authority as soon as reasonably practicable. If the Supplier still fails to provide correct data or where the Authority believes there is an unreasonable delay in providing such data, then the Authority may escalate the non-compliance for resolution in accordance with the Dispute Resolution Procedure, and the Authority and/or its Replacement Supplier shall be entitled to bring a claim against the Supplier for material breach of its obligations under this Paragraph 3.7.

3.8 No later than two (2) months prior to the Services Transfer Date, the Supplier shall provide to the Authority and/or its Replacement Supplier an example of the Supplier's format of the payroll information using anonymised data to assist the Authority and/or its Replacement Supplier to carry out a trial run of the payroll for the Transferring Employees.

4 EXIT PLAN

4.1 The Supplier shall, within three (3) months after the Effective Date, deliver to the Authority a draft Exit Plan which:

(a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on Partial Termination, expiry or termination of this Agreement.

(b) complies with the requirements set out in Paragraph 4.3;

(c) is otherwise reasonably satisfactory to the Authority.; and

(d) is in a format and using a software tool agreed by the Authority.

4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

4.3 The Exit Plan shall set out, as a minimum:

(a) 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;

(b) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;

(c) the management structure to be employed during the Termination Assistance Period;

(d) 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;

(e) how the Exit Information is obtained;

(f) how the Services will transfer to the Replacement Supplier(s) 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);

(g) 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);

(h) a timetable and critical issues for providing the Termination Services;

(i) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;

(j) how the Termination Services would be provided (if required) during the Termination Assistance Period;

(k) procedures to:

(i) deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*);

(ii) determine which Supplier Personnel are or are likely to become Transferring Supplier Employees; and

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

(l) 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; and

(m) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement.

4.4 The Parties acknowledge that the transfer 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.

4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule once every six (6) months to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

4.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Agreement (or such other period as required by the Authority), 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.

4.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

5 TERMINATION SERVICES

Notification of Requirements for Termination Services

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

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

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

(c) where the Authority wishes to hold a Public Procurement Process in relation to any of the Services (or a particular sub-set of the Services); or

(d) where the Authority initiates a procurement process (other than a Public Procurement Process where a public notice is required to be given) in relation to any of the Services (or a particular sub-set of the Services).

The Termination Assistance Notice shall specify:

(e) the date from which the Supplier shall commence providing the Termination Services ("**Assistance Commencement Date**");

(f) the nature of the Termination Services required; and

(g) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the Services.

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

Termination Assistance Period

5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

(a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;

(b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;

(c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 1.3(a) without additional costs to the Authority;

(d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and

(e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 1.3(a) 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.

5.5 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

5.6 The Supplier shall comply with all of its obligations contained in this Schedule 8.5 (Exit Management).

5.7 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), the Supplier shall:

(a) cease to use the Authority Data;

(b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);

(c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion. The Supplier shall also delete all copies of any Personal Data unless it is required to be retained by EU or member state laws;

(d) return to the Authority such of the following as is in the Supplier's possession or control:

(i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;

(ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;

(iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and

(iv) any items that have been on-charged to the Authority, such as consumables;

(e) vacate any Authority Premises;

(f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination to:

(i) such information relating to the Services as remains in the possession or control of the Supplier; and

(ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7(f)(ii).

5.8 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 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.

5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the Services shall be terminated with effect from the end of the Termination Assistance Period.

6. GOVERNANCE

6.1. Both Parties shall comply with the provisions in Schedule 8.1 (*Governance*) in relation to the management and governance of Termination Assistance.

7. ASSETS, SUB-CONTRACTS AND SOFTWARE

7.1. Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, without the Authority's prior written consent:

(a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;

(b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or

(c) terminate, enter into or vary any licence for software in connection with the Services.

7.2. Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(e), the Authority shall provide written notice to the Supplier setting out:

(a) which, if any, of the Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier ("**Transferring Assets**");

(d) which, if any, of:

(i) the Exclusive Assets that are not Transferring Assets; and

(ii) the Non-Exclusive Assets,

the Authority and/or the Replacement Supplier requires the continued use of; and

(e) which, if any, of the Sub-contracts the Authority does not require to be assigned or novated to the Authority and/or the Replacement Supplier and all other Sub-contracts shall be the **"Transferring Contracts"**,

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. The Supplier shall freeze the lists of Transferring Assets and Transferring Contracts and shall update them (with the Authority's prior written consent) only as and when changes are required in order to continue the fulfilment of the Transferring Services in the Ordinary Course of Business. 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 Transferring Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services.

7.3. With effect from the expiry of the Termination Assistance Period, should the Authority so require, the Supplier shall be obliged to sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a sum in accordance with Fair Market Value and agreed between the parties. The final price may be affected where:

(b) 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

(f) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the sum agreed 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 (d) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferring Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

(c) 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

(g) 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. During the Termination Assistance Period, the Supplier shall not vary, terminate, assign, novate, purport to vary, nor allow any of the listed Transferring Contracts

used wholly or mainly to provide the Transferring Services to expire, without the Authority's prior written consent (such consent not to be unreasonably withheld).

7.7. The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall provide full copies of the Transferring Contracts to the Authority (and/or the Replacement Supplier at the Authority's request) no less than 4 weeks before the date the novation or assignment is to take effect. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.

7.8. The Authority shall:

(d) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and

(h) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

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

7.10. The Supplier shall transfer to the Replacement Supplier the benefit of any manufacturers' warranties ("**Manufacturer's Warranties**") applicable wholly to the transferring Services where the Supplier is able to transfer the benefit thereunder. To the extent that the benefit of any such Manufacturer's Warranty cannot be transferred to the Replacement Supplier except by way of a novation agreement or by obtaining a consent, an approval, a waiver or the like from the manufacturer or other third party ("**Consents**"):

(e) the Supplier shall (unless otherwise agreed) use commercially reasonable efforts to procure such Consents or the novation of the relevant Manufacturer's Warranties to the Replacement Supplier; and

(i) unless or until any such Manufacturer's Warranty is so novated or any necessary Consent is obtained, the Supplier will receive and hold the benefit of the relevant Manufacturer's Warranty for the Replacement Supplier and the Authority will pay or reimburse any sums (as agreed between the Parties) properly payable in connection with such Manufacturer's Warranty after each Services Transfer Date, as the case may be.

7.11. Except where the Authority has expressly agreed through the Change Control Procedure that a waiver shall apply in respect of a particular specified Transferring

Contract, the Supplier shall pay any fees required for the transfer of the Transferring Contracts.

7.12. The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 8.7 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract.

7.13. At any time following a Termination Notice, the Supplier shall promptly notify the Authority of any material changes to any enterprise-wide Sub-contract which may have a material impact on the fulfilment of the Transferring Services.

8. SUPPLIER PERSONNEL

8.1. The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.

8.2. The Supplier shall not and shall procure that any relevant Sub-contractor shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) without the prior written consent of the Authority to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier or Replacement Sub-contractor.

8.3. During the Termination Assistance Period, the Supplier shall and shall procure that any relevant Sub-contractor shall:

8.3.1 give the Authority and/or the Replacement Supplier and/or Replacement Sub-contractor reasonable access to the Supplier's personnel and/or their consultation representatives to present the case for transferring their employment to the Authority and/or the Replacement Supplier and/or to discuss or consult on any measures envisaged by the Authority, Replacement Supplier and/or Replacement Sub-contractor in respect of persons expected to be Transferring Supplier Employees;

8.3.2 consent to any election by the Authority, Replacement Supplier and/or Replacement Sub-contractor to carry out pre-transfer collective consultation under S198A - 198B of the Trade Union and Labour Relations (Consolidation) Act 1992 and thereafter facilitate such consultation;

8.3.3 co-operate with the Authority and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services.

8.4. The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply either where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy or where an offer is made pursuant to an express right to make such offer under Schedule 9.1 (*Staff Transfer*) in respect of a Transferring Supplier Employee not identified in the Supplier's Final Supplier Personnel List.

9. CHARGES

9.1. The Authority shall pay the Charges to the Supplier in respect of the Termination Services carried out during the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), in accordance with the rates set out in Paragraph 3 of Schedule 7.1 (Charges and Invoicing). The Authority shall not be required to pay any other costs in respect of the Termination Services. If the scope or timing of the Termination Services is changed and this results in a change to the Charges for such Termination Services, the cap may be varied in accordance with the Change Control Procedure.

9.2. Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 5.2:

(a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and

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

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

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

10. APPORTIONMENTS

10.1. Where applicable, all outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the

Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

(f) the amounts shall be annualised and divided by 365 to reach a daily rate;

(j) 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

(k) 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.

11. DISPUTES

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

12. ETHICAL WALLS AGREEMENT

The Supplier shall prior to the expiry or earlier termination of this Agreement enter into an agreement in the form set out at Annex 3 of this Schedule 8.5 without which the Authority may elect at its sole discretion that the Supplier may not take part in any future procurement exercise carried out by the Authority in relation to the Services (including Replacement Services).

ANNEX 1 | Scope of the Termination Services

1

1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:

(a) ceasing all non-critical Software changes (except where agreed in writing with the Authority);

(b) notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;

(c) providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;

(d) delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services);

(e) providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;

(f) with respect to work in progress, including any in-flight projects, as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition and providing support and collaboration for the transition of any in-flight projects;

(g) providing the Authority with any problem logs which have not previously been provided to the Authority;

(h) providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;

(i) providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;

(j) reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;

(k) providing assistance and expertise as necessary to support the Authority and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;

(l) provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;

(m) making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;

(n) assisting in establishing naming conventions for any new production site;

(o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;

(p) generating a computer listing of the Source Code of any software related to The Services, in a form and on media reasonably requested by the Authority;

(q) agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority Personnel, customers and key stakeholders;

(r) agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;

(s) delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;

(t) assisting with the loading, testing and implementation of the production databases;

(u) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Agreement;

(v) in respect of the maintenance and support of the Supplier System, providing historical performance data for the contract term;

(w) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);

(x) providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;

(y) answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;

(z) 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;

(aa) providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:

(i) to information and documentation relating to the 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, including those employees filling the relevant Key Personnel positions and Key Personnel with specific knowledge in respect of the Exit Plan;

(bb) 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 as early as possible 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 sufficient numbers of the members of the Supplier's or its Sub-contractors' personnel of suitable experience and skill and 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 Supplier to work alongside and observe the performance of the Services by the Supplier at its facilities 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

(cc) regarding any escrow agreement that may exist, providing details of where it is lodged and any other related information as may be required by the Authority.

1.2 The Supplier shall:

(a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(m) for agreement by the Authority at the time of termination or expiry of this Agreement;

(b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(q), providing skills and expertise of a suitable standard; and

(c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(z), 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(bb) shall include:

(a) copies of up-to-date procedures and operations manuals;

(b) product information;

(c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;

(d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;

(e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;

(f) details of physical and logical security processes and tools which will be available to the Authority; and

(g) any relevant interface information,

and such information shall be updated by the Supplier at the Services Transfer Date.

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:

(a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:

(i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

(ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and

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

1.6 Assets

(a) No later than two (2) years before the intended expiry of the Term, the Supplier shall engage an independent expert, with the agreement of the Authority, to write a review of the physical condition of all the Supplier-owned or Supplier-leased Assets used in connection with the Supplier Solution including an assessment of whether such Assets shall be capable of continued, satisfactory use in services similar to those Services provided by the Supplier for at least twelve (12) months after expiry of the Term. The Supplier shall provide the Authority with a copy of this report as soon as it is available, and in any event, no later than eighteen (18) months prior to the intended expiry of the Term.

(b) Where the expert's written review identifies any deficiencies that he/she advises should be remedied by the Supplier, the Supplier shall take such actions as are reasonably necessary to remedy such deficiencies.

(c) In the event that the Authority exercises its right to extend the Term, Sections (a) and (b) above shall be repeated no later than two (2) years before the intended expiry of the Term (as so extended). The Supplier shall be entitled to recover its costs in connection with the conduct of such further review through the Charges, as adjusted in line with the revised version of the Financial Model agreed between the Parties as described in Clause 34.8 of the Agreement.

Annex 2 | DATA MATRIX

Data Matrix included in Schedule 8.2, Annex 4, Virtual Library

Annex 3 | Ethical walls agreement

ETHICAL WALLS DEED
Between

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS

- and -

[Insert name of Supplier]

THIS DEED is made the [ ] day of [ ] 20[xx]

BETWEEN:

(1) **The Commissioners for Her Majesty's Revenue and Customs** whose principal of business is at 100 Parliament Street, London, SW1A 2BQ **("HMRC")**; and

(2) **[Insert Supplier's name]** (Company Number [ ]) whose registered office is at [ ] **("the Supplier")**.

RECITALS

(A) HMRC is to procure a service in respect of the provision of scanning services **("the Service")**.

(B) This Deed is made in recognition of the requirements of Regulation 18 of The Public Contract Regulations 2015 **("PCR")** places HMRC under a statutory duty to act in a transparent and proportionate manner, to treat all bidders equally and without discrimination, and to ensure that the design of the Procurement Process is not made with the intention of unduly favouring or disadvantaging certain economic operators.

(C) This Deed is also made in compliance of the duty on HMRC to take appropriate measures to effectively prevent, identify and remedy conflicts of interest, actual and perceived as arising in the conduct of the Procurement Process so as to avoid any distortion of competition and to ensure equal treatment of all economic operators as set out in Regulation 24 of the PCR.

(D) As an Incumbent Supplier to HMRC, the Supplier may have or have had access to Relevant Information relating to the affairs of HMRC, and the Service in particular, which is commercially sensitive and of a confidential nature.

(E) The Supplier acknowledges that, any Relevant Information it may have obtained in connection with its provision as an Incumbent Supplier to HMRC could give the Supplier and/or other bidders an unfair advantage.

(F) Non-incumbent bidders may consider themselves disadvantaged if another Bid Team has access to Relevant Information that is not generally available. In particular they may be concerned about an Incumbent Supplier having access to knowledgeable and experienced staff from the Operational Team supporting HMRC.

(G) Ethical Walls are designed to control communications between Operational Teams and Bid Teams within the Incumbent Supplier. In addition, such control is intended to ensure that all bidders are assured of an equal competitive opportunity through access to Relevant Information.

(H) To assure HMRC that the Supplier will avoid this potential unfair advantage and/or conflict as an Incumbent Supplier, the Supplier has agreed to enter this Deed.

TERMS

1 Definitions

1.1 In this Deed the following terms shall have the following meanings:

"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 with, that body corporate from time to time.
"Supplier Personnel"	means all employees, agents, consultants, sub-contractors and contractors of the Incumbent Supplier (or any Affiliate of the Incumbent Supplier) and/or of any of its sub-contractors, agents or members of its consortium.
"Bid"	means any activity which involves the Supplier, including any involvement as a sub-contractor, in any direct or indirect participation in a Procurement Process.

"Bid Team"	means any team from time to time comprising of those Supplier Personnel for the purpose of responding directly or indirectly to a Procurement Process (or any part thereof).
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "**Controls**" and "**Controlled**" shall be interpreted accordingly.
"Ethical Walls"	means the set of management processes, barriers and disciplines that create a zone of non-communication and physical and organisational separation between Members of the Bid Team and all other Supplier Personnel, to protect client confidentiality and ensure conflicts of interest do not arise that could otherwise give an unfair competitive advantage to an Incumbent Supplier in a Procurement Process.
"Incumbent Supplier"	means the Supplier as named in this Deed providing existing services to HMRC, who may be deemed to have an actual, potential or perceived view of HMRC's current IT environment.
"Relevant Information"	means any written or oral information which describes the nature of the services provided to HMRC or the method by which those services are, or will be, provided during the course of the current service contract(s). This definition covers any information, which an Incumbent Supplier obtains, either directly or indirectly, during the course of its ongoing service relationship with HMRC (together with any information derived from the same). It excludes any information that is already available to all bidders either through public domain or other sources not subject to an obligation of confidence or through the procurement documentation and other supporting information provided by HMRC.
"Member of the Bid Team"	means any Supplier Personnel who are or have been involved in the Bid and **"Members"** shall be interpreted accordingly.
"the Service"	has the meaning as set out in Recital (A) above.
"the Supplier"	means the party named in this Deed at (2) above.
"Operational Team"	means any Supplier Personnel who are involved in the day-to-day provision of services to HMRC, or in the management of such services.
"PCR"	has the meaning as set out in Recital (B) above.

	"Procurement Process"	means the process by which HMRC shall procure the provision of the Service.

2 Ethical Walls

2.1 The Supplier shall comply with this Deed without prejudice to any of its own internal policies and procedures which relate to conflicts of interest or ethical walls. The Supplier shall promptly inform HMRC of any conflict between this Deed and any of its own relevant internal policies and procedures and HMRC shall consider the purported conflict and instruct the Supplier accordingly, at HMRC's discretion.

2.2 The undersigned on, behalf of the Supplier, shall ensure that no Supplier Personnel:

2.2.1 discusses with or provides any Relevant Information gained to any Members of the Bid Team;

2.2.2 discloses or makes available to any Members of the Bid Team any Relevant information that is not in the public domain; and

2.2.3 becomes a member of the Bid Team, unless the Supplier has obtained HMRC's prior written consent.

2.3 The Supplier shall at all times ensure separation between Supplier Personnel and Members of the Bid Team, and in particular shall:

2.3.1 ensure that all Supplier Personnel are, so far as reasonably practicable:

2.3.1.1 located in different offices to the Members of the Bid Team, or else on different floors with restricted access of the same office to the Members of the Bid Team;

2.3.1.2 have separate reporting, supervision and management lines to the Members of the Bid Team; and

2.3.1.3 in particular remain separate to the Members of the Bid Team at organisational levels where any commercial decisions relating to either team can be made;

2.3.2 ensure that where a single point of supervision for both teams exists this is notified to HMRC;

2.3.3 ensure that:

2.3.3.1 all electronic information (including all files and databases) relating to the Bid cannot be accessed by any Supplier Personnel except to the extent necessary to comply with the Supplier's information technology and security policies and any such access shall be strictly limited to IT security and administrative personnel; and

2.3.3.2 that no Supplier IT security and administrative personnel do anything with any such electronic information they access and in particular do not provide access to any Member of the Bid Team; and

2.3.4 ensure that all information and documentation held in hard copy is stored securely and separately from that relating to any Procurement Process so that it cannot be accessed by any Supplier Personnel.

2.4 Upon becoming aware of any instance of non-compliance with this Deed, the Supplier shall, without prejudice to HMRC's rights of enforcement under this Deed:

2.4.1 immediately report to HMRC any such non-compliance with full details of the non-compliance;

2.4.2 carry out a review to ascertain the reasons for and extent of such non-compliance;

2.4.3 take such steps as are necessary to eliminate the risk of such non-compliance occurring again; and

2.4.4 implement procedures for the reporting of any unexpected or unusual requests for access to or copies of documents.

2.5 The Supplier shall maintain records to show that effective Ethical Walls have been put in place and that the Supplier has implemented measures to prevent themselves from gaining any advantage over other prospective bidders or suppliers in any Procurement Process.

2.6 The Supplier shall monitor the effectiveness of the Ethical Walls and take all necessary steps where is it is found that the Ethical Walls have not been effective.

2.7 The Supplier shall implement or procure the implementation of disciplinary sanctions within its, its Affiliate's or sub-contractor's organisation where there has been a breach of the Ethical Walls.

2.8 HMRC may, on five (5) days' prior written notice, audit the Supplier's compliance with this Deed, including (but not limited to) visiting the Supplier, its Affiliates' and/or any sub-contractors' sites. The Supplier shall (and shall use all reasonable endeavours to ensure that its Affiliates and sub-contractors shall) take all necessary steps to assist HMRC to carry out this audit.

3 Enforcement

3.1 In the event of a breach of this Deed by the Supplier, HMRC may (at its sole discretion) do one or more of the following:

3.1.1 exclude the Supplier from any Procurement Process pursuant to Regulation 57(8)(e) PCR where a conflict of interest within the meaning of Regulation 24 of the PCR cannot be effectively remedied by other, less intrusive, measures; and

3.1.2 seek injunctive or other equitable remedy to restrain disclosure or further disclosure of any information relating to the Procurement Process or the Service; and/or

3.1.3 circulate to all bidders contemporaneously any information that it considers could be relevant to the Procurement Process and/or the Service and/or could provide any advantage to a bidder;

3.1.4 pursue any other remedy that may be available to HMRC.

4 General

4.1 The obligations in this Deed shall continue until the date thirty (30) days after the execution of the contract for the Service.

4.2 This Deed shall be governed by and construed in accordance with the laws of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

4.3 This Deed is for the benefit of and may be enforced by any public body involved or interested in the procurement of the Service under the Contracts (Rights of Third Parties) Act 1999.

4.4 This Deed may be amended or terminated by the agreement of the parties without notice to or consent from any third party.

4.5 Any notice required to be given under this Deed shall be in writing and shall be delivered at the address specified in this Deed.

4.6 If any provision or part provision of this Deed is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision shall be deemed deleted. Any modification to or deletion of a provision or part provision under this clause shall not affect the validity and enforceability of the rest of this Deed.

IN WITNESS WHEREOF HMRC and [name of Supplier] have caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a Deed by being signed and delivered for and on behalf of her Majesty's Revenue and Customs:

Signature.....

Name:

Position:

Date.....

Witnessed by:

Signature.....

Name:

Position:

Date.....

EXECUTED as a Deed by [NAME OF SUPPLIER] acting by a [Director and the Secretary or two Directors]:

Signature.....	Signature.....
Name:	Name:
Position:	Position:
Date.....	Date.....

Witnessed by:

Signature.....	Signature.....
Name:	Name:

Position: Position:

Date..... Date.....

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 8.6 | Service Continuity Plan and Corporate Resolution Planning

Schedule 8.6 | Service Continuity Plan and Corporate Resolution Planning

PART 1: SERVICE CONTINUITY PLAN

DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Business Continuity Plan"	has the meaning given in Paragraph 2.2(a)(ii));
"Business Continuity Services"	has the meaning given in Paragraph 4.2(b);
"Department"	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; or (b) Non-Ministerial Department.
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for period of four hours or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
"Disaster Recovery Plan"	has the meaning given in Paragraph 2.2(a)(iii);
"Disaster Recovery Services"	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
"Disaster Recovery System"	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster **Recovery** Services;

2 SERVICE CONTINUITY PLAN

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

(a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and

(b) the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

(a) be divided into four parts:

(i) Part A which shall set out general principles applicable to the Service Continuity Plan;

(ii) Part B which shall relate to business continuity (the **"Business Recovery Plan"**);

(iii) Part C which shall relate to disaster capability (the **"Disaster Recovery Plan"**);

(iv) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the **"Insolvency Continuity Plan"**); and

(b) unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4 5 and 6.

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

(a) review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and

(b) notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 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:

(a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 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 - PLAN AND GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Service Continuity Plan shall:

(a) set out how the business continuity and disaster capability elements of the Plan link to each other;

(b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;

(c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;

(d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity plan and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;

(e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desktop configurations, where required by the Authority;

(f) contain a risk analysis, including:

(i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;

(ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;

(iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;

(iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and

(v) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

(g) provide for documentation of processes, including business processes, and procedures;

(h) set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;

(i) identify the procedures for reverting to "normal service";

(j) set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than the accepted amount of data loss and to preserve data integrity;

(k) identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and

(l) provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority's business continuity plans.

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

(a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;

(b) the adverse impact of any Disaster, service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority is minimal as far as reasonably possible;

(c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force;

(d) there is a process for the management of disaster capability testing detailed in the Service Continuity Plan; and

(e) it complies and is consistent with the requirements set out in the Ecosystem Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

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

4 SERVICE CONTINUITY PLAN: PART B - BUSINESS

PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

(a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

(b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

(a) address the various possible levels of failures of or disruptions to the Services;

(b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the "**Business Continuity Services**");

(c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and

(d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5 SERVICE CONTINUITY PLAN: PART C – DISASTER RECOVERY

PRINCIPLES AND CONTENTS

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

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

5.3 The Disaster Capability Plan shall include the following:

(a) the technical design and build specification of the Disaster Recovery System;

(b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Capability Services and any testing of the same including but not limited to the following:

(i) data centre and disaster capability site audits;

(ii) backup methodology and details of the Supplier's approach to data back-up and data verification;

(iii) identification of all potential disaster scenarios;

(iv) risk analysis;

(v) documentation of processes and procedures;

(vi) hardware configuration details;

(vii) network planning including details of all relevant data networks and communication links;

(viii) invocation rules;

(ix) Service recovery procedures; and

(x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;

(c) any applicable Performance Indicators with respect to the provision of the Disaster Capability Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Capability Plan;

(d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Capability Plan is invoked;

(e) access controls to any disaster capability sites used by the Supplier in relation to its obligations pursuant to this Schedule; and

(f) testing and management arrangements.

6 SERVICE CONTINUITY PLAN: PART D – INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

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

6.2 The Insolvency Continuity Plan shall include the following:

(a) communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;

(b) identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;

(c) plans to manage and mitigate identified risks;

(d) details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;

(e) details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and

(f) sufficient detail to enable an appointed insolvency practitioner to invoke the plan in the event of an Insolvency Event of the Supplier.

7 REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

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

(a) on a regular basis and as a minimum once every six (6) months;

(b) within three (3) calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;

(c) within 14 days of a Financial Distress Event;

(d) within 30 days of a Corporate Change Event; and

(e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) and 7.1(b)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

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:

(a) the findings of the review;

(b) any changes in the risk profile associated with the Services; and

(c) the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:

(a) review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and

(b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 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:

(a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8 TESTING OF THE SERVICE CONTINUITY PLAN

8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.

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

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

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

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

(a) the outcome of the test;

(b) any failures in the Service Continuity Plan (including the Service Continuity Plan's procedures) revealed by the test; and

(c) the Supplier's proposals for remedying any such failures.

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

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

8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9 INVOCATION OF THE SERVICE CONTUNITY PLAN

9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.

9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:

(a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or

(b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

PART 2: CORPORATE RESOLUTION PLANNING

10 Service Status and Supplier Status

10.1 This Agreement is a Critical Service Contract.

10.2 The Supplier shall notify the Authority in writing within 5 Working Days of the Effective Date and promptly after the publication of the Supplier's audited financial statements throughout the Term as to whether or not it is a Public Sector Dependent Supplier.

11 Provision of Corporate Resolution Planning Information

11.1 Paragraphs 11 to 13 of this Part 2 shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part 2 or the Supplier is or becomes a Public Sector Dependent Supplier.

11.2 Subject to Paragraphs 11.6 and 11.10 of this Part 2:

(a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority with the CRP Information within 60 days of the Effective Date; and

(b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part 2, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority with the CRP Information within 60 days of the date of the Relevant Authority's request.

11.3 The CRP Information provided by the Supplier shall relate only to those Supplier Group companies that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and will:

(a) be full, comprehensive, accurate and up to date;

(b) be split into two parts:

(i) Group Structure Information and Resolution Commentary;

(ii) UK Public Service / CNI Contract Information

and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at https://www.gov.uk/government/publications/the-outsourcing-playbook and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

(c) incorporate any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority to understand and consider the information for approval;

(d) provide a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

(e) comply with the requirements set out at Appendix I (Group Structure Information and Resolution Commentary) and Appendix II (UK Public Sector / CNI Contract Information) respectively.

11.4 Following receipt by the Relevant Authority of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part 2, the Supplier and the Relevant Authority shall discuss in good faith the contents of the CRP Information and:

(a) where the Authority is the Relevant Authority, the Authority shall; and

(b) where the Cabinet Office Markets and Suppliers Team is the Relevant Authority, the Authority shall use reasonable endeavours to procure that the Cabinet Office Markets and Suppliers Team shall,

no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that it approves the CRP Information or that it rejects it.

11.5 If the Relevant Authority rejects the CRP Information:

(a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and

(b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's comments, and shall re-submit the CRP Information to the Relevant Authority for approval within 30 days of the date of the Relevant Authority's rejection or other such reasonable period as agreed between the parties acting in good faith. The provisions of paragraph 11.3 to 11.5 of this Part 2 shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

11.6 Where the Supplier has already provided CRP Information to a Department (or, in the case of a Strategic Supplier, to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department (or, in the case of a Strategic Supplier, from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid, the Supplier shall not be required to provide the CRP Information or updated CRP Information under Paragraphs 11.2 and 11.8(a) to 11.8(c) of this Part 2 if it provides a copy of the Valid Assurance to the Authority on or before the date on which the CRP Information would otherwise have been required.

11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part 2 if:

(l) in respect of the Supplier's obligations under Paragraph 11.2:

(i) the CRP Information on which the Assurance was based was provided to the Department providing the Assurance (or, in the case of Strategic Suppliers, to the Cabinet Office Markets and Suppliers Team) within the 12 months prior to the deadline by which the CRP Information would otherwise have been required under Paragraph 11.2; and

(ii) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Agreement had then been in force) have occurred since the date on which the CRP Information was provided; and

(b) in respect of the Supplier's obligations under Paragraphs 11.8(a) to 11.8(c), the CRP Information on which the Assurance was based was provided to the Department providing the Assurance (or, in the case of Strategic Suppliers, to the Cabinet Office Markets and Suppliers Team) after the date of the event triggering the obligation to provide the CRP Information under Paragraphs 11.8(a) to 11.8(c).

11.8 Subject to Paragraph 11.6, if this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part 2 its initial CRP Information) to the Relevant Authority:

(a) Not used

(b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;

(c) within 30 days of the date that:

(i) the credit rating(s) of the Supplier changes in accordance with Paragraph 11.10; or

(ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier; and

(d) in any event, promptly after the publication of the Supplier's audited financial statements or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:

(i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or

(ii) not required pursuant to Paragraph 11.10.

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to (d) of this Part 2, the Supplier shall provide at the request of the Relevant Authority and within the applicable timescales for each event as set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority.

11.10 Where the Supplier has a Dunn & Bradstreet credit rating of:

(a) 5A2 or better the Supplier will not be required to provide the CRP Information;

(b) 5A3 the Supplier will provide, on the Authority's reasonable request, the summary information set out in 1.2 of Annex II; and

(c) 5A4 the Supplier will provide on the Authority's reasonable request the information set out in 1.3 of Annex II.

12 Termination Rights

12.1 The Authority shall be entitled to terminate this Agreement under Clause 34.1(b) (Termination by the Authority) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part 2 and either:

(a) the Supplier fails to provide the CRP Information within 6 months of the Effective Date if this is a Critical Service Contract or otherwise within 6 months of the Relevant Authority's request or other such reasonable period as agreed between the parties acting in good faith; or

(b) the Supplier fails to provide revised CRP Information in accordance with Paragraph 11.5(b) within 4 months of the date that it was first required to provide the revised CRP Information under Paragraph 11.5(a).

13 Confidentiality and usage of CRP Information

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

13.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under paragraph 13.1 of this Part 2 and Clause 21.

13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority pursuant to Paragraph 11 of this Part 2 subject, where necessary, to the Relevant Authority entering into an appropriate confidentiality agreement in the form required by the third party.

13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part 2, the Supplier shall not be obliged to disclose such CRP Information but shall use reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

a) redacting only those parts of the information which are subject to such obligations of confidentiality

b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
   i) summarising the information;
   ii) grouping the information;
   iii) anonymising the information; and
   iv) presenting the information in general terms

13.5 The Supplier shall provide the Relevant Authority with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

APPENDIX I
Group Structure Information and Resolution Commentary

1. The Supplier shall:

1.1 provide sufficient information in relation to those Supplier Group companies that have agreements for goods, services or works provision in respect of UK Public

Sector Business and/or Critical National Infrastructure to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix II if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.

1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and

1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and CNI contracts listed pursuant to Appendix II and the dependencies between each.

APPENDIX II
UK Public Sector / CNI contract Information

1. The Supplier shall:

1.1 For all contracts worth more than £5m per contract year, provide summary details (as set out in paragraph 1.2 below) of the agreements, where those agreements are for goods, services or works provision and:

1.1.1 are held by the Supplier with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations; or

1.1.2 are held by members of the Supplier Group and have been previously designated a CNI agreement by the entities described in 1.1.1 above.

1.2 Subject to Paragraph 13 (Confidentiality and usage of CRP Information) the Supplier will provide the summary details required under 1.1 as follows:

a) Agreement name and high-level description of goods, services or works provided;
b) Parties to the agreement;
c) Start date and term of the agreement;
d) Value of agreement per contract year; and
e) List of material sub-contractors and description of their role in provision of goods, services or works.

13.6 1.3 In accordance with this Paragraph 1 and upon reasonable request from the Authority, and subject to Paragraph 13 of this Schedule 8.6, provide the Relevant Authority with a copy of the latest version of the agreement(s) which have been identified under Paragraphs 1.1.1 and 1.1.2 of this Appendix II.

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 8.7 | Conduct of Claims

Schedule 8.7 | Conduct of Claims

1. INDEMNITIES

1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the "**Indemnifier**"), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the "**Beneficiary**").

1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a "**Claim**"), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within ten (10) Working Days of receipt of the same.

1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.

1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.2:

(a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;

(b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;

(c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and

(d) the Indemnifier shall conduct the Claim with all due diligence.

1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

(a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.2;

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

(c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.3.

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 1.2 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3 RECOVERY OF SUMS

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

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

(b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4 MITIGATION

Each of the Authority and the Supplier shall at all times take all reasonable steps to

minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 9.1 | Staff Transfer

Schedule 9.1 | Staff Transfer

1 DEFINITIONS

In this Schedule, the following definitions shall apply:

"Admission Agreement"	An admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services;
"Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the Admission Agreement;
"Fair Deal Employees"	those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule applies, and any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal);
"Former Supplier"	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
"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;
"Notified Sub-contractor"	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
"Replacement Sub-contractor"	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service

	Transfer Date (or any sub-contractor of any such sub-contractor);
"Relevant Transfer"	a transfer of employment to which the Employment Regulations applies;
"Relevant Transfer Date"	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Schemes"	the Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
"Service Transfer Date"	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
"Staffing Information"	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: (a) their ages, dates of commencement of employment or engagement, gender and place of work;

(b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;

(c) the identity of the employer or relevant contracting Party;

(d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;

(e) their wages, salaries, bonuses and profit sharing arrangements as applicable;

(f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

(g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);

(h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;

(i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

(j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Supplier's Final Supplier Personnel List"	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Personnel List"	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at

	the date of such list will no longer be provided by the Supplier;
"Transferring Authority Employees"	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
"Transferring Former Supplier Employees"	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2 INTERPRETATION

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

PART A | Transferring Authority Employees at commencement of Services

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

(a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and

(b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2 AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;

(b) the breach or non-observance by the Authority before the Relevant Transfer Date of:

(i) any collective agreement applicable to the Transferring Authority Employees; and/or

(ii) any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;

(c) any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

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

(i) in relation to any Transferring Authority 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 Authority 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 Authority to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

(e) a failure of the Authority 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 Authority Employees arising before the Relevant Transfer Date;

(f) any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or

(b) arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and

(b) the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the 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 15 Working Day period specified in Paragraph 2.3(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

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

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

(a) shall not apply to:

(i) any claim for:

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

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

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

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.

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

3 SUPPLIER INDEMNITIES AND OBLIGATIONS

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;

(b) 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 Authority Employees; and/or

(ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

(d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Authority 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;

(e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, a**ny Transferring Authority Employee before the Relevant Transfer Date regarding** the Relevant Transfer which has not been agreed in advance with the Authority in writing;

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

(i) in relation to any Transferring Authority 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 Authority 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 Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

(g) a failure of the 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 Authority Employees in respect of the period from (and including) the Relevant Transfer Date;

(h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

(i) a failure by the Supplier or any Sub-contractor to comply with its obligations under Paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority'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 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 the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

4 INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority 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 Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:

(a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

(b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions" of 1999;

(c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

(d) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6 PENSIONS

The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with the pensions provisions in the following Annex.

1 PARTICIPATION

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

1.3 The Supplier and the Authority agree:

(a) that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement;

(b) notwithstanding sub-paragraph 1.3(a) of this Annex, the Supplier shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and

(c) that the Authority shall be entitled to terminate this Agreement in the event that the Supplier:

(i) commits an irremediable breach of the Admission Agreement; or

(ii) commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it.

1.4 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes, including without limitation MyCSP's and/or the current Civil Service Pensions administrator on-boarding costs.

2 FUTURE SERVICE BENEFITS

2.1 The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of Schemes for service from (and including) the Relevant Transfer Date.

2.2 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

2.3 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 FUNDING

3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by, the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4 PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other:

(a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

(b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 INDEMNITY

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 EMPLOYER OBLIGATION

The Supplier shall comply with 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.

7 SUBSEQUENT TRANSFERS

The Supplier shall:

(a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;

(b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal; and

(c) for the applicable period either

(i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

(ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8 BULK TRANSFER

Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

(a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

(b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

(c) allow, in respect of any Fair Deal 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 Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service (**"the Shortfall"**), the Supplier agrees to pay the Shortfall to the Schemes;

(d) indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8(c) above.

PART B | Transferring Former Supplier Employees at commencement of Services

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

(a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

(b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or 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 (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier 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, 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:

(a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

(b) 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 in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

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

(i) in relation to any Transferring Former 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 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 in respect of the period to (but excluding) the Relevant Transfer Date;

(d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;

(e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

(f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-contractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

(a) arising out of the resignation of any Transferring Former 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

(b) 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 by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and

(b) the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier 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(b) 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 15 Working Day period specified in Paragraph 2.3(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

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

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the 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 of employment pursuant to the provisions of Paragraph 2.5 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:

(a) shall not apply to:

(i) any claim for:

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

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

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

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

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the 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 5 (Allowable Assumptions) of Part C (Adjustments to the Charges and Risk Register) of Schedule 7.1 (Charges and Invoicing) and to Paragraph 3.2 below, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

(a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

(b) 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 Employee; 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;

(c) 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;

(d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment 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;

(e) 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;

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

(i) in relation to any Transferring Former 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 on or after the Relevant Transfer Date;

(g) 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;

(h) 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, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

(i) a failure by the Supplier or any Sub-contractor to comply with its obligations under Paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each 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 and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4 INFORMATION

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:

(a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;

(b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;

(c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or

(d) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6 PROCUREMENT OBLIGATIONS

Notwithstanding any other provisions of this PART B **| Transferring Former Supplier Employees at commencement of Services**, where in this PART B **| Transferring Former Supplier Employees at commencement of Services** 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

The Supplier shall, and shall procure that each Sub-contractor shall, comply with the pensions provisions in the following Annex.

ANNEX TO PART B | PENSIONS

1 PARTICIPATION

1.1 The Supplier undertakes to enter into the Admission Agreement.

1.2 The Supplier and the Authority undertake to do all such things and execute any documents (including the Admission Agreement) as may be required to enable the Supplier to participate in the Schemes in respect of the Fair Deal Employees;

1.3 The Supplier and the Authority agree:

(a) that the arrangements under Paragraph 1.1 of this Annex include the body responsible for the Schemes notifying the Authority if the Supplier breaches any obligations it has under the Admission Agreement;

(b) notwithstanding sub-paragraph 1.3 (a) of this Annex, the Supplier shall notify the Authority in the event that it breaches any obligations it has under the Admission Agreement and when it intends to remedy such breaches; and

(c) that the Authority shall be entitled to terminate this Agreement in the event that the Supplier:

(i) commits an irremediable breach of the Admission Agreement; or

(ii) commits a breach of the Admission Agreement which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice giving particulars of the breach and requiring the Supplier to remedy it.

1.4 The Supplier shall bear its own costs and all costs that the Authority reasonably incurs in connection with the negotiation, preparation and execution of documents to facilitate the Supplier participating in the Schemes including without limitation MyCSP's and/or the current Civil Service Pensions administrator on-boarding costs.

2 FUTURE SERVICE BENEFITS

2.1 If the Supplier is rejoining the Schemes for the first time, the Supplier shall procure that the Fair Deal Employees shall be either admitted to or offered continued membership of the relevant section of the Schemes that they became eligible to join on the Relevant Transfer Date and shall continue to accrue or accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.2 If staff have already been readmitted to the Schemes, the Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the Schemes that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the Schemes for service from (and including) the Relevant Transfer Date.

2.3 The Supplier undertakes that should it cease to participate in the Schemes for whatever reason at a time when it has Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation remained an Eligible Employee with access to an occupational pension scheme certified by the Government Actuary's Department or any actuary nominated by the Authority in accordance with relevant guidance produced by the Government Actuary's Department as providing benefits which are broadly comparable to those provided by the Schemes on the date the Eligible Employees ceased to participate in the Schemes.

2.1 The Parties acknowledge that the Civil Service Compensation Scheme and the Civil Service Injury Benefit Scheme (established pursuant to section 1 of the Superannuation Act 1972) are not covered by the protection of New Fair Deal.

3 FUNDING

3.1 The Supplier undertakes to pay to the Schemes all such amounts as are due under the Admission Agreement and shall deduct and pay to the Schemes such employee contributions as are required by the Schemes.

3.2 The Supplier shall indemnify and keep indemnified the Authority on demand against any claim by, payment to, or loss incurred by the Schemes in respect of the failure to account to the Schemes for payments received and the non-payment or the late payment of any sum payable by the Supplier to or in respect of the Schemes.

4 PROVISION OF INFORMATION

The Supplier and the Authority respectively undertake to each other:

(a) to provide all information which the other Party may reasonably request concerning matters (i) referred to in this Annex and (ii) set out in the Admission Agreement, and to supply the information as expeditiously as possible; and

(b) not to issue any announcements to the Fair Deal Employees prior to the Relevant Transfer Date concerning the matters stated in this Annex without the consent in writing of the other Party (not to be unreasonably withheld or delayed).

5 INDEMNITY

The Supplier undertakes to the Authority to indemnify and keep indemnified the Authority on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards the Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which relate to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Schemes.

6 EMPLOYER OBLIGATION

The Supplier shall comply with 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.

7 SUBSEQUENT TRANSFERS

The Supplier shall:

(a) not adversely affect pension rights accrued by any Fair Deal Employee in the period ending on the date of the Service Transfer Date;

(b) provide all such co-operation and assistance as the Schemes and the Replacement Supplier and/or the Authority may reasonably require to enable the Replacement Supplier to participate in the Schemes in respect of any Eligible Employee and to give effect to any transfer of accrued rights required as part of participation under the New Fair Deal; and

(c) for the applicable period either:

(i) after notice (for whatever reason) is given, in accordance with the other provisions of this Agreement, to terminate the Agreement or any part of the Services; or

(ii) after the date which is two (2) years prior to the date of expiry of this Agreement,

ensure that no change is made to pension, retirement and death benefits provided for or in respect of any person who will transfer to the Replacement Supplier or the Authority, no category of earnings which were not previously pensionable are made pensionable and the contributions (if any) payable by such employees are not reduced without (in any case) the prior approval of the Authority (such approval not to be unreasonably withheld). Save that this sub-paragraph shall not apply to any change made as a consequence of participation in an Admission Agreement.

8 BULK TRANSFER

Where the Supplier has set up a broadly comparable pension scheme in accordance with the provisions of paragraph 2.2 above of this Annex, the Supplier agrees to:

(a) fully fund any such broadly comparable pension scheme in accordance with the funding requirements set by that broadly comparable pension scheme's actuary or by the Government Actuary's Department;

(b) instruct any such broadly comparable pension scheme's actuary to, and to provide all such co-operation and assistance in respect of any such broadly comparable pension scheme as the Replacement Supplier and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the Schemes in respect of any Fair Deal Employee that remain eligible for New Fair Deal protection following a Service Transfer;

(c) allow, in respect of any Fair Deal 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 Schemes on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal, for the avoidance of doubt should the amount offered by the broadly comparable pension scheme be less than the amount required by the Schemes to fund day for day service (**"the Shortfall"**), the Supplier agrees to pay the Shortfall to the Schemes;

(d) indemnify the Authority on demand for any failure to pay the Shortfall as required under Paragraph 8(c) above.

PART C | No transfer of employees at commencement of Services

1 PROCEDURE IN THE EVENT OF TRANSFER

1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.

1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

(a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and

(b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved,

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

2 INDEMNITIES

2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.1 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:

(a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.1 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

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

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

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

2.4 The indemnities in Paragraph 2.1:

(a) shall not apply to:

(i) any claim for:

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

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

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

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

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

3 PROCUREMENT OBLIGATIONS

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

PART D | Employment Exit Provisions

1 PRE-SERVICE TRANSFER OBLIGATIONS

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

(a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

(b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;

(c) the date which is 12 months before the end of the Term; and

(d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

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

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

(a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and

(b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

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

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

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

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

(b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and/or any payments connected with the termination of employment);

(c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;

(d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;

(e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

(f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

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

(a) the numbers of employees engaged in providing the Services;

(b) the percentage of time spent by each employee engaged in providing the Services;

(c) the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule (as appropriate); and

(d) a description of the nature of the work undertaken by each employee by location.

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

(a) the most recent month's copy pay slip data;

(b) details of cumulative pay for tax and pension purposes;

(c) details of cumulative tax paid;

(d) tax code;

(e) details of any voluntary deductions from pay; and

(f) bank/building society account details for payroll purposes.

2 EMPLOYMENT REGULATIONS EXIT PROVISIONS

2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.

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

(a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:

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

(ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

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

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

(ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

(e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);

(f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and

(g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

(a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or

(b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

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

(a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

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

2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

(a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or

(c) the situation has not otherwise been resolved

the Replacement Supplier and/or Replacement Sub-contractor, as appropriate may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

(a) shall not apply to:

(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

(b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date .

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

(a) the Supplier and/or any Sub-contractor; and

(b) the Replacement Supplier and/or the Replacement Sub-contractor.

2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

(a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;

(b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:

(i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List ; and/or

(ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

(c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

(d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

(e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

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

(i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and

(ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;

(g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

(h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX | LIST OF NOTIFIED SUB-CONTRACTORS
[*Insert*]

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 9.2 | Key Personnel

Schedule 9.2 | 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

**key personnel redacted.*

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 10 | Not used

HM Revenue & Customs

HMRC Tier 1 and 2 Model ICT Contract
Version 2.1 (November 2019)

SCHEDULE 11 | Collaboration

Schedule 11

Multi Party Performance Management and Governance

1 DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

"Authority Business Objectives"	has the meaning given in Paragraph 2.1 (*Introduction*) of this Schedule 11;
"Ecosystem Services"	means all the services to be provided by the Ecosystem Suppliers under their respective Ecosystem Agreements;
"Required Behaviours"	means the behaviours set out in Attachment 1 to Annex 1 (*Required Behaviours*) to this Schedule 11; and
"Status"	means the Supplier's status for the purposes of determining eligibility for the incentives set out in Paragraph 5, as determined by the Authority in accordance with Paragraph 3.3 of Annex 1 (*Required Behaviours*) of this Schedule 11, comprising: (a) Bronze Status; (b) Silver Status; and (c) Gold Status.

2 INTRODUCTION

2.1 This Schedule 11 sets out the obligations of the Parties to work cooperatively and collaboratively with each other and with the Other Ecosystem Suppliers to achieve:

(a) great user experience (internal and external);

(b) pace and flexibility in delivery;

(c) great security and resilience;

(d) value for money; and

(e) avoidance of "lock-in",

(**"Authority Business Objectives"**)

3 NOTIFICATION OF FAILURE

3.1 The Parties shall at all times act in accordance with the principle of "fix first, settle later", requiring that each Party shall concentrate on solving a problem as expeditiously and cost effectively as possible and leave any Disputes as to which Party

or Other Supplier is responsible, which Party or Other Supplier should bear the cost of fixing the problem and any associated legal issues until resolution of the relevant problem.

3.2 Where the Supplier fails or becomes aware that it is likely to fail to comply with any obligation under this Agreement and that failure could impact on the performance of the services by any Other Supplier(s) or the Authority, the Supplier shall as soon as is reasonably practicable notify the Authority of such failure or likely failure.

3.3 Where the Supplier becomes aware of an event or incident that that could impact on the performance of its own Services or the performance of the services by any Other Supplier(s) or the Authority, the Supplier shall as soon as is reasonably practicable notify the Authority of such failure or likely failure.

4 REQUIRED BEHAVIOURS

4.1 The Parties shall comply with the provisions of Annex 1 (*Required Behaviours*) to this Schedule 11.

5 SUPPLIER STATUS

5.1 The Supplier shall not be entitled to describe itself as a supplier to the Authority (including, without limitation, in any press announcements, promotions or marketing) unless:

(a) such description includes the Supplier's Status, as applicable during the relevant period; and

(b) the Supplier has obtained the prior written consent of the Authority in accordance with Clause 24.1 (*Publicity and Branding*).

5.2 Subject to compliance with the Authority's policies and applicable Law, the Supplier shall be entitled to the incentives set out in Table 1 below in accordance with the Supplier's Status during the relevant period.

Table 1: Incentives

Gold Status	Silver Status	Bronze Status
• The Supplier shall be entitled to describe itself as a "Gold Supplier" to the Authority. • The Authority shall, on reasonable request of the Supplier, support the Supplier	• The Supplier shall be entitled to describe itself as a "Silver Supplier" to the Authority. • The Supplier shall be entitled to include the Authority as a reference in any	• The Supplier shall be entitled to describe itself as a "Bronze Supplier" to the Authority.

in improving cross-government ICT services. • The Authority shall, on reasonable request of the Supplier, provide Authority executives as guest speakers at Supplier events. • The Supplier shall be entitled to include the Authority as a reference in any tenders submitted by the Supplier. • The Supplier shall be entitled to use the Authority as a reference site. • The Authority shall make available opportunities for Supplier Personnel to be seconded to the Authority. • The Authority shall work with the Supplier to support opportunities for Authority personnel to be seconded to the Supplier. • The Authority shall, on reasonable request of the Supplier, act as co-author with the Supplier for case studies and/or white papers.	tenders submitted by the Supplier. • The Authority shall make available opportunities for Supplier Personnel to be seconded to the Authority. • The Authority shall work with the Supplier to support opportunities for Authority personnel to be seconded to the Supplier.	

6 CHANGES TO SCHEDULE 11

6.1 The Authority shall be entitled amend this Schedule 11 (*Collaboration*) by giving written notice to the Supplier. Subject to Paragraph 6.2 below, any such changes shall take effect from the date specified in the notice given pursuant to this Paragraph 6.1.

6.2 Any changes to the Required Behaviours made pursuant to this Paragraph 6 shall take effect no earlier than the commencement of the quarter immediately following the date of the notice given pursuant to Paragraph 6.1.

7 INCENTIVE REGIME

7.1 Without limitation to the Authority's rights under Paragraph 6, the Authority reserves the right implement an incentive regime under which incentives and rewards may be provided for Ecosystem Suppliers to work cooperatively and collaboratively to jointly achieve the Authority's objectives.

8 GOVERNANCE

8.1 The Supplier acknowledges that its relationship with the Authority is governed by the governance provisions set out in schedule 8.1 (*Governance*).

8.2 In addition to those governance provisions, the Parties' respective representatives shall each comply with their obligations and responsibilities to participate in the meetings and other activities and hold the meetings set out in Annex 2 (*Ecosystem Governance*) to this Schedule 11 to discuss the matters identified in that schedule.

8.3 The Supplier and the Authority shall each appoint an ecosystem representative (**"Ecosystem Representative"**) at the level of the Joint Collaboration Board who:

(a) will be responsible for managing the relationship between the Parties and the Other Ecosystem Suppliers and any issues arising under this Schedule 11; and

(b) will have authority to act on behalf of the designating party in all matters pertaining to this Schedule 11.

8.4 The Ecosystem Representative will be a Key Personnel role for the purposes of this Agreement.

9 ECOSYSTEM DISPUTE RESOLUTION PROCEDURE

9.1 The Parties shall comply with the provisions of Annex 3 (*Ecosystem Dispute Resolution Procedure*) to this Schedule 11.

Annex 1 | Required Behaviours

1 DEFINITIONS

1.1 In this Annex, the following definitions shall apply:

"Service Provider"	the Supplier, all Other Suppliers and the Authority;
"Service Provider Personnel"	all directors, officers, employees, agents, consultants and contractors of the Service Providers; and
"Qualifying Supplier"	any supplier to the Authority (including the Supplier) that has entered into an agreement incorporating an annex that is identical or substantially similar to Annex 1 (*Required Behaviours*).

2 INTRODUCTION

2.1 The Parties acknowledge that the adoption of the Required Behaviours may be a transformational exercise taking place over a series of months.

3 ASSESSMENT OF PERFORMANCE AGAINST THE REQUIRED BEHAVIOURS

3.1 Within five (5) Working Days following the end of each quarter, each Qualifying Supplier shall provide to the Authority:

(a) a self-assessment of its own performance against the Required Behaviours during the preceding quarter, substantially in the form set out in Attachment 2 (*Template Required Behaviours Questionnaire*) of this Annex 1; and

(b) completed questionnaires for the Authority and each of the other Qualifying Suppliers, each consisting of an assessment of the relevant organisation's performance against the Required Behaviours during the preceding quarter, substantially in the form set out in Attachment 2 (*Template Required Behaviours Questionnaire*) of this Annex 1.

3.2 Within five (5) Working Days following the end of each quarter, the Authority shall complete:

(a) completed questionnaires for each of the Qualifying Suppliers, each consisting of an assessment of the relevant Qualifying Supplier's performance against the Required Behaviours during the preceding quarter, substantially in the form set out in Attachment 2 (*Template Required Behaviours Questionnaire*) of this Annex 1.

3.3 The Authority shall aggregate all assessments provided to it by the Qualifying Suppliers pursuant to Paragraph 3.1 (or equivalent under the relevant agreement) together with the Authority's assessments completed pursuant to Paragraph 3.2 within a single aggregated report, and shall:

(a) consider and review the relevant assessments;

(b) give each Qualifying Supplier the opportunity to attend a closed meeting with the Authority to receive detailed feedback relating to its score and comment on such feedback;

(c) moderate the scores and determine for the Authority and each Qualifying Supplier, at the Authority's sole discretion, a final moderated Required Behaviours score for the applicable quarter (**"Final Required Behaviours Scores"**); and

(d) determine for each Qualifying Supplier, at the Authority's sole discretion, whether the Supplier shall qualify for Gold Status, Silver Status or Bronze Status for the forthcoming quarter.

3.4 Within twenty (20) Working Days following the end of each quarter, the Authority shall provide to all Qualifying Suppliers a report setting out:

(a) the Final Required Behaviours Scores for the Authority and each of the Qualifying Suppliers; and

(b) the Status for each of the Qualifying Suppliers (such Status to apply from the date of the report until the next Status determination pursuant to this Paragraph 3).

1 TAKING RESPONSIBILITY

1.1 Each Party shall improve its working relationships with the other Service Providers taking responsibility to fulfil collaboratively agreed commitments to support the delivery of the Authority's objectives (as notified to the Supplier from time to time) through leadership, awareness, information exchange and joint problem solving.

1.2 The Parties shall demonstrate consistent leadership at all levels to set an agreed expectation for the direction of the collaborative relationship through appropriate actions, behaviours and effective empowerment, in particular by establishing a strong direction and a persuasive future vision.

1.3 The Supplier shall seek to understand the Authority's objectives and goals in relation to the end to end services (including delivery of the Authority's Next Generation Performance Measures) in order to support and improve the Parties' collaborative relationships and behaviours.

1.4 The Parties shall be open, transparent and responsive in sharing with other Service Providers relevant and accurate information required to facilitate the delivery of the Authority's objectives.

1.5 The Parties shall demonstrate collaborative behaviour by proactively leading on, pre-empting, mitigating and contributing to the resolution of service delivery problems or issues irrespective of their contractual obligations, including acting in accordance with the principle of "fix first, settle later".

2 CONSISTENCY AND CONVERGENCE

2.1 Each Party acknowledges that adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with other Service Providers will support the successful delivery of the Services.

2.2 The Supplier shall adopt common working practices and common terminology with other Service Providers to support the successful delivery of the Services, including by:

(a) where appropriate, adopting such standard terminology as is used already by the Authority and the other Service Providers;

(b) using recognised industry standard terminology wherever possible, in preference to terminology that describes the Supplier's own products, services, tools and processes; and

(c) working with the other Service Providers to identify and resolve any ambiguities in the use of terminology in the delivery of the Services; and

(d) demonstrating an ability and willingness to work proactively with other Service Providers to deliver potential solution designs and/or optimal services for improved value, using consistent end to end service delivery processes.

2.3 The Parties shall work individually and collaboratively with the other Service Providers to achieve optimal exploitation of people skills, facilities and tools within the wider organisation and the flexible allocation of those resources to achieve delivery of the current and future business requirements.

2.4 The Supplier shall demonstrate willingness to utilise existing solutions, technologies and open standards where commonly available to the other Service Providers rather than "re-inventing wheels" in order to facilitate the efficient and effective delivery of the Authority's objectives.

3 OPENNESS AND COMMUNICATION

3.1 The Parties shall provide cooperation, support, information and assistance to the other Service Providers in a proactive, transparent and open way and in a spirit of trust and mutual confidence, to achieve the Authority's objectives, including the effective delivery of the Next Generation Performance Measures.

3.2 The Parties shall act as "one team" with the other Service Providers (i.e. leave company badges at the door) and collaborate to deliver the Authority's objectives (as notified to the Supplier from time to time), including by:

(a) maintaining a genuine, non-defensive presence and working openly and collaboratively with the other Service Providers to resolve any problems that arise;

(b) engaging in regular and open communication with the other Service Providers and with other Delivery Groups and avoiding working in "silos";

(c) demonstrating a willingness and ability to:

(i) listen to other parties' concerns and consider in good faith all constructive feedback without triggering escalation; and

(ii) provide constructive feedback to other Service Providers where appropriate; and

(d) behaving in a supportive and considerate manner to all Service Provider Personnel, regardless of organisation.

3.3 The Parties shall identify and adopt appropriate types and styles of communications, behaviours and engagement activities. This includes the identification of clear lines of engagement and authorities in support of decision making and actively working with the other Service Providers to develop and improve the working relationships between delivery teams to promote the Authority's objectives (as notified to the Supplier from time to time).

3.4 The Parties shall promptly and proactively:

(a) identify factors which may compromise or enhance the solution or performance;

(b) analyse the impact and likelihood of such factors;

(c) escalate and mitigate emerging risks; and

(d) exploit opportunities to enhance the solution or performance.

4 DELIVERY AND INNOVATION

4.1 Each Party shall individually and collectively with the other Service Providers work to deliver the Authority's objectives (as notified to the Supplier from time to time) and achieve best value and ensure the orderly provision of seamless end to end services.

4.2 The Parties shall encourage, identify, implement and capitalise on opportunities to improve products, services, processes, technologies or ideas to deliver better solutions and performance throughout the relationship lifecycle.

4.3 The Supplier shall demonstrate a drive to continually strive to deliver more in order to support the Authority to achieve its ambition to become the most digitally advanced tax authority in the world.

4.4 The Supplier shall act responsively to change and shall proactively identify situations where change may be appropriate and empower staff to consider and take managed risks.

4.5 Each Party shall recognise exceptional performance across the ecosystem, regardless of which Service Provider(s) are responsible for such performance, and where applicable implement processes to achieve such recognition.

Taking Responsibility

Q1. Does the Service Provider demonstrate consistent leadership at all levels to set an agreed expectation for the direction of the collaborative relationship through appropriate actions, behaviours and effective empowerment? In particular, does the Service Provider establish a strong direction and a persuasive future vision?

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q2. Does the supplier seek to understand HMRC's objectives and goals in relation to the end to end services (including delivery of HMRC Next Generation Performance Measures) in order to support and improve the Parties' collaborative relationships and behaviours?

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q.3 Is the Service Provider open, transparent and responsive in sharing with other Service Providers relevant and accurate information required to facilitate the delivery of HMRC's objectives?

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q.4 Does the Service Provider demonstrate collaborative behaviour by proactively leading on, pre-empting, mitigating and contributing to the resolution of service delivery problems or issues irrespective of their contractual obligations, including acting in accordance with the principle of "fix first, settle later"?

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Consistency and Convergence

Q.5 Does the supplier adopt common working practices and common terminology with other Service Providers to support the successful delivery of the Services? In particular, does the Service Provider:

- where appropriate, adopt such standard terminology as is used already by HMRC and the other Service Providers;
- use recognised industry standard terminology wherever possible, in preference to terminology that describes the supplier's own products, services, tools and processes; and
- work with the other Service Providers to identify and resolve any ambiguities in the use of terminology in the delivery of the Services?

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q.6 Does the Service Provider demonstrate an ability and willingness to work proactively with other Service Providers to deliver potential solution designs and/or optimal services for improved value, using consistent end to end service delivery processes?

Level 0	
Level 1	

Level 2	
Level 3	
Level 4	

Q.7 Does the Service Provider work individually and collaboratively with the other Service Providers to achieve optimal exploitation of people skills, facilities and tools within the wider organisation and the flexible allocation of those resources to achieve delivery of the current and future business requirements?

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q.8 Does the supplier demonstrate willingness to utilise existing solutions, technologies and open standards where commonly available to the other Service Providers rather than “re-inventing wheels” in order to facilitate the efficient and effective delivery of HMRC's objectives.

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Openness and Communication

Q.9 Does the Service Provider act as "one team" with the other Service Providers (i.e. leave company badges at the door) and collaborate to deliver HMRC’s objectives, including by:

- Maintaining a genuine, non-defensive presence and working openly and collaboratively with the other Service Providers to resolve any problems that may arise:

- Engaging in regular and open communication with the other Service Providers and with other Delivery Groups and avoiding working in “silos”:

- Demonstrating a willingness and ability to:
    - Listen to other parties' concerns and consider in good faith all constructive feedback without triggering escalation: and
    - Provide constructive feedback to other Service Providers where appropriate
- Behaving in a supportive and considerate manner to all Service Provider personnel, regardless of organisation

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q.10 Does the Service Provider identify and adopt appropriate types and styles of communications, behaviours and engagement activities? This includes the identification of clear lines of engagement and authorities in support of decision making and actively working with the other Service Providers to develop and improve the working relationships between delivery teams to promote HMRC's objectives.

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q.11 Does the Service Provider promptly and proactively:

- identify factors which may compromise or enhance the solution or performance;
- analyse the impact and likelihood of such factors;
- escalate and mitigate emerging risks; and

- exploit opportunities to enhance the solution or performance.

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Delivery and Innovation

Q.12 Does the Service Provider encourage, identify, implement and capitalise on opportunities to improve products, services, processes, technologies or ideas to deliver better solutions and performance throughout the relationship lifecycle?

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q.13 Does the supplier demonstrate a drive to continually strive to deliver more in order to support HMRC to achieve its ambition to become the most digitally advanced tax authority in the world.

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Q.14 Is the supplier responsive to change and proactive in identifying situations where change may be appropriate? Does the supplier empower staff to consider and take managed risks?

Level 0	

Level 1	
Level 2	
Level 3	
Level 4	

Q.15 Does the Service Provider recognise exceptional performance across the ecosystem, regardless of which Service Provider(s) are responsible for such performance, and where applicable implement processes to achieve such recognition?

Level 0	
Level 1	
Level 2	
Level 3	
Level 4	

Annex 2 | Ecosystem Governance

1 DEFINITIONS

1.1 In this Annex, the following definitions shall apply:

"Board Member"	the persons appointed by the Authority and Supplier as more particularly set out in Paragraph 3.6 (*Board Meetings*) of this Annex 2;
"Boards"	the Joint Collaboration Board, Joint Live Services Review Board and Project Delivery Board, and **"Board"** shall mean any of them;
"Joint Collaboration Board"	the body described in Table 1 of this Annex 2 (*Ecosystem Governance*);
"Joint Live Services Review Board"	the body described in Table 1 of this Annex 2 (*Ecosystem Governance*); and
"Project Delivery Board"	the body described in Table 1 of this Annex 2 (*Ecosystem Governance*).

2 GOVERNANCE OF THE ECOSYSTEM SERVICES

2.1 The ecosystem governance structures are designed to facilitate the alignment of the Authority's and the Ecosystem Suppliers' objectives and overall strategy, the early identification and resolution of issues and to provide a structure for collaborative and pro-active management capable of adapting to changing requirements and delivering improvements. The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Annex 2 (*Ecosystem Governance*) can be fully realised.

3 BOARDS

Establishment and structure of the Boards

3.1 The Authority shall establish the Boards set out in Table 1 below for the purposes of this Agreement on which the Ecosystem Suppliers and the Authority shall be represented.

3.2 In relation to each Board, the following information is set out in Table 1 below:

(a) Authority Board Members;

(b) Ecosystem Supplier Board Members;

(c) the Board's terms of reference;

(d) frequency that the Board shall meet (unless otherwise agreed between the Parties);

(e) whether the Board's business may be conducted in multiple parts; and

(f) planned start date by which the Board shall be established.

3.3 Where a Board meeting is designated in Table 1 as "multi-part", this means that the Authority may at its discretion require that certain agenda items are only discussed by the Authority and the relevant Ecosystem Supplier(s) (ie closed agenda items). Agenda items which may be discussed by all Parties are open agenda items.

3.4 All Board meetings will be timetabled by the Authority, and a 12 month Board meeting calendar shall be maintained and made available to all Ecosystem Suppliers by the Authority.

3.5 Notwithstanding any other provision of this Annex 2 (*Ecosystem Governance*), the Authority may by giving not less than three (3) days' written notice call an unscheduled Board meeting to discuss matters which the Authority reasonably considers require attention before the next relevant scheduled meeting. The Supplier shall ensure that it is appropriately represented at any such meeting. The Supplier may ask the Authority giving not less than three (3) days' written notice to call such an additional meeting by submitting a request to the relevant chairperson.

Board meetings

3.6 Each Party shall ensure that the individuals specified in Table 1 (**"Board Member(s)"**) have the authority, or have access to a member of the Supplier Personnel who has authority, to make decisions at the Board meetings at which that Board Member's attendance is required.

3.7 Each Party shall ensure that the Board Members shall make 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 reasonable endeavours to ensure that:

(a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and

(b) that he/she is debriefed by such delegate after the Board meeting.

3.8 If a Board Member is unable to attend a Board meeting and, having used reasonable endeavours, is unable to ensure that a delegate will attend the Board meeting pursuant to Paragraph 3.7, he/she shall notify the Authority and the Other Ecosystem Suppliers as soon as reasonably practicable.

3.9 Where the Supplier wishes to replace its Board Member with a different officer and/or employee at any Board meeting it shall first obtain the Authority's written approval for such substitution and ensure that any such replacement has the level of seniority, knowledge and authority required for the meeting in question. The Authority may replace its Board Member at its discretion and shall inform the Ecosystem Suppliers of any such change.

3.10 A chairperson shall be appointed by the Authority for each Board meeting as identified in Table 1. The chairperson shall be responsible for:

(a) scheduling Board meetings;

(b) setting the agenda for Board meetings and circulating the meeting notice to all attendees in advance of such meeting. The meeting notice will set out the standing agenda items and will invite agenda items from the attendees. Except for unscheduled meetings called pursuant to Paragraph 3.5, the agenda will be finalised five (5) Working Days before the Board meeting and be re-issued along with all the supporting papers;

(c) chairing the Board meetings;

(d) determining whether the Board meeting shall be conducted in multiple parts to allow commercially confidential matters to be discussed;

(e) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;

(f) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within five (5) Working Days after the Board meeting.

(g) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.

3.11 The minutes will be in a format specified by the Authority and will contain as a minimum (i) progress on issues identified at the previous meeting; (ii) issues of concern for the continued and future provision of the Ecosystem Services; and (iii) agreed actions and target completion dates for those actions. Minutes will be agreed at the subsequent Board meeting. The chairperson will maintain a library of meeting records and a running log of actions. The chairperson shall make the library of meeting records available to the Authority and to any Board Member of the relevant Ecosystem Suppliers to which meeting record relates. The chairperson shall not make available any meeting records relating to closed Board meetings except to the Authority and the Board Member of the relevant Ecosystem Supplier.

3.12 The quorum for a Board meeting shall be at least one (1) Board Member (or delegate) of the Authority and at least one (1) Board Member (or delegate) of those Ecosystem Supplier(s) entitled to attend the relevant Board meeting, as specified in Table 1. If

one (1) or more Ecosystem Suppliers entitled to attend is not represented by at least one (1) Board Member (or delegate) at a Board meeting, a quorum will, subject to Paragraph 3.13, be deemed to exist with the Board Members then present after fifteen (15) minutes following the commencement of the meeting. Any agenda items which exclusively relate to the Ecosystem Supplier whose Board Member is not present shall be deferred to the next scheduled Board meeting of that body.

3.13 If the Authority considers that there is an insufficient number of Board Members present at a Board meeting to constitute a quorum, the meeting shall be adjourned by the Authority's Board Member present and shall be reconvened on a date and time to be determined by the Authority in its absolute discretion.

3.14 The Authority shall escalate any failure to attend by a Board Member (or his/her delegate) without having sent apologies prior to commencement of the relevant Board meeting to the relevant Ecosystem Supplier's Account Director.

3.15 The Parties shall ensure, as far as reasonably practicable, that the issues and objectives considered at Board meetings are resolved and / or achieved as soon as reasonably practicable. Each Party shall endeavour to ensure that their respective Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

Table 1 | Board Meetings

BOARD	TERMS OF REFERENCE	STRUCTURE AND BOARD MEMBERS	FREQUENCY	MULTI-PART	PLANNED START DATE
Joint Collaboration Board	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Insert date***]
Project Delivery Board	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Insert date***]
Joint Live Services Review Board	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Drafting note: To be advised***]	[***Insert date***]

4 COLLABORATION WORKSHOP

4.1 Where a new Ecosystem Supplier is on-boarded, the Authority shall organise a collaboration workshop to be attended by the Authority, all of the existing Ecosystem Suppliers' Relationship Managers, any Key Personnel identified in the relevant Ecosystem Agreements and representatives of any Other Suppliers as the Authority deems necessary. The purpose of the workshop will be to assist in the development of collaborative relationships to ensure Ecosystem Suppliers and the Authority are focused on collective performance and innovation.

5 CONTRACT MANAGEMENT MECHANISMS

5.1 The Parties shall pro-actively manage risks attributed to them under the terms of their Ecosystem Agreements.

5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:

(a) the identification and management of risks;

(b) the identification and management of issues; and

(c) monitoring and controlling project plans.

5.3 The Supplier shall create and maintain a risk register and shall submit the risk register for review by the Joint Collaboration Board.

5.4 The Parties shall develop and agree with the Other Ecosystem Suppliers a "relationship map" which identifies:

(a) key personnel within the Authority's and each Ecosystem Suppliers' organisation and charts equivalent roles between the organisations; and

(b) the points of escalation for the Authority and each Ecosystem Supplier.

5.5 The Parties shall jointly manage all internal communications within each Party's organisation regarding changes required under or in connection with this Schedule 11.

6 ANNUAL REVIEW

6.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Authority and the Ecosystem Suppliers.

6.2 The meeting shall be attended by the [***insert role***] of the Ecosystem Suppliers and the [***insert role***] of the Authority and any other persons considered by the Authority necessary for the review.

6.3 The purpose of the annual review shall be to:

(a) determine the effectiveness of Board meetings in the preceding year;

(b) agree any required changes to the terms of reference of existing Board meetings; and

(c) make any required amendments to the number and/or type of Board meetings held.

Annex 3 | Ecosystem Dispute Resolution Procedure

1 DEFINITIONS

1.1 In this Annex, the following definitions shall apply:

"CEDR"	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
"**Counter Notice**"	has the meaning given in Paragraph 8.2;
"Ecosystem Dispute Notice"	a written notice served by one party to an Ecosystem Dispute on the other parties to that Ecosystem Dispute stating that the party serving the notice believes that there is an Ecosystem Dispute;
"Ecosystem Dispute Process"	has the meaning given in Paragraph 4 of this Annex 3 (*Ecosystem Dispute Resolution Procedure*);
"Expert"	in relation to an Ecosystem Dispute, a person appointed in accordance with Paragraph 7 of this Annex 3 (*Ecosystem Dispute Resolution Procedure*) to act as an expert in relation to that Dispute;
"Expert Determination"	determination by an Expert in accordance with Paragraph 7;
"Expert Determination Notice"	has the meaning given in Paragraph 7.1;
"Mediation Notice"	has the meaning given in Paragraph 5.3;
"Mediator"	means the independent third party appointed in accordance with Paragraph 6 to mediate a Dispute;
"Parties to the Dispute"	means the Authority and the parties to the relevant Ecosystem Dispute (and **"Party to the Dispute"** shall be construed accordingly);
"Reference Date"	has the meaning given in Paragraph 5.1 of this Annex 3 (*Ecosystem Dispute Resolution Procedure*);
"Related Third Party Dispute"	has the meaning given in Schedule 8.4 (*Dispute Resolution Procedure*);

"Supplier Request"	has the meaning given in Schedule 8.4 (*Dispute Resolution Procedure*);

2 GENERAL PROVISIONS APPLYING TO THE ECOSYSTEM DISPUTE RESOLUTION PROCEDURE

2.1 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement, regardless of the nature of the Dispute and notwithstanding any issue of an Ecosystem Dispute Notice.

2.2 The Parties shall use their reasonable endeavours to:

(a) ensure that the Ecosystem Dispute Process operates efficiently and flexibly; and

(b) resolve all Ecosystem Disputes as quickly as possible and at the most appropriate level within their respective organisations.

3 SINGLE SUPPLIER AND MULTI-PARTY DISPUTE RESOLUTION

3.1 Any Dispute that arises under or in connection with this Agreement that involves only the Supplier and the Authority and which does not impact the Other Ecosystem Suppliers nor the performance of their services shall be resolved in accordance with the Dispute Resolution Procedure set out in Schedule 8.4 (*Dispute Resolution Procedure*).

3.2 Any Dispute that arises under or in connection with this Agreement that in the reasonable judgment of the Authority may:

(a) require the Authority to make a claim against one or more Other Ecosystem Suppliers;

(b) trigger a claim by such Other Ecosystem Suppliers against the Authority; or

(c) may otherwise impact how the Other Ecosystem Suppliers must deliver their services under their respective Ecosystem Agreements so that they have a legitimate interest in the outcome of the Dispute

(each an **"Ecosystem Dispute"**), shall be resolved in accordance with the Ecosystem Dispute Resolution Procedure set out in this Annex 3 (*Ecosystem Dispute Resolution Procedure*) where applicable or so determined by the Authority.

3.3 The Authority, in its sole discretion, will determine when it first receives a Claim Notice triggering a new Dispute whether a Dispute falls within the scope of this Annex 3 (*Ecosystem Dispute Resolution Procedure*) and/or Schedule 8.4 (*Dispute Resolution Procedure*). Prior to making any such determination the Authority shall be entitled to give notice of the Dispute to any of the Other Ecosystem Suppliers it considers may have a connection to or be interested in the Dispute and require them

within ten (10) Working Days (or as otherwise agreed with the Authority) to serve on the Authority an Ecosystem Dispute Notice in accordance with Paragraph 3.6 below (or equivalent under the applicable Ecosystem Agreement) setting out any claim(s) they may have against the Authority arising out of essentially the same facts or circumstances as set out in the Claim Notice.

3.4 The Authority shall be entitled to re-visit any determination under Paragraph 3.3 if and when it receives notice of any other Dispute or Disputes from an Other Ecosystem Supplier who either:

(a) was not served with a notice by the Authority pursuant to this Paragraph 3; or

(b) upon receipt of such a notice and following reasonable investigation, could not have known at the time either of the facts and circumstances giving rise to their claim or that it arose out of essentially the same facts or circumstances as set out in the first Claim Notice.

In any such case, the Authority shall be entitled either to apply to join the relevant Other Ecosystem Supplier to the Dispute at the relevant procedural stage it has reached under the Ecosystem Dispute Resolution Procedure or to treat the Dispute as a free-standing dispute to be resolved on its own.

3.5 If an Other Ecosystem Supplier fails to notify a claim to the Authority in accordance with Paragraph 3.3 when it was in a position to do so then it shall be debarred from pursuing that claim thereafter.

3.6 An Ecosystem Dispute Notice:

(a) shall set out:

(i) the name of the party that issued the Ecosystem Dispute Notice;

(ii) the material particulars of the Dispute;

(iii) the reasons why the party serving the Dispute Notice believes that the Dispute has arisen; and

(iv) any actions taken by the party that issued the Ecosystem Dispute Notice to mitigate the dispute;

(v) the Dispute's severity and the degree of urgency involved;

(vi) an estimate of the current and projected financial impact that the Dispute may have on the party that issued the Ecosystem Dispute Notice;

(vii) any further information requested by the Authority; and

(b) may specify that the party issuing the Ecosystem Dispute Notice has determined (in the case of the Authority) or considers (in the case of an Ecosystem Supplier) that the Dispute is a Related Third Party Dispute, in which case the provisions of Paragraph 9 to Schedule 8.4 (*Dispute Resolution Procedure*) shall apply.

3.7 Following the receipt of a Claim Notice and any Ecosystem Dispute Notice received by the Authority pursuant to Paragraph 3.3, the Authority will determine:

(a) whether a Dispute or Disputes are best resolved separately or as one or more Ecosystem Disputes;

(b) who should be the parties to each Ecosystem Dispute;

(c) the issues to be resolved in such Ecosystem Dispute; and

(d) whether the provisions of Paragraph 9 to Schedule 8.4 (*Dispute Resolution Procedure)* shall apply.

3.8 The Authority will notify in writing the relevant parties of its determination under Paragraphs 3.3 to 3.4 and 3.7 above, setting out details of the parties to the Ecosystem Dispute, details of the facts and issues in dispute as set out in each parties' notices served on the Authority. Within ten (10) Working Days of receiving such notification from the Authority, any party in receipt will serve a response specifying those points of the Ecosystem Dispute Notice it disputes and the reasons for doing so.

4 ECOSYSTEM DISPUTE PROCESS

4.1 This Paragraph 4 sets out the process that the Parties shall follow to seek to resolve Ecosystem Disputes (**"Ecosystem Dispute Process"**).

4.2 If an Ecosystem Dispute arises then the Parties to the Dispute shall attempt in good faith to resolve the Dispute in accordance with the provisions herein.

4.3 In the case of each Ecosystem Dispute (as determined by the Authority), the Parties shall seek to resolve the Dispute:

(a) first by commercial negotiation (as prescribed in Paragraph 4);

(b) then, if a Party to the Dispute serves a Mediation Notice, by mediation (as prescribed in Paragraph 6);

(c) then, if a Party to the Dispute serves an Expert Determination Notice, by Expert Determination (as prescribed in Paragraph 7); and

(d) lastly by recourse to arbitration (as prescribed in Paragraph 8) or litigation (in accordance with Clause 48 (*Governing Law and Jurisdiction*)).

5 COMMERCIAL NEGOTIATION

5.1 Following the establishment of an Ecosystem Dispute, the Authority shall refer the Dispute to the Joint Collaboration Board for consideration and resolution, who shall meet as soon as practicable after reference by the Authority of the Ecosystem Dispute Notice (the **"Reference Date"**), but in any event within five (5) Working Days of the Reference Date.

5.2 If the Joint Collaboration Board is not due to convene within the timescale set out in Paragraph 5.1, the Authority reserves the right to:

(a) escalate the Dispute to the next most appropriate Board; or

(b) schedule a meeting to resolve the Dispute out of committee, provided that the Authority considers that a sufficient quorum exists for that Board and that all relevant parties are represented.

5.3 If the parties to the Ecosystem Dispute and the Authority are unable to resolve the Dispute within twenty (20) Working Days of service of the Reference Date, a Party to the Dispute may serve a written notice to the other Parties to the Dispute to proceed to mediation in accordance with Paragraph 6 (a **"Mediation Notice"**).

6 MEDIATION

6.1 If a Mediation Notice is served, then the Authority shall within five (5) Working Days determine whether to proceed to mediation or to escalate the Ecosystem Dispute to expert determination in accordance with Paragraph 7. The Authority will then serve a notice on each party confirming that determination.

6.2 If the Authority determines to proceed with mediation, the Parties to the Dispute shall attempt to settle that Dispute by mediation in accordance with CEDR's Model Mediation Agreement which is current at the time the Mediation Notice is served (or such other version as the Parties may agree) and which shall be deemed to be incorporated by reference into this Agreement.

6.3 If the Parties to the Dispute are unable to agree on the joint appointment of an independent person to mediate the Dispute within ten (10) Working Days from (and including) the service of a Mediation Notice then any Party to the Dispute may apply to CEDR to nominate such a person on the then current panel rates for CEDR mediations.

6.4 The first meeting of the mediation shall take place within twenty (20) Working Days from the date on which the Mediator is appointed, or as soon as reasonably practicable thereafter.

6.5 If the Parties to the Dispute are unable to reach a settlement in the negotiations at the mediation, and only if all parties so request and the Mediator agrees, the Mediator shall produce for the parties a non-binding recommendation on terms of settlement. The recommendation 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.

6.6 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) and the other parties to the Dispute. The Mediator shall assist the Parties to the Dispute in recording the outcome of the mediation.

6.7 CEDR's fees (which include the Mediator's fees) and the other expenses of the mediation will be borne equally by the Parties to the Dispute. Payment of these fees and expenses will be made to CEDR in accordance with its fee schedule and terms and conditions of business.

6.8 Each Party to the Dispute will bear its own costs and expenses of its participation in the mediation.

6.9 If a mediation is unsuccessful or no mediation is convened pursuant to Paragraph 6.1, then:

(a) any Party to the Dispute may at any stage request the Authority to convene or re-convene a mediation; and

(b) if the Authority agrees to any such request, a mediation pursuant to this Paragraph 6 shall be convened parallel to any on-going proceedings or on such terms as to a stay of the proceedings as any expert, arbitrator or judge may direct.

7 EXPERT DETERMINATION

7.1 Any Party to the Dispute may serve a written notice to the other Parties to the Dispute to proceed to Expert Determination in accordance with this Paragraph 7 (**"Expert Determination Notice"**) if a Dispute has not been resolved:

(a) by commercial negotiation in accordance with Paragraph 4; and

(b) if applicable, by mediation within sixty (60) Working Days of the first mediation meeting being held in accordance with Paragraph 6.

7.2 The Authority may serve an Expert Determination Notice to the other Parties to the Dispute if the Authority has escalated a dispute to Expert Determination pursuant to Paragraph 6.1.

7.3 The Parties to the Dispute shall agree on the appointment of an independent Expert. If the Parties to the Dispute are unable to agree on an Expert within ten (10) Working Days from the date of the Expert Determination Notice, or if the person appointed is unable or unwilling to act, the expert shall be appointed within twenty (20) Working Days from the date of the Expert Determination Notice:

(a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an ICT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

(b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales;

(c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 7.3(a) or 7.3(b), on the instructions of the president (or equivalent) of:

(i) an appropriate body agreed between the Parties to the Dispute; or

(ii) if the Parties to the Dispute do not reach agreement on the relevant body within fifteen (15) Working Days from the date of the Expert Determination Notice, such body as may be specified by the President of the Law Society on application by any party; or

(d) if the Dispute relates to a matter of law:

(i) an appropriate Queen's Counsel agreed between the Parties to the Dispute; or

(ii) the Parties to the Dispute do not reach agreement on the relevant body within fifteen (15) Working Days the date of the Expert Determination Notice, a Queen's Counsel as may be specified by the President of the Law Society on application by any party.

7.4 In the event that there is any disagreement between the parties as to which of the subject matters set out in Paragraph 7.3 is more applicable to the Dispute then:

(a) an Expert under Paragraph 7.3(d)(ii) shall be appointed within twenty (20) Working Days; and

(b) that Expert may determine if any technical expert is required to support him or her.

7.5 The Expert shall act on the following basis:

(a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

(b) the Expert's determination shall (in the absence of fraud or manifest error) be final and binding on the Parties to the Dispute; unless within twenty (20) Working Days of that decision a Party to the Dispute serves notice on the other parties referring the Ecosystem Dispute to either arbitration pursuant to Paragraph 8 or court proceedings pursuant to Clause 48 (*Governing Law and Jurisdiction*);

(c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within thirty (30) Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties to the Dispute shall assist and provide the documentation that the Expert requires for the purpose of the determination;

(d) unless the parties agree otherwise, the Expert shall provide a written decision setting out his or her reasons for the determination;

(e) 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;

(f) the process shall be conducted in private and shall be confidential; and

(g) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

8 ARBITRATION AND COURT PROCEEDINGS

8.1 Subject to compliance with its obligations under Paragraph 4 and to the provisions of Paragraph 7, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 8.6.

8.2 Before any Ecosystem Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority and all other Parties to the Dispute of its intentions. Following its receipt of such notice, the Authority shall have fifteen (15) Working Days to serve a reply (**"Counter Notice"**) on the relevant Ecosystem Supplier and all other Parties to the Dispute, requiring the Dispute:

(a) to be referred to and resolved by arbitration in accordance with Paragraph 8.6; or

(b) to be subject to the exclusive jurisdiction of the courts of England and Wales.

8.3 The Ecosystem Suppliers shall not commence any court proceedings or arbitration until the expiry of the fifteen (15) Working Day period referred to in Paragraph 8.2.

8.4 If the Authority serves a Counter Notice, then:

(a) if the Counter Notice requires the Dispute to be referred to arbitration, Dispute shall be so referred to arbitration and the provisions of Paragraph 8.6 shall apply; or

(b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Ecosystem Suppliers shall not commence arbitration proceedings.

8.5 If the Authority does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 8.2, the Ecosystem Supplier which served the notice pursuant to Paragraph 8.2 may either commence arbitration proceedings in accordance with Paragraph 8.6 or commence court proceedings in the courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

8.6 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 8.1 to 8.5:

(a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the LCIA (subject to Paragraphs 8.6(e), 8.6(f) and 8.6(g));

(b) the arbitration shall be administered by the LCIA;

(c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties to the Dispute in the absence of any material failure to comply with such rules;

(d) if the Parties to the Dispute 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;

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

(f) the arbitration proceedings shall take place in London and in the English language; and

(g) the seat of the arbitration shall be London.

9 URGENT RELIEF

9.1 Any party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

(a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or

(b) where compliance with Paragraph 4 and/or referring the Ecosystem Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the relevant limitation period.