

buyer Award Form

This Award Form creates this Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1. Buyer	THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT ("Department for Education")
2. Supplier	<p>Name: Education Support Partnership</p> <p>Address: 40A Drayton Park London N5 1EW</p> <p>Registration number: 09311354</p>
3. Contract	This Contract between the Buyer and the Supplier is for the supply of Deliverables, see Schedule 2 (Specification) for full details.
4. Contract reference	24810
5. Buyer Cause	<p>Any material breach of:</p> <p>Any material breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of this Contract and in respect of which the Buyer is liable to the Supplier.</p>
6. Collaborative working principles	<p>The Collaborative Working Principles apply to this Contract.</p> <p>See Clause 3.1.3 for further details.</p>
7. Financial Transparency Objectives	<p>The Financial Transparency Objectives do not apply to this Contract.</p> <p>See Clause 6.3 for further details.</p>
8. Start Date	01/04/2024

9.	Expiry Date	31/03/2027
10.	Extension Period	There is an option to extend this contract once up to a maximum of 12 months
11.	Ending this Contract without a reason	The Buyer shall be able to terminate this Contract in accordance with Clause 14.3 and 14.4
12.	Incorporated Terms (together these documents form the " this Contract ")	<p>The following documents are incorporated into this Contract. Where numbers are missing we are not using these Schedules. If there is any conflict, the following order of precedence applies:</p> <ul style="list-style-type: none"> (a) This Award Form (b) Core Terms (c) Schedule 1 (Definitions) (d) Schedule 6 (Transparency Reports) (e) Schedule 20 (Processing Data) (f) Schedule 36 (Intellectual Property Rights) (g) The following Schedules (in equal order of precedence): <ul style="list-style-type: none"> (i) Schedule 2 (Specification) (ii) Schedule 3 (Charges) (iii) Schedule 5 (Commercially Sensitive Information) (iv) Schedule 7 (Staff Transfer) (v) Schedule 8 (Implementation Plan & Testing) (vi) Schedule 9 (Installation Works) (vii) Schedule 10 (Service Levels) (viii) Schedule 11 (Continuous Improvement) (ix) Schedule 13 (Contract Management) (x) Schedule 14 (Business Continuity and Disaster Recovery) (xi) Schedule 15 (Minimum Standards of Reliability) (xii) Schedule 16 (Security) (xiii) Schedule 21 (Variation Form) (xiv) Schedule 22 (Insurance Requirements) (xv) Schedule 24 (Financial Difficulties) (xvi) Schedule 25 (Rectification Plan) (xvii) Schedule 26 (Sustainability)

		<p>(xviii) Schedule 27 (Key Subcontractors)</p> <p>(xix) Schedule 29 (Key Supplier Staff)</p> <p>(xx) Schedule 30 (Exit Management)</p> <p>(h) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that part of the Tender will take precedence over the documents above.</p>
13.	Special Terms	Not Used
14.	Buyer's Environmental Policy	Environmental and sustainability policy - GOV.UK (www.gov.uk)
15.	Social Value Commitment	The Supplier agrees, in providing the Deliverables and performing its obligations under this Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and report on the Social Value KPIs as required by Schedule 10 (Service Levels)
16.	Buyer's Security Requirements and Security and ICT Policy	The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan and complies with the Security Policy. Full details in Schedule 16 (Security).
17.	Charges	The Charges shall be calculated in accordance with the terms of Schedule 3; and cannot be increased except as specifically permitted by this Schedule; and any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule. Full details in Schedule 3 (Charges).
18.	Reimbursable expenses	None
19.	Payment method	In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form. All Charges exclude VAT, which is payable on provision of a valid VAT invoice and include all costs connected with the Supply of Deliverables. The Buyer must pay the Supplier the Charges within 30 days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the relevant payment method (Purchase order). A Supplier invoice is only valid if it meets the requirements listed in section 4.4.

20.	Service Levels	<p>Service Credits will accrue in accordance with Schedule 10 (Service Levels)</p> <p>The Service Credit Cap for each Service Period is: £6000</p> <p>The Service Period is 1 calendar Month</p> <p>A Critical Service Level Failure is: a failure to achieve more than 50% of the Performance Measure, in any calendar month.</p>
21.	Insurance	<p>Details in Annex of Schedule 22 (Insurance Requirements). The Supplier shall upon the Start Date and within fifteen (15) Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.</p>
22.	Liability	<p>In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under the Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges.</p>
23.	Cyber Essentials Certification	<p>Cyber Essentials Scheme Basic Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)</p>
24.	Progress Meetings and Progress Reports	<p>The Supplier shall attend Progress Meetings with the Buyer as mutually agreed (Performance Review Meetings). The Supplier shall provide the Buyer with Progress Reports every month. (Performance Monitoring Reports).</p>
25.	Guarantor	<p>Not applicable</p>
26.	Virtual Library	<p>In accordance with Paragraph 2.2. of Schedule 30 (Exit Management)</p>
27.	Supplier's Contract Manager	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
28.	Supplier Authorised Representative	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

29.	Supplier Compliance Officer	<div></div> <div></div> <div></div> <div></div>
30.	Supplier Data Protection Officer	<div></div> <div></div> <div></div> <div></div>
31.	Supplier Marketing Contact	<div></div> <div></div> <div></div> <div></div>
32.	Key Subcontractors	<p>Key Subcontractor 1</p> <p>Name (Registered name if registered): Workplace Options Ltd.</p> <p>Registration number (if registered): 02436931</p> <p>Role of Subcontractor: Provider of 1-1 counselling.</p>
33.	Buyer Authorised Representative	<div></div> <div></div> <div></div>

For and on behalf of the Supplier:		For and on behalf of the Buyer:	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	
Date:	Apr 5, 2024	Date:	Apr 5, 2024

Core Terms

1. Definitions used in the contract

Interpret this Contract using Schedule 1 (Definitions).

2. How the contract works

- 2.1. If the Buyer decides to buy Deliverables under this Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:
 - 2.1.1. make changes to the Award Form;
 - 2.1.2. create new Schedules;
 - 2.1.3. exclude optional template Schedules; and
 - 2.1.4. use Special Terms in the Award Form to add or change terms.
- 2.2. The Contract:
 - 2.2.1. is between the Supplier and the Buyer; and
 - 2.2.2. includes Core Terms, Schedules and any other changes or items in the completed Award Form.
- 2.3. The Supplier acknowledges it has all the information required to perform its obligations under this Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.
- 2.4. The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:
 - 2.4.1. the Buyer's requirements for the Deliverables;
 - 2.4.2. the Buyer's operating processes and working methods; and
 - 2.4.3. the ownership and fitness for purpose of the Buyer Assets, and it has it has advised the Buyer in writing of:
 - 2.4.4. each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;
 - 2.4.5. the actions needed to remedy each such unsuitable aspect; and
 - 2.4.6. a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions, and such actions, timetable and costs are fully reflected in this Contract.
- 2.5. The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
 - 2.5.1. verify the accuracy of the Due Diligence Information; and
 - 2.5.2. properly perform its own adequate checks.

- 2.6. The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7. The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

3. **What needs to be delivered**

3.1. **All deliverables**

- 3.1.1. The Supplier must provide Deliverables:
 - a) that comply with the Specification, the Tender Response and this Contract;
 - b) using reasonable skill and care;
 - c) using Good Industry Practice;
 - d) using its own policies, processes and internal quality control measures as long as they don't conflict with this Contract;
 - e) on the dates agreed; and
 - f) that comply with Law.
- 3.1.2. The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.
- 3.1.3. Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:
 - a) proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
 - b) being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
 - c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;
 - d) providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
 - e) identifying, implementing and capitalising on opportunities to improve deliverables and deliver better

solutions and performance throughout the relationship lifecycle.

3.2. Goods clauses

- 3.2.1. All Goods delivered must be new, or as new if recycled, unused and of recent origin.
- 3.2.2. The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.
- 3.2.3. Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three (3) Working Days of Delivery.
- 3.2.4. The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.
- 3.2.5. The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.
- 3.2.6. The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.
- 3.2.7. All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.
- 3.2.8. The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.
- 3.2.9. The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.10. The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than fourteen (14) days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.
- 3.2.11. The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 2.7. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- 3.2.12. The Buyer will not be liable for any actions, claims and Losses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any Loss or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a

result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

3.3. Services clauses

- 3.3.1. Late Delivery of the Services will be a Default of this Contract.
- 3.3.2. The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.
- 3.3.3. The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of this Contract.
- 3.3.4. The Supplier must allocate sufficient resources and appropriate expertise to this Contract.
- 3.3.5. The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6. On completion of the Services, the Supplier is responsible for leaving the Buyer Premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer Premises or Buyer Assets, other than fair wear and tear.
- 3.3.7. The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.3.8. The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under this Contract.

4. Pricing and payments

- 4.1. In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.
- 4.2. All Charges:
 - 4.2.1. exclude VAT, which is payable on provision of a valid VAT invoice; and
 - 4.2.2. include all costs connected with the Supply of Deliverables.
- 4.3. The Buyer must pay the Supplier the Charges within thirty (30) days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the invoice or in the Award Form.
- 4.4. A Supplier invoice is only valid if it:

- 4.4.1. includes all appropriate references including this Contract reference number and other details reasonably requested by the Buyer; and
 - 4.4.2. includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).
- 4.5. The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.6. The Supplier must ensure that all Subcontractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.
- 4.7. The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.
- 5. **The buyer's obligations to the supplier**
 - 5.1. If Supplier Non-Performance arises from a Buyer Cause:
 - 5.1.1. the Buyer cannot terminate this Contract under Clause 14.4.1;
 - 5.1.2. the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;
 - 5.1.3. the Supplier is entitled to additional time needed to make the Delivery;
 - 5.1.4. the Supplier cannot suspend the ongoing supply of Deliverables.
 - 5.2. Clause 5.1 only applies if the Supplier:
 - 5.2.1. gives notice to the Buyer of the Buyer Cause within ten (10) Working Days of becoming aware;
 - 5.2.2. demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
 - 5.2.3. mitigated the impact of the Buyer Cause.
- 6. **Record keeping and reporting**
 - 6.1. The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
 - 6.2. The Supplier must keep and maintain full and accurate records and accounts in respect of this Contract during the Contract Period and for seven (7) years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.
 - 6.3. Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will

provide a Financial Report to the Buyer:

- 6.3.1. on or before the Effective Date;
 - 6.3.2. at the end of each Contract Year; and
 - 6.3.3. within six (6) Months of the end of the Contract Period,
 - 6.3.4. and the Supplier must meet with the Buyer if requested within ten (10) Working Days of the Buyer receiving a Financial Report.
- 6.4. If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:
- 6.4.1. Supplier's currently incurred or forecast future Costs; and
 - 6.4.2. forecast Charges for the remainder of this Contract,
 - 6.4.3. then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.
- 6.5. The Buyer or an Auditor can Audit the Supplier.
- 6.6. The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:
- 6.6.1. complies with the Supplier's operating procedures; and
 - 6.6.2. does not unreasonably disrupt the Supplier or its provision of the Deliverables.
- 6.7. During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:
- 6.7.1. all information within the permitted scope of the Audit;
 - 6.7.2. any Sites, equipment and the Supplier's ICT system used in the performance of this Contract; and
 - 6.7.3. the Supplier Staff.
- 6.8. The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a Material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 6.9. The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
- 6.9.1. correcting any identified Default;
 - 6.9.2. rectifying any error identified in a Financial Report; and
 - 6.9.3. repaying any Charges that the Buyer has overpaid.
- 6.10. If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:
- 6.10.1. tell the Buyer and give reasons;
 - 6.10.2. propose corrective action; and

6.10.3. provide a deadline for completing the corrective action.

6.11. Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.

7. Supplier staff

7.1. The Supplier Staff involved in the performance of this Contract must:

7.1.1. be appropriately trained and qualified;

7.1.2. be vetted using Good Industry Practice and the Security Policy (is used); and

7.1.3. comply with all conduct requirements when on the Buyer's Premises.

7.2. Where the Buyer decides one of the Supplier's Staff is not suitable to work on this Contract, the Supplier must replace them with a suitably qualified alternative.

7.3. The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

7.4. The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

7.5. The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

8. Supply chain

8.1. Appointing Subcontractors

8.1.1. The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:

a) manage Subcontractors in accordance with Good Industry Practice;

b) comply with its obligations under this Contract; and

c) assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

8.2. Mandatory provisions in Sub-Contracts

8.2.1. For Sub-Contracts in the Supplier's supply chain entered into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract:

- a) where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions that; or
- b) where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:
- c) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- d) require the Supplier to pay all Subcontractors in full, within thirty (30) days of receiving a valid, undisputed invoice; and
- e) allow the Buyer to publish the details of the late payment or non-payment if this thirty (30) day limit is exceeded.

8.3. When Sub-Contracts can be ended

- 8.3.1. At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:
 - a) there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
 - b) the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;
 - c) a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
 - d) the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
 - e) the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

8.4. Competitive terms

- 8.4.1. If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.
- 8.4.2. If the Buyer uses Clause 8.4.1 then the Charges must be reduced by an agreed amount by using the Variation Procedure.

9. Rights and protection

9.1. The Supplier warrants and represents that:

- 9.1.1. it has full capacity and authority to enter into and to perform this Contract;
- 9.1.2. this Contract is entered into by its authorised representative;
- 9.1.3. it is a legally valid and existing organisation incorporated in the place it was formed;
- 9.1.4. there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform this Contract;
- 9.1.5. all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under this Contract and for the Buyer to receive the Deliverables;
- 9.1.6. it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform this Contract;
- 9.1.7. it is not impacted by an Insolvency Event or a Financial Distress Event; and
- 9.1.8. neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the Effective Date or been subject to an investigation relating to a Prohibited Act.

9.2. The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Deliverables under this Contract.

9.3. The Supplier indemnifies the Buyer against each of the following:

- 9.3.1. wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts this Contract; and
- 9.3.2. non-payment by the Supplier of any tax or National Insurance.

9.4. All claims indemnified under this Contract must use Clause 30.

9.5. The description of any provision of this Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for Default of that clause by the Supplier.

9.6. If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

9.7. All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.

10. Intellectual Property Rights (IPRs)

10.1. The Parties agree that the terms set out in Schedule 36 (Intellectual Property Rights) shall apply to this Contract.

10.2. If there is an IPR Claim, the Supplier indemnifies the Buyer against all

losses, damages, costs or expenses (including professional fees and fines) incurred as a result.

10.3. If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:

10.3.1. obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or

10.3.2. replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.

10.4. If the Buyer requires that the Supplier procures a licence in accordance with Clause 10.3.1 or to modify or replace an item pursuant to Clause 10.3.2, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect and the consequences of termination set out in Clauses 14.5.1 shall apply.

11. Rectifying issues

11.1. If there is a Notifiable Default, the Supplier must notify the Buyer within three (3) Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within ten (10) Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.

11.2. When the Buyer receives a requested Rectification Plan it can either:

11.2.1. reject the Rectification Plan or revised Rectification Plan giving reasons; or

11.2.2. accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.

11.3. Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:

11.3.1. will give reasonable grounds for its decision; and

11.3.2. may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

12. Escalating issues

12.1. If the Supplier fails to:

12.1.1. submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and

12.1.2. adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.

or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than five (5) Working Days' notice. The Buyer will determine the location,

time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.

- 12.2. The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than five (5) Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.
- 12.3. If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in Clauses 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

13. **Step-in rights**

- 13.1. If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 13.1 and setting out:
 - 13.1.1. whether it will be taking action itself or with the assistance of a third party;
 - 13.1.2. what Required Action the Buyer will take during the Step-In Process;
 - 13.1.3. when the Required Action will begin and how long it will continue for;
 - 13.1.4. whether the Buyer will require access to the Sites; and
 - 13.1.5. what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.
- 13.2. For as long as the Required Action is taking place:
 - 13.2.1. the Supplier will not have to provide the Deliverables that are the subject of the Required Action;
 - 13.2.2. no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and
 - 13.2.3. the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 13.3. The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within twenty (20) Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.
- 13.4. If the Buyer does not approve the draft Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft Step-Out Plan and re-submit it for approval.

13.5. The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:

13.5.1. limbs (f) or (g) of the definition of a Step-In Trigger Event; or

13.5.2. limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

14. **Ending the contract**

14.1. The Contract takes effect on the Effective Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.

14.2. The Buyer can extend this Contract for the Extension Period by giving the Supplier written notice before this Contract expires as described in the Award Form.

14.3. **Ending the contract without a reason**

The Buyer has the right to terminate this Contract at any time without reason by giving the Supplier not less than ninety (90) days' notice (unless a different notice period is set out in the Award Form) and if it's terminated Clause 14.6.3 applies.

14.4. When the Buyer can end this Contract

14.4.1. If any of the following events happen, the Buyer has the right to immediately terminate this Contract by issuing a Termination Notice to the Supplier and the consequences of termination in Clause 14.5.1 shall apply:

- a) there's a Supplier Insolvency Event;
- b) the Supplier fails to notify the Buyer in writing of any Occasion of Tax Non-Compliance or fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Buyer, are acceptable;
- c) there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- d) the Buyer rejects a Rectification Plan or the Supplier does not provide it within ten (10) days of the request;
- e) there's any Material Default of this Contract;
- f) there's any Material Default of any Joint Controller Agreement relating to this Contract;
- g) there's a Default of Clauses 2.8, 12, 31 or Schedule 28 (ICT Services) (where applicable);
- h) the performance of the Supplier causes a Critical Service Level Failure to occur;

- i) there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);
- j) there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- k) the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time this Contract was awarded;
- l) the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them;
- m) the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables; or
- n) the Supplier fails to enter into or to comply with an Admission Agreement under Part D of Schedule 7 (Staff Transfer).

14.4.2. If any of the events in 73 (1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate this Contract and Clauses b)) to g)) apply.

14.5. What happens if the contract ends

14.5.1. Where the Buyer terminates this Contract under Clauses 14.4.1, 10.4 and 12.3, Paragraph 7 of Part D of Schedule 7 (Staff Transfer), Paragraph 2.2 of Schedule 12 (Benchmarking) (where applicable) Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable) or Paragraphs 3.1.12.2 or 3.3.1.2 of Part A of Schedule 26 (Sustainability) all of the following apply:

- a) The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.
- b) The Buyer's payment obligations under the terminated Contract stop immediately.
- c) Accumulated rights of the Parties are not affected.
- d) The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.
- e) The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.
- f) The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).
- g) The Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.

- 14.5.2. If either Party terminates this Contract under Clause 24.3:
 - a) each party must cover its own Losses; and
 - b) Clauses b)) to g)) apply.
- 14.5.3. The following Clauses survive the termination or expiry of this Contract: 3.2.10, 4, 6, 7.4, 7.5, 10, 14.5, 14.6.3, 15, 18, 19, 20, 21, 22, 23, 35.3.2, 39, 40, Schedule 1 (Definitions), Schedule 3 (Charges), Schedule 7 (Staff Transfer), Schedule 30 (Exit Management)) (if used), Schedule 36 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.
- 14.6. When the Supplier (and the Buyer) can end the contract
 - 14.6.1. The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate this Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within thirty (30) days of the date of the Reminder Notice.
 - 14.6.2. The Supplier also has the right to terminate this Contract in accordance with Clauses 24.3 and 27.5.
 - 14.6.3. Where the Buyer terminates this Contract under Clause 14.3 or the Supplier terminates this Contract under Clause 14.6.1 or 27.5:
 - a) the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
 - b) the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if this Contract had not been terminated; and
 - c) Clauses b)) to g)) apply. the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum payable to the Supplier if this Contract had not been terminated; and
- 14.7. Partially ending and suspending the contract
 - 14.7.1. Where the Buyer has the right to terminate this Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends this Contract it can provide the Deliverables itself or buy them from a third party.
 - 14.7.2. The Buyer can only partially terminate or suspend this Contract if the remaining parts of this Contract can still be used to effectively deliver the intended purpose.

14.7.3. The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:

- a) reject the Variation; or
- b) increase the Charges, except where the right to partial termination is under Clause 14.3.

14.7.4. The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.

15. How much you can be held responsible for?

15.1. Each Party's total aggregate liability in each Contract Year under this Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.

15.2. Neither Party is liable to the other for:

- 15.2.1. any indirect Losses; and/or
- 15.2.2. Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

15.3. In spite of Clause 15.1, neither Party limits or excludes any of the following:

- 15.3.1. its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;
- 15.3.2. its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and
- 15.3.3. any liability that cannot be excluded or limited by Law.

15.4. In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.4, 7.5, 9.3.2, 10.2, 35.3.2 or Schedule 7 (Staff Transfer) of this Contract.

15.5. In spite of Clause 15.1, The Buyer does not limit or exclude its liability for any indemnity given under Clause 7 or Schedule 7 (Staff Transfer) of this Contract.

15.6. In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.

15.7. Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with this Contract, including any indemnities.

15.8. When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:

- 15.8.1. Deductions; and
- 15.8.2. any items specified in Clause 15.4.

- 15.9. If more than one Supplier is party to this Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

16. Obeying the law

- 16.1. The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 16.2. The Supplier shall comply with the provisions of:
- 16.2.1. the Official Secrets Acts 1911 to 1989; and
 - 16.2.2. section 182 of the Finance Act 1989.
- 16.3. The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with this Contract.
- 16.4. The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.

17. Insurance

- 17.1. The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (Insurance Requirements).

18. Data protection and security

- 18.1. The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).
- 18.2. The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3. The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies via a secure encrypted method upon reasonable request.
- 18.4. The Supplier must ensure that any Supplier, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Supplier, Subcontractor and Subprocessor) holding any Government Data, including back-up data, is a secure system that complies with the Cyber Essentials Schedule (if used), the Security Schedule (if used), the Security Policy and the security requirements specified in the Award Form. and otherwise as required by Data Protection Legislation.
- 18.5. If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 18.6. If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:

- 18.6.1. tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and
- 18.6.2. restore the Government Data itself or using a third party.
- 18.7. The Supplier must pay each Party's reasonable costs of complying with Clause 18.6 unless the Buyer is at fault.
- 18.8. The Supplier:
 - 18.8.1. must provide the Buyer with all Government Data in an agreed format (provided it is secure and readable) within ten (10) Working Days of a written request;
 - 18.8.2. must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;
 - 18.8.3. must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
 - 18.8.4. securely erase all Government Data and any copies it holds when asked to do so by the Buyer (and certify to the Buyer that it has done so) unless and to the extent required by Law to retain it other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
 - 18.8.5. indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

19. What you must keep confidential

- 19.1. Each Party must:
 - 19.1.1. keep all Confidential Information it receives confidential and secure;
 - 19.1.2. not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under this Contract; and
 - 19.1.3. immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 19.2. In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:

- 19.2.1. where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 19.2.2. if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
 - 19.2.3. if the information was given to it by a third party without obligation of confidentiality;
 - 19.2.4. if the information was in the public domain at the time of the disclosure;
 - 19.2.5. if the information was independently developed without access to the Disclosing Party's Confidential Information;
 - 19.2.6. on a confidential basis, to its auditors or for the purpose of regulatory requirements;
 - 19.2.7. on a confidential basis, to its professional advisers on a need-to-know basis; and
 - 19.2.8. to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3. The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under this Contract. The Supplier Staff shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 19.4. The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1. on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - 19.4.2. on a confidential basis to any other Crown Body, any successor body to a Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - 19.4.3. if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - 19.4.4. where requested by Parliament;
 - 19.4.5. under Clauses 4.6 and 20; and
 - 19.4.6. on a confidential basis under the audit rights in Clauses 6.5 to 6.9 (inclusive), Clause 13 (Step-in rights), Schedule 7 and Schedule 30 (if used).

- 19.5. For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.
- 19.6. Transparency Information and any information which is exempt from disclosure by Clause 20 is not Confidential Information.
- 19.7. The Supplier must not make any press announcement or publicise this Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

20. When you can share information

- 20.1. The Supplier must tell the Buyer within forty eight (48) hours if it receives a Request For Information.
- 20.2. In accordance with a reasonable timetable and in any event within five (5) Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
 - 20.2.1. publish the Transparency Information; and
 - 20.2.2. comply with any Request for Information.
- 20.3. To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

21. Invalid parts of the contract

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

22. No other terms apply

The provisions incorporated into this Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

23. Other people's rights in this Contract

- 23.1. The provisions of Paragraphs 2.1 and 2.3 of Part A, Paragraphs 2.1, 2.3 and 3.1 of Part B, Paragraphs 1.2, 1.4 and 1.7 of Part C, Part D and Paragraphs 1.4, 1.7, 2.3, 2.5 and 2.10 of Part E of Schedule 7 (Staff Transfer) and the provisions of Paragraph 3.1, 6.1, 7.2, 8.2, 8.5, 8.6 and 8.9 of Schedule 30 (Exit Management) (together "Third Party Provisions") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act ("CRTPA").

- 23.2. Subject to Clause 23.1, no third parties may use the CRTPA to enforce any term of this Contract unless stated (referring to CRTPA) in this Contract. This does not affect third party rights and remedies that exist independently from CRTPA.
- 23.3. No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.
- 23.4. Any amendments or modifications to this Contract may be made, and any rights created under Clause 23.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

24. Circumstances beyond your control

- 24.1. Any Party affected by a Force Majeure Event is excused from performing its obligations under this Contract while the inability to perform continues, if it both:
 - 24.1.1. provides a Force Majeure Notice to the other Party; and
 - 24.1.2. uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 24.2. Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.
- 24.3. Either party can partially or fully terminate this Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

25. Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

26. Giving up contract rights

A partial or full waiver or relaxation of the terms of this Contract is only valid if it is stated to be a waiver in writing to the other Party.

27. Transferring responsibilities

- 27.1. The Supplier cannot assign, novate or in any other way dispose of this Contract or any part of it without the Buyer's written consent.
- 27.2. Subject to Schedule 27 (Key Subcontractors), the Supplier cannot sub-contract this Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer

to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within ten (10) Working Days of the request for consent then its consent will be deemed to have been given. The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:

- 27.2.1. the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
- 27.2.2. the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- 27.2.3. the proposed Subcontractor employs unfit persons.
- 27.3. The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 27.4. When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 27.5. The Supplier can terminate this Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.
- 27.6. The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 27.7. If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
 - 27.7.1. their name;
 - 27.7.2. the scope of their appointment;
 - 27.7.3. the duration of their appointment; and
 - 27.7.4. a copy of the Sub-Contract.

28. Changing the contract

- 28.1. Either Party can request a Variation to this Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.
- 28.2. The Supplier must provide an Impact Assessment either:
 - 28.2.1. with the Variation Form, where the Supplier requests the Variation; and
 - 28.2.2. within the time limits included in a Variation Form requested by the Buyer.
- 28.3. If the Variation to this Contract cannot be agreed or resolved by the Parties, the Buyer can either:
 - 28.3.1. agree that this Contract continues without the Variation; and
 - 28.3.2. refer the Dispute to be resolved using Clause 39 (Resolving

Disputes).

- 28.4. The Buyer is not required to accept a Variation request made by the Supplier.
- 28.5. The Supplier may only reject a Variation requested by the Buyer if the Supplier:
 - 28.5.1. reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
 - 28.5.2. demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.
- 28.6. If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 28.7. If there is a Specific Change in Law or one is likely to happen during this Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or this Contract and provide evidence:
 - 28.7.1. that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
 - 28.7.2. of how it has affected the Supplier's costs.
- 28.8. Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.

29. How to communicate about the contract

- 29.1. All notices under this Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise, the notice is effective on the next Working Day. An email is effective at 9:00am on the first Working Day after sending unless an error message is received.
- 29.2. Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.
- 29.3. This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

30. Dealing with claims

- 30.1. If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Days.
- 30.2. At the Indemnifier's cost the Beneficiary must both:

- 30.2.1. allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
 - 30.2.2. give the Indemnifier reasonable assistance with the claim if requested.
 - 30.3. The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
 - 30.4. The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
 - 30.5. The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
 - 30.6. Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.
 - 30.7. If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
 - 30.7.1. the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
 - 30.7.2. the amount the Indemnifier paid the Beneficiary for the Claim.
31. **Preventing fraud, bribery and corruption**
- 31.1. The Supplier must not during the Contract Period:
 - 31.1.1. commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);
 - 31.1.2. do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
 - 31.2. The Supplier must during the Contract Period:
 - 31.2.1. create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
 - 31.2.2. keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and
 - 31.2.3. if required by the Buyer, within twenty (20) Working Days of the Effective Date of this Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including

its policies and procedures.

31.3. The Supplier must immediately notify the Buyer if it becomes aware of any Default of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:

31.3.1. been investigated or prosecuted for an alleged Prohibited Act;

31.3.2. been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;

31.3.3. received a request or demand for any undue financial or other advantage of any kind related to this Contract; and

31.3.4. suspected that any person or Party directly or indirectly related to this Contract has committed or attempted to commit a Prohibited Act.

31.4. If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.

31.5. If the Supplier is in Default under Clause 31.1 the Buyer may:

31.5.1. require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and

31.5.2. immediately terminate this agreement in accordance with Clause 14.4.1 and the consequences of termination in Clauses 14.5.1 shall apply.

31.6. In any notice the Supplier gives under Clause 31.4 it must specify the:

31.6.1. Prohibited Act;

31.6.2. identity of the Party who it thinks has committed the Prohibited Act; and

31.6.3. action it has decided to take.

32. Equality, diversity and human rights

32.1. The Supplier must follow all applicable equality Law when they perform their obligations under this Contract, including:

32.1.1. protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and

32.1.2. any other requirements and instructions which the Buyer reasonably imposes related to equality Law.

32.2. The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when

working on this Contract.

33. Health and safety

33.1. The Supplier must perform its obligations meeting the requirements of:

- 33.1.1. all applicable Law regarding health and safety; and
- 33.1.2. the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.

33.2. The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of this Contract.

34. Environment

34.1. When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.

34.2. The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

35. Tax

35.1. The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due, including where applicable, any interest or any fines. The Buyer cannot terminate this Contract where the Supplier has not paid a minor tax or social security contribution.

35.2. Where the Charges payable under this Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within five (5) Working Days including:

- 35.2.1. the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and
- 35.2.2. other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.

35.3. Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under this Contract, the Supplier must both:

- 35.3.1. comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and
- 35.3.2. indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of

the Supplier Staff.

35.4. If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

- 35.4.1. the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;
- 35.4.2. the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;
- 35.4.3. the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and
- 35.4.4. the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

36. Conflict of interest

- 36.1. The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.
- 36.2. The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.
- 36.3. The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses b) to g) shall apply.

37. Reporting a breach of the contract

- 37.1. As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected:
 - 37.1.1. breach of Law;
 - 37.1.2. Default of Clause 16.1; and
 - 37.1.3. Default of Clauses 31 to 36.
- 37.2. The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach or Default listed in Clause 37.1 to the Buyer or a Prescribed Person.

38. Further Assurances

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

39. Resolving disputes

39.1. If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within twenty eight (28) days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.

39.2. If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.4 to 39.6.

39.3. Unless the Buyer refers the Dispute to arbitration using Clause 39.5, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:

39.3.1. determine the Dispute;

39.3.2. grant interim remedies; and

39.3.3. grant any other provisional or protective relief.

39.4. The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.

39.5. The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 39.4, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.5.

39.6. The Supplier cannot suspend the performance of this Contract during any Dispute.

40. Which law applies

This Contract and any issues or Disputes arising out of, or connected to it, are governed by English law.

Schedule 1 (Definitions)

1. Definitions

- 1.1. In this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2. If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3. In this Contract, unless the context otherwise requires:
 - 1.3.1. reference to a gender includes the other gender and the neuter;
 - 1.3.2. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
 - 1.3.3. a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023);
 - 1.3.4. the words "including", "other", "in particular", "for example" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - 1.3.5. references to "writing" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - 1.3.6. references to "representations" shall be construed as references to present facts, to "warranties" as references to present and future facts and to "undertakings" as references to obligations under this Contract;
 - 1.3.7. references to "Clauses" and "Schedules" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;
 - 1.3.8. references to "Paragraphs" are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided;

- 1.3.9. references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified;
- 1.3.10. where the Buyer is a Crown Body the Supplier shall be treated as contracting with the Crown as a whole; and
- 1.3.11. Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("EU References") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time.
- 1.4. In this Contract, unless the context otherwise requires, the following words shall have the following meanings:
- | | |
|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| "Achieve" | in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and "Achieved" , "Achieving" and "Achievement" shall be construed accordingly; |
| "Additional FDE Group Member" | means any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties); |
| "Affected Party" | the party seeking to claim relief in respect of a Force Majeure Event; |
| "Affiliates" | in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time; |
| "Allowable Assumptions" | means the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges); |
| "Annex" | extra information which supports a Schedule; |
| "Approval" | the prior written consent of the Buyer and "Approve" and "Approved" shall be construed accordingly; |
| "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;

"Audit"

the Buyer's right to:

- (a) verify the integrity and content of any Financial Report;
- (b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with this Contract);
- (c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;
- (d) verify the Open Book Data;
- (e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;
- (f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to provide the Deliverables;
- (h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
- (j) carry out the Buyer's internal and statutory audits and to prepare, examine and/or

	certify the Buyer's annual and interim reports and accounts;
	(k) 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 Buyer has used its resources;
"Auditor"	<p>(a) the Buyer's internal and external auditors;</p> <p>(b) the Buyer's statutory or regulatory auditors;</p> <p>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</p> <p>(d) HM Treasury or the Cabinet Office;</p> <p>(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and</p> <p>(f) successors or assigns of any of the above;</p>
"Award Form"	the document outlining the Incorporated Terms and crucial information required for this Contract, to be executed by the Supplier and the Buyer;
"Beneficiary"	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
"Buyer"	the public sector purchaser identified as such in the Order Form;
"Buyer Assets"	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of this Contract;
"Buyer Authorised Representative"	the representative appointed by the Buyer from time to time in relation to this Contract initially identified in the Award Form;
"Buyer Cause"	has the meaning given to it in the Award Form;
"Buyer Existing IPR"	means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Crown Body, any Crown IPR, and which are or have been developed independently of this

	Contract (whether prior to the Effective Date or otherwise)
"Buyer Premises"	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
"Buyer Property"	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
"Buyer Software"	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
"Buyer System"	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
"Buyer Third Party"	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;
"Buyer's Confidential Information"	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with this Contract; and</p> <p>information derived from any of the above;</p>
"Change in Law"	any change in Law which impacts on the supply of the Deliverables and performance of this Contract which comes into force after the Effective Date;

"Change of Control"	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under this Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under this Contract less any Deductions;
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
"Commercially Sensitive Information"	the Confidential Information listed in Schedule 5 (Commercially Sensitive Information (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
"Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " confidential ") or which ought reasonably to be considered to be confidential;
"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under this Contract, in the reasonable opinion of the Buyer;
"Contract"	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
"Contract Period"	the term of this Contract from the earlier of the: (a) Start Date; or (b) the Effective Date,

	until the End Date;
"Contract Value"	the higher of the actual or expected total Charges paid or payable under this Contract where all obligations are met by the Supplier;
"Contract Year"	a consecutive period of twelve (12) Months commencing on the Effective Date or each anniversary thereof;
"Control"	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Controller"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Core Terms"	the Buyer's terms and conditions which apply to and comprise one part of this Contract set out in the document called "Core Terms" ;
"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <ul style="list-style-type: none"> (a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including: <ul style="list-style-type: none"> base salary paid to the Supplier Staff; employer's National Insurance contributions; pension contributions; car allowances; any other contractual employment benefits; staff training; work place accommodation; work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and reasonable recruitment costs, as agreed with the Buyer; (b) costs incurred in respect of Supplier Assets 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 Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier 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 provision of the Deliverables; and
- (d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;

but excluding:

- (a) Overhead;
- (b) financing or similar costs;
- (c) maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- (d) taxation;
- (e) fines and penalties;
- (f) amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and
- (g) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"COTS Software" or "Commercial off the shelf Software"

non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;

"Critical Service Level Failure"

has the meaning given to it in the Award Form;

"Crown Body"

the government of the United Kingdom (including the Northern Ireland Assembly and Executive

	Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown IPR"	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
"CRTPA"	the Contract Rights of Third Parties Act 1999;
"Data Loss Event"	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Legislation"	(i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;
"Data Protection Liability Cap"	has the meaning given to it in the Award Form;
"Data Protection Officer"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deductions"	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under this Contract;
"Default"	any breach of the obligations of the Supplier (including abandonment of this Contract in breach of its terms) or any other default (including Material

Default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of this Contract and in respect of which the Supplier is liable to the Buyer;

"Defect"	<p>any of the following:</p> <ul style="list-style-type: none">(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 requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; 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 requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
"Delay Payments"	<p>the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;</p>
"Deliverables"	<p>Goods, Services or software that may be ordered and/or developed under this Contract including the Documentation;</p>
"Delivery"	<p>delivery of the relevant Deliverable or Milestone in accordance with the terms of this Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and Testing) is used issue by the Buyer of a</p>

	Satisfaction Certificate. "Deliver" and "Delivered" shall be construed accordingly;
"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 Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable);
"Disclosing Party"	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (What you must keep confidential);
"Dispute"	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with this Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of this Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 39 (Resolving disputes);
"Documentation"	descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under this Contract as:

	<ul style="list-style-type: none"> (a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables (b) is required by the Supplier in order to provide the Deliverables; and/or (c) has been or shall be generated for the purpose of providing the Deliverables;
"DOTAS"	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
"DPA 2018"	The Data Protection Act 2018;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;
"Effective Date"	the date on which the final Party has signed this Contract;
"EIR"	the Environmental Information Regulations 2004;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"End Date"	<p>the earlier of:</p> <ul style="list-style-type: none"> (a) the Expiry Date as extended by the Buyer under Clause 14.2; or (b) if this Contract is terminated before the date specified in (a) above, the date of termination of this Contract;
"End User"	means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);

"Environmental Policy"	to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment, including any written environmental policy of the Buyer;
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Escalation Meeting"	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
"Estimated Year 1 Charges"	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
"Estimated Yearly Charges"	<p>means for the purposes of calculating each Party's annual liability under Clause 15.1:</p> <ul style="list-style-type: none">(a) in the first Contract Year, the Estimated Year 1 Charges; or(b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or(c) after the end of this Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
"EU GDPR"	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of this Contract (whether prior to the Start Date or otherwise);
"Exit Plan"	has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan);
"Expiry Date"	the date of the end of this Contract as stated in the Award Form;

"Extension Period"	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
"FDE Group"	the Supplier and any Additional FDE Group Member;
"Financial Distress Event"	<p>The occurrence of one or more the following events:</p> <ul style="list-style-type: none"> (a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency; (b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects; (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity; (d) any FDE Group entity commits a material breach of covenant to its lenders; (e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute; (f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than nine (9) months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate; (g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate; (h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity's going concern in the annual report including in a reasonable but

plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;

(i) any of the following:

any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;

commencement of any litigation against any 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;

non-payment by any FDE Group entity of any financial indebtedness;

any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;

the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or

an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity,

in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with this Contract; or

(j) any of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold;

"Financial Report"

a report provided by the Supplier to the Buyer that:

(a) to the extent permitted by Law, provides a true and fair reflection of the Costs and

Supplier Profit Margin forecast by the Supplier;

- (b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);
- (c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the Effective Date for the purposes of this Contract; and
- (d) is certified by the Supplier's Chief Financial Officer or Director of Finance;

"Financial Transparency Objectives"

means:

- (a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;
- (b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;
- (d) the Parties being able to review, address issues with and re-forecast progress in relation to the provision of the Services;
- (e) the Parties challenging each other with ideas for efficiency and improvements; and
- (f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;

"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 relevant Government department in relation to such legislation;
"Force Majeure Event"	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none">(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;(c) acts of a Crown Body, local government or regulatory bodies;(d) fire, flood or any disaster; or(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:<ul style="list-style-type: none">(i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;(ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and(iii) any failure of delay caused by a lack of funds, <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
"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;
"General Anti-Abuse Rule"	<ul style="list-style-type: none">(a) the legislation in Part 5 of the Finance Act 2013; and(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;

"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Goods"	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract;
"Good Industry Practice"	At any time the standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the Welsh Government), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Government Data"	<p>(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, including any of the Buyer's Confidential Information, and which:</p> <p>(i) are supplied to the Supplier by or on behalf of the Buyer; and/or</p> <p>(ii) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>(b) any Personal Data for which the Buyer is Controller;</p>
"Government Procurement Card"	the Government's preferred method of purchasing and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2 ;
"Guarantor"	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;

"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	His Majesty's Revenue and Customs;
"ICT Environment"	the Buyer System and the Supplier System;
"ICT Policy"	the Buyer's policy in respect of information and communications technology, referred to in the Award Form (if used), which is 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 Variation Procedure;
"Impact Assessment"	<p>an assessment of the impact of a Variation request by the Buyer completed in good faith, including:</p> <ul style="list-style-type: none"> (a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under this Contract; (b) details of the cost of implementing the proposed Variation; (c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party; (d) a timetable for the implementation, together with any proposals for the testing of the Variation; and (e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;
"Implementation Plan"	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing) where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
"Incorporated Terms"	the contractual terms applicable to this Contract specified in the Award Form;
"Indemnifier"	a Party from whom an indemnity is sought under this Contract;

"Independent Controller"	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
"Indexation"	the adjustment of an amount or sum in accordance with this Contract;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Initial Period"	the initial term of this Contract specified in the Award Form;
"Insolvency Event"	<p>with respect to any person, means:</p> <ul style="list-style-type: none">(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:<ul style="list-style-type: none">(i) (being a company or an 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, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;(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 fourteen (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, an LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that 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 an 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;

"Installation Works"

all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with this Contract;

"Intellectual Property Rights" or "IPR"

- (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 or business names, goodwill, 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;

"IP Completion Day"

has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;

"IPR Claim"

any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR (excluding COTS Software where Part B of Schedule 36 (Intellectual Property Rights) is used), used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under this Contract;

"IR35"

the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at:
<https://www.gov.uk/guidance/ir35-find-out-if-it-applies>;

"Joint Controller Agreement"

the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);

"Joint Control"	where two (2) or more Controllers jointly determine the purposes and means of Processing;
"Joint Controllers"	has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;
"Key Staff"	the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);
"Key Sub-Contract"	each Sub-Contract with a Key Subcontractor;
"Key Subcontractor"	<p>any Subcontractor:</p> <ul style="list-style-type: none">(a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or(b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or(c) with a Sub-Contract with this Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract, <p>and the Supplier shall list all such Key Subcontractors in the Award Form;</p>
"Know-How"	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the Effective Date;
"Law"	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

"Law Enforcement Processing"	processing under Part 3 of the DPA 2018;
"Losses"	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
"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;
"Material Default"	a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied)
"Marketing Contact"	shall be the person identified in the Award Form;
"Milestone"	an event or task described in the Implementation Plan;
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;
"National Insurance"	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
"New IPR"	(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including database schema; and/or

- (b) IPR in or arising as a result of the performance of the Supplier's obligations under this Contract and all updates and amendments to the same;

but shall not include the Supplier's Existing IPR

"New IPR Item" means a deliverable, document, product or other item within which New IPR subsists;

"Notifiable Default" means:

- (a) the Supplier commits a Material Default; and/or
- (b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;

"Object Code" software and/or data in machine-readable complied object code form;

"Occasion of Tax Non – Compliance" where:

- (a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;

"Open Book Data"

complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of this Contract, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;
- (b) operating expenditure relating to the provision of the Deliverables including an analysis showing:
 - (i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;
 - (iii) manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iv) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
 - (v) Reimbursable Expenses, if allowed under the Award Form;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;
- (e) the Supplier Profit achieved over the Contract Period 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 Deliverables, including the amount of money attributed to each risk and/or contingency; and

(h) the actual Costs profile for each Service Period;

"Open Licence"	means any material that is published for use, with rights to access, copy, modify and publish, by any person for free, under a generally recognised open licence including Open Government Licence as set out at http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/ and the Open Standards Principles documented at https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles , and includes the Open Source publication of Software;
"Open Source"	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
"Open Licence Publication Material"	means items created pursuant to this Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for publication under Open Licence;
"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor'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 Staff and accordingly included within limb (a) of the definition of "Costs";
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Parliament"	takes its natural meaning as interpreted by Law;
"Party"	the Buyer or the Supplier and "Parties" shall mean both of them where the context permits;
"Personal Data"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Personal Data Breach"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;

"Prescribed Person"	<p>a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in "Whistleblowing: list of prescribed people and bodies", 24 November 2016, available online at:</p> <p>https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies-2/whistleblowing-list-of-prescribed-people-and-bodies;</p>
"Processing"	<p>has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;</p>
"Processor"	<p>has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;</p>
"Processor Personnel"	<p>all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under this Contract;</p>
"Progress Meeting"	<p>a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;</p>
"Progress Report"	<p>a report provided by the Supplier indicating the steps taken to achieve Milestones or delivery dates;</p>
"Prohibited Acts"	<ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:<ul style="list-style-type: none">(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 Contract; or(c) committing any offence:<ul style="list-style-type: none">(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or

	<ul style="list-style-type: none"> (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; 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;
"Protective Measures"	technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation including pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 16 (Security);
"Public Sector Body "	means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;
"Recall"	a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;
"Recipient Party"	the Party which receives or obtains directly or indirectly Confidential Information;
"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:</p> <ul style="list-style-type: none"> (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);

"Rectification Plan Process"	the process set out in Clause 11;
"Regulations"	the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);
"Reimbursable Expenses"	<p>the 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 Buyer's expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none"> (a) travel expenses incurred as a result of Supplier Staff 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 Buyer otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Staff 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;
"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 pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Reminder Notice"	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
"Replacement Deliverables"	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Supplier"	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;

"Request For Information"	a request for information or an apparent request relating to this Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
"Required Action"	means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
"Required Insurances"	the insurances required by Schedule 22 (Insurance Requirements);
"Satisfaction Certificate"	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
"Schedules"	any attachment to this Contract which contains important information specific to each aspect of buying and selling;
"Security Management Plan"	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
"Security Policy"	the Buyer's security policy, referred to in the Award Form (if used), in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Serious Fraud Office"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Service Credits"	any service credits specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Levels"	any service levels applicable to the provision of the Deliverables under this Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
"Service Period"	has the meaning given to it in the Award Form;

"Services"	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract;
"Sites"	<p>any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which:</p> <ul style="list-style-type: none">(a) the Deliverables are (or are to be) provided; or(b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables;(c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided);
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;
"Social Value"	the additional social benefits that can be achieved in the delivery of this Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used);
"Social Value KPIs"	the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used);
"Social Value Report"	the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used;
"Software"	any software including Specially Written Software, COTS Software and software that is not COTS Software;
"Software Supporting Materials"	has the meaning given to it in Schedule 36 (Intellectual Property Rights);

"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;
"Special Terms"	any additional terms and conditions set out in the Award Form incorporated into this Contract;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Effective Date;
"Specification"	the specification set out in Schedule 2 (Specification);
"Standards"	<p>any:</p> <ul style="list-style-type: none">(a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;(b) standards detailed in the specification in Schedule 2 (Specification);(c) standards agreed between the Parties from time to time;(d) relevant Government codes of practice and guidance applicable from time to time;

"Start Date"	the date specified on the Award Form;
"Step-In Process"	the process set out in Clause 13;
"Step-In Trigger Event"	<p>means:</p> <ul style="list-style-type: none">(a) the Supplier's level of performance constituting a Critical Service Level Failure;(b) the Supplier committing a Material Default which is irremediable;(c) where a right of termination is expressly reserved in this Contract;(d) an Insolvency Event occurring in respect of the Supplier or any Guarantor;(e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;(f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;(g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;(h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or(i) a need by the Buyer to take action to discharge a statutory duty;
"Step-Out Plan"	means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under this Contract following the completion of the Step-In Process;
"Storage Media"	the part of any device that is capable of storing and retrieving data;
"Sub-Contract"	<p>any contract or agreement (or proposed contract or agreement), other than this Contract, pursuant to which a third party:</p> <ul style="list-style-type: none">(a) provides the Deliverables (or any part of them);

	<p>(b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or</p> <p>(c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);</p>
"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Processor related to this Contract;
"Subsidiary Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Supplier"	the person, firm or company identified in the Award Form;
"Supplier Assets"	all assets and rights used by the Supplier to provide the Deliverables in accordance with this Contract but excluding the Buyer Assets;
"Supplier Authorised Representative"	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
"Supplier Equipment"	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
"Supplier Existing IPR"	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of this Contract (whether prior to the Effective Date or otherwise);
"Supplier Existing IPR Licence"	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier New and Existing IPR Licence"	means a licence to be offered by the Supplier to the New IPR and Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);

"Supplier Non-Performance"	<p>where the Supplier has failed to:</p> <ul style="list-style-type: none">(a) Achieve a Milestone by its Milestone Date;(b) provide the Goods and/or Services in accordance with the Service Levels ; and/or(c) comply with an obligation under this Contract;
"Supplier Profit"	<p>in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of this Contract for the relevant period;</p>
"Supplier Profit Margin"	<p>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;</p>
"Supplier Staff"	<p>all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under this Contract;</p>
"Supplier System"	<p>the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);</p>
"Supplier's Confidential Information"	<ul style="list-style-type: none">(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with this Contract;(c) information derived from any of (a) and (b) above;

"Supplier's Contract Manager"	the person identified in the Award Form appointed by the Supplier to oversee the operation of this Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
"Supply Chain Information Report Template"	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);
"Supporting Documentation"	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under this Contract detailed in the information are properly payable;
"Tender Response"	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
"Termination Assistance"	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
"Termination Assistance Period"	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of Schedule 30 (Exit Management);
"Termination Assistance Notice"	has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management);
"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 Contract on a specified date and setting out the grounds for termination;
"Test Issue"	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in this Contract;
"Test Plan"	a plan: (a) for the Testing of the Deliverables; and

	(b) setting out other agreed criteria related to the achievement of Milestones;
"Tests and Testing"	any tests required to be carried out pursuant to this Contract as set out in the Test Plan or elsewhere in this Contract and "Tested" shall be construed accordingly;
"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"Third Party IPR Licence"	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36 (Intellectual Property Rights);
"Transparency Information"	the Transparency Reports and the content of this Contract, including any changes to this Contract agreed from time to time, except for – (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (b) Commercially Sensitive Information;
"Transparency Reports"	the information relating to the Deliverables and performance pursuant to this Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
"UK GDPR"	has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;
"Variation"	means a variation to this Contract;
"Variation Form"	the form set out in Schedule 21 (Variation Form);
"Variation Procedure"	the procedure set out in Clause 28 (Changing the contract);
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

"Verification Period"	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);
"Work Day"	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Work Hours"	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Worker"	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; and
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.

Schedule 2 (Specification)

1. Introduction

1. 1 The Authority is seeking to appoint a Contractor to deliver a three-year programme of professional supervision to a minimum of 2,500 school and college leaders in need of wellbeing support who meet the eligibility criteria (see section 7.1). The service shall be delivered, as a minimum, through facilitated virtual or telephone-based one-to-one professional supervision, with scope for the provision of group supervision and one-to-one counselling for those identified as needing this.
1. 2 This is an opportunity to support the mental health and wellbeing needs of school and college leaders across England, and to contribute to the development, delivery, and evaluation of an ambitious government support programme.

2. Background

2. 1 Supporting the mental health and wellbeing of staff in schools and colleges is crucial to the department's commitment to recruit and retain more teachers and leaders, support teacher quality and deliver priority FE skills reforms. The department is committed to taking a whole school approach to mental health and wellbeing, and to ensure that staff wellbeing policy is integrated within schools' and colleges culture. This is why we have worked in partnership with the education sector and mental health experts to inform and deliver commitments to protect and promote school and college staff mental health and wellbeing. These include publishing the first ever Education Staff Wellbeing Charter in May 2021. The charter sets out the actions that government and other organisations, including Ofsted, will take to improve wellbeing of staff in schools and colleges.
2. 2 The department recognises the pressure that staff, especially school and college leaders, are under. Our evidence suggests that the wellbeing of teachers and leaders has decreased significantly since the start of the pandemic, and whilst there have been some improvements, it has yet to recover to pre-pandemic levels¹. School leaders report that their work has a negative impact on their mental health and wellbeing², and in 2021 more than half of school leaders (60%) reporting suffering from a high degree of burnout³. Colleges have also seen an increase in the workforce accessing mental health support, with one of the main reasons being workload (78%).⁴
2. 3 In terms of access to provision for mental health and wellbeing support, evidence suggests that this is limited, with just under half (49%) of teachers

¹ In a January 2023 survey of teachers and leaders, levels of self-reported life satisfaction, worthwhileness, and happiness were still reported to be significantly lower than reported in Winter 2019, and anxiety levels significantly higher (IFF Research, School and College Panel: January 2023)

² 53% of leaders reported that their work had a negative impact on their mental health (IFF Research Working Lives of Teachers and Leaders- Wave 1 April 2023)

³ Over half (60%) of leaders reported feeling a "high" or "very high" degree of burnout in their job role (IFF Research School and College Panel: December 2021)

⁴ 62% of colleges have seen a significant or slight increase in staff accessing mental health services and resources. The main reasons for these increases were "recurrence of existing mental health condition" (81%) and "workload" (78%). Association of Colleges. AoC Mental Health Survey Report. March 2023)

and leaders reporting that their school provided access to teacher support schemes or wellbeing programmes⁵. Just over half of colleges (56%) have staff counselling and support available and the gap around a lack of professional supervision has been identified⁶.

2. 4 This demonstrates a need for dedicated mental health and wellbeing support for school and college leaders. This was why the department took decisive action to procure a contractor to deliver mental health and wellbeing support over the last three years. Over 1000 school leaders have benefitted from this support so far.
2. 5 The department is now seeking to appoint a Contractor to deliver a longer-term programme of one-to-one professional supervision to school and college leaders (this includes assistant headteachers, deputy headteachers, headteachers, Trust CEOs, FE CEOs, college principals, deputy principals and senior leaders directly reporting to FE CEOs or principals) working at state funded primary and secondary schools, FE and sixth form colleges, 16-19 academies and designated institutions in England.
2. 6 Professional supervision provides reflection, learning and development organised around a professional identity and holds children and young people at its heart. In the education sector, professional supervision offers participants the opportunity to reflect on their core purpose in the education of children and young people. For this contract, it would give school leaders a safe and confidential space to talk about, and process what is going on for them at work. It allows them to focus on their mental wellbeing and develop new coping strategies to feel more fulfilled and in control in their role.
2. 7 This new programme will consist of:
 - a. a minimum of four sessions of **one-to-one professional supervision**, with scope for the supplier to provide group supervision and one-to-one counselling, for those requiring it. At least 95% of participants to receive support through one-to-one professional supervision. No more than 5% should receive support through either group supervision or one-to-one counselling.
 - b. a programme to run for three years which will support **a minimum of 2500** leaders over this period, of which a minimum of 2000 places will be allocated to school leaders and a minimum of 500 places for college leaders. This is a guide only and we will expect bidders to set out how many school and college leaders they propose to support for the funding available and to explain their rationale.
 - c. provision in the contract to increase the contract value [by up to 100%] subject to the availability of additional funding and if demand proves to be higher than expected.

⁵ IFF Research, *Working Lives of Teachers and Leaders- Wave 1*, April 2023

⁶ 56% of colleges have counselling and support services available in college and the introduction of professional supervision for further education staff is recommended to meet identified needs. Association of Colleges. *AoC Mental Health Survey Report*. March 2023)

3. Purpose

3. 1 The primary purpose is to maintain and continue to develop a programme of mental health and wellbeing support for school and college leaders.

4. Programme objectives

4. 1 The programme objectives are:
- To **prevent** the onset of mental health difficulties, by taking action to support the wellbeing of school and college leaders in England.
 - To **support** school and college leaders experiencing mental health and wellbeing difficulties who do not have access to independent support by plugging the gap in provision.
 - To **promote and improve** the quality of mental health and wellbeing support for school and college leaders by helping to stimulate the market and support capacity building.

5. Services requirements

5. 1 We require, as a minimum, 2500 school and college leaders (a minimum of 2000 places for school leaders and a minimum of 500 places for college leaders) to be supported via a minimum of four sessions of online/telephone one-to-one professional supervision, with the maximum number/length of sessions determined by the Contractor in their initial tender response. As a minimum, supervision shall be delivered by individuals with an accredited supervisor qualification, or equivalent and ideally with experience or knowledge of the education sector.
5. 2 In addition, we require:
- Online/telephone one-to-one counselling to be available to a proportion of participants identified as requiring counselling during their supervision sessions. The service must be delivered by British Association for Counselling and Psychotherapy (BACP) or UK Council for Psychotherapy (UKCP) registered counsellors, or equivalent; and
 - Online group supervision to be available to a small proportion of participants if there is demand. Size of group to be determined by the contractor. As a minimum, to be delivered by individuals with an accredited supervisor qualification, or equivalent and ideally with experience or knowledge of the education sector.
5. 3 95% of participants will receive support through one-to-one professional supervision. No more than 5% should receive support through either group supervision or one-to-one counselling. Tenderers should set out the approach to delivery in line with this profile.
5. 4 Services to be free for school and college leaders meeting the eligibility criteria (Section 7), at the point of use.
5. 5 Tenderers are encouraged to outline, where applicable, how their proposals

may add value/benefit to the Authority, over and above the minimum requirements set out in this specification.

6. Delivery profile

6. 1 Accessibility: The Contractor shall set up secure, appropriate technology and processes, to support participants from initial point of contact through to successful completion of either a one-to-one professional supervision or group supervision or one-to-one counselling support programme.
6. 2 Registration: The Contractor's participant registration process shall include, as a minimum:
 - i. a process to confirm eligibility of potential participants and help target the support to those who would most benefit. Given the sensitivities, this should include as a minimum and without breaching confidentiality, self-declarations that participants meet the eligibility criteria.
 - a. a process to collect data relating to relevant protected characteristics⁷ to facilitate consideration of equality implications pursuant to section 149 of the Equality Act 2010 (the Public Sector Equality Duty).
6. 3 Support: The Contractor shall set up an appropriate process to signpost participants who seek support but are not eligible, to relevant, alternative support services. The Contractor shall have effective emergency protocols in place for participants who are facing a major crisis. This process will enable participants to seek the most appropriate support for their needs.
6. 4 Availability: The Contractor shall ensure the service offers one-to-one professional supervision, or group supervision and one-to-one counselling support to eligible school and college leaders across England, for the duration of the contract.
6. 5 Service continuity: The Contractor shall ensure service provision is staggered across tranches and made available to participants for the duration of the contract, with a robust exit plan in place. Associated milestones will be agreed with DfE upon award of contract.
6. 6 High demand: Where demand is high and it becomes necessary to hold a waiting list or expressions of interest to the programme, the contractor must ensure there is robust processes in place to regularly engage with those waiting to join the programme.
6. 7 Ability to upscale: The Contractor shall have the capability, capacity and strategy to mobilise resources at pace, early in the programme and flex as required to meet fluctuating programme demand.

⁷ age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

7. Eligibility criteria

7. 1 The full service offer must be made available to school⁸ and college leaders (this includes assistant headteachers, deputy headteachers, headteachers, Trust CEOs; FE CEOs, college principals, deputy principals and senior leaders directly reporting to FE CEOs or principals) working at state funded primary and secondary schools, and state funded colleges in England.
7. 2 State funded primary and secondary schools include community schools; community special schools; foundation schools; foundation special schools; voluntary schools; pupil referral units, non-maintained special schools - approved under section 342 of the Education Act 1996; academy schools; and alternative provision academies.
7. 3 State funded colleges include FE providers (General FE colleges, Sixth Form Colleges and Designated Institutions) and 16-19 academies.
7. 4 For school or college leaders seeking support who are not eligible for this service, the Contractor shall ensure they are signposted to alternative support services.

8. Recruitment, marketing, and branding

8. 1 All marketing material relating to this programme will be DfE approved and branded prior to publication/print.
8. 2 All marketing materials will be clear about who the programme is targeting (see eligibility criteria, section 7), the purpose and objectives of the programme, and the availability of places/demand management arrangements.
8. 3 All marketing shall ensure leaders' expectations are not raised to there being services available beyond the confirmed funding period.
8. 4 Cabinet Office efficiency controls, which place restrictions on spending public money on advertising, marketing and communications, will apply to this contract. The Contractor shall ensure their marketing methods are low-cost or no-cost. Any paid for activity will be subject to additional approvals.
8. 5 DfE will support, where appropriate and necessary, with reaching potential participants for the programme through its existing networks, social media, and email distribution lists.
8. 6 The Contractor shall ensure the service is promoted across state funded schools and colleges in England, having regard to section 149 of the Equality Act 2010 (the Public Sector Equality Duty).
8. 7 The Contractor shall ensure all marketing relating to the services achieve a broad geographical reach across England to ensure that around 70% of participants are based outside of London and the South East.

⁸ The support will therefore not cover senior leaders in early years, further or higher education providers, independent schools and independent training providers/employer providers.

8. 8 As a minimum, the Contractor shall ensure marketing materials reach potential participants via email and social media. DfE will support, where appropriate and necessary, with reaching potential participants for the programme through its existing networks, social media, and email distribution lists.

9. Programme evaluation

9. 1 The Contractor shall develop an evaluation approach to monitor programme milestones and delivery, achievement of key performance indicators (KPIs), and service level agreements (SLAs) and enable continuous improvement. This should incorporate participant feedback. Written proposals for this evaluation approach shall be provided to DfE within six weeks of contract start for review and approval.
9. 2 It is anticipated that in addition, an independent external evaluation will take place, funded separately and overseen by a DfE appointed contractor. The independent evaluation is expected to assess the overall success of the programme in meeting its objectives, value for money, and capture lessons learned for future interventions. If commissioned, timing, frequency, and approach will be determined by DfE within three months of contract start, in consultation with the successful Contractor. The successful Contractor shall cooperate with all requirements for this external evaluation.

10. Maximum contract value

10. 1 Initial maximum contract value £1,500,000.
10. 2 Initial annual contract value shall be a maximum of £500,000.
10. 3 The departmental budget is subject to annual review, therefore the funding for this programme is subject to continued government funding.

11. Detailed breakdown of costs

11. 1 The Contractor shall provide a detailed breakdown of costs in **Document 3b – Price Schedule**.

12. Payment

12. 1 Payments will be made by BACS transfer following receipt of a valid invoice, completion of milestones and progress made against KPIs as confirmed at monthly contract management meetings.

13. Milestones

The milestones set out in Table 1 below are indicative, subject to funding and agreement with the successful Contractor.

Table 1 - Milestones

Target period	Key milestones	Date
---------------	----------------	------

Contract start	Successful tenderer signs contract.	April 2024
TBC upon contract award, including mobilisation activities (within first 2 months)	<ul style="list-style-type: none"> Contractor to set up secure, appropriate technology and processes to enable participants to apply to the programme (including marketing). Contractor to develop and agree with DfE, a process for communicating with participants and feedback process. Contractor to develop and agree with DfE an evaluation approach to monitor progress, delivery, and achievement of KPIs and SLAs. Contractor to recruit and induct staff and personnel as required. Contractor and DfE to commence monthly contract management meetings (ongoing throughout contract term). Contractor to provide proposed exit plan, for DfE review and approval. Contractor to provide Social Value plan, for DfE review and approval. 	May 2024
TBC upon contract award (within first 6 months)	<ul style="list-style-type: none"> Contractor to support school and college leaders (390 per delivery profile). Contractor to implement internal evaluation processes and assess impact of support, to consider any adjustments needed to be made (in consultation with DfE). Contractor to support anticipated independent evaluation. 	September 2024
TBC upon contract award (month 6 to 12)	<ul style="list-style-type: none"> Contractor to support school and college leaders (830 per delivery profile). Contractor to assess impact of support, to consider any adjustments needed to be made (in consultation with the DfE). Contractor to support anticipated independent evaluation. 	March 2025
TBC upon contract award (month 13 to 18)	<ul style="list-style-type: none"> Contractor to support school and college leaders (1240 per delivery profile). Contractor to assess impact of support, to consider any adjustments needed to be made (in consultation with DfE and 	September 2025

	<p>subject to agreement).</p> <ul style="list-style-type: none"> Contractor to support intended independent evaluation. 	
TBC upon contract award (month 19 to 24)	<ul style="list-style-type: none"> Contractor to support school and college leaders (1670 per delivery profile). Contractor to assess impact of support, to consider any adjustments needed to be made (in consultation with the DfE). Contractor to support anticipated independent evaluation (TBC) 	March 2026
TBC upon contract award (month 25 to 30)	<ul style="list-style-type: none"> Contractor to support school and college leaders (2260 per delivery profile). Contractor to assess impact of support, to consider any adjustments needed to be made (in consultation with the DfE). Contractor to support anticipated independent evaluation (TBC) Contractor to provide proposed end of contract exit plan for DfE review and approval. 	September 2026
TBC upon contract award (month 31 to 36)	<ul style="list-style-type: none"> Contractor to support school leaders (totalling a minimum of 2,000 school leaders and 500 college leaders across the programme). Contractor to assess impact of support, to consider any lessons or short-term adjustments required (in consultation with DfE and subject to agreement). Contractor to support intended independent evaluation. Contractor to end programme. DfE to set up exit meeting and finalise end of contract arrangements. 	March 2027

14. Key performance indicators (KPIs)

Please refer to Annex A to Part A - Schedule 10

15. Service Level Agreements (SLAs)

Please refer to Annex A to Part A - Schedule 10

16. Contract Management

16. 1 A start-up meeting shall be held following contract signatures, hosted virtually by the department.
16. 2 Subsequently, monthly contract management meetings shall take place between the Contractor and DfE as a minimum, to update on:
 - progress against milestones and KPIs
 - budget management and planned expenditure
 - evaluation, including feedback from participants, and
 - delivery risks and issues and mitigations.
16. 3 These meetings will be set up, administrated, and chaired by DfE. Key products will include an actions and decisions log and risks and issues log.
16. 4 The successful Contractor shall be required to provide management information to meet the needs of the department. As a minimum:
 - a. The Contractor shall provide to DfE a written report two business days before each scheduled progress meeting. DfE templates will be used to provide this information, which will show progress against milestones and KPIs, identify risks and slippages associated to the delivery of the programme.
 - b. The Contractor shall provide an annual certificate of expenditure.
 - c. The Contractor shall use learning from the delivery of the programme (including participant feedback) to inform any proposed adjustments to the programme where appropriate, and subject to DfE's approvals.
16. 5 All change requests shall follow the process set out in Attachment 1 – Conditions of Contract

17. Social Value

Social Value in Government Contracts

17. 1 The Contractor shall commit to delivering Social Value during the Contract Period. The Authority will monitor the Contractor's success in achieving these social value objectives and measure the Contractor's performance against the performance indicators set out in Schedule 4 (Performance Levels).
17. 2 The Contractor shall develop, submit, and maintain a Social Value Plan in accordance with clause 39 (Social Value) of the Contract.
17. 3 The Contractor shall meet the objectives set out in paragraph 1 by making commitments in its Social Value Plan to undertake activities, implement policies and develop initiatives that demonstrate:
 - a. plans to engage the contract workforce in deciding the most important workplace conditions to address.

- b. methods to measure staff workforce conditions over time and adapt to any changes in the results, with clear processes for acting on issues identified.
- c. plans to engage the contract workforce in deciding the most important health and wellbeing issues to address and how the organisation will respond to and monitor delivery of the agreed actions.
- d. methods to measure staff physical and mental health and wellbeing engagement over time and adapt to any changes in the results.

18. VAT

- 19. 1 Where the contract price agreed between the department and contractor is inclusive of any VAT, further amounts will not be paid by the department should a vatable supply claim be made at any later stage.
- 19. 2 Where the overall contract price is exclusive of VAT, the department will pay any VAT incurred at the prevailing rate (currently 20%). If the VAT rate changes the department will pay any VAT incurred at the new rate.
- 19. 3 It is the responsibility of tenderers to check the VAT position with HMRC before submitting a bid.

Schedule 3 (Charges)

1. Definitions

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Anticipated Contract Life Profit Margin" the anticipated Supplier Profit Margin over the Contract Period;

"Maximum Permitted Profit Margin" means the Anticipated Contract Life Profit Margin plus 5%;

2. How Charges are calculated

- 2.1. The Charges:

2.1.1. shall be calculated in accordance with the terms of this Schedule;

2.1.2. cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and]

- 2.2. Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

3. When the Supplier can ask to change the Charges

- 3.1. The Charges will be fixed for the Contract Period, save as detailed in this Schedule.

- 3.2. The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time, then it will only be able to request an increase prior to the next Review Date.

- 3.3. Any notice from the Supplier requesting an increase to the Charges shall include:

- a. a list of the Charges to be reviewed;
- b. for each of the Charges under review, written evidence of the justification for the requested increase including:
- c. a breakdown of the profit and cost components that comprise the relevant part of the Charges;

- d. details of the movement in the different identified cost components of the relevant Charge;
 - e. reasons for the movement in the different identified cost components of the relevant Charge;
 - f. evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and
 - g. evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the Contract Commencement Date.
- 3.4. The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.
- 3.5. Where the Buyer approves an increase then it will be implemented from a date determined by the Buyer at its sole discretion reasonably and Annex 1 shall be updated accordingly.

4. Other events that allow the Supplier to change the Charges

- 4.1. The Charges can also be varied (and Annex 1 will be updated accordingly) due to:
- 4.1.1. a Specific Change in Law in accordance with Clauses 28.6 to 28.8;
 - 4.1.2. a review in accordance with insurance requirements in Clause 17;
 - 4.1.3. a request from the Supplier, which it can make at any time, to decrease the Charges; and
 - 4.1.4. any extension or variation of the Contract at request of the Buyer or Supplier and agreed by both Parties.

5. The pricing mechanisms

- 5.1. The pricing mechanisms and prices set out in Annex **Error! Reference source not found.** shall be available for use in calculation of Charges in this Contract.

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]

[REDACTED]

- [REDACTED]

-
- | Group | Strongly agree | Somewhat agree | Disagree/Strongly disagree |
|---------------------------------|----------------|----------------|----------------------------|
| All respondents | 75% | 20% | 5% |
| U.S. born | 85% | 12% | 3% |
| Foreign born | 65% | 25% | 10% |
| U.S. born, foreign born parents | 80% | 15% | 5% |

□

- [REDACTED]

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]
13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]
21. [REDACTED]
22. [REDACTED]
23. [REDACTED]
24. [REDACTED]
25. [REDACTED]
26. [REDACTED]
27. [REDACTED]
28. [REDACTED]
29. [REDACTED]
30. [REDACTED]
31. [REDACTED]
32. [REDACTED]
33. [REDACTED]
34. [REDACTED]
35. [REDACTED]
36. [REDACTED]
37. [REDACTED]
38. [REDACTED]
39. [REDACTED]
40. [REDACTED]
41. [REDACTED]
42. [REDACTED]
43. [REDACTED]
44. [REDACTED]
45. [REDACTED]
46. [REDACTED]
47. [REDACTED]
48. [REDACTED]
49. [REDACTED]
50. [REDACTED]
51. [REDACTED]
52. [REDACTED]
53. [REDACTED]
54. [REDACTED]
55. [REDACTED]
56. [REDACTED]
57. [REDACTED]
58. [REDACTED]
59. [REDACTED]
60. [REDACTED]
61. [REDACTED]
62. [REDACTED]
63. [REDACTED]
64. [REDACTED]
65. [REDACTED]
66. [REDACTED]
67. [REDACTED]
68. [REDACTED]
69. [REDACTED]
70. [REDACTED]
71. [REDACTED]
72. [REDACTED]
73. [REDACTED]
74. [REDACTED]
75. [REDACTED]
76. [REDACTED]
77. [REDACTED]
78. [REDACTED]
79. [REDACTED]
80. [REDACTED]
81. [REDACTED]
82. [REDACTED]
83. [REDACTED]
84. [REDACTED]
85. [REDACTED]
86. [REDACTED]
87. [REDACTED]
88. [REDACTED]
89. [REDACTED]
90. [REDACTED]
91. [REDACTED]
92. [REDACTED]
93. [REDACTED]
94. [REDACTED]
95. [REDACTED]
96. [REDACTED]
97. [REDACTED]
98. [REDACTED]
99. [REDACTED]
100. [REDACTED]

-
- | Group | Bar 1 Length (approx. %) | Bar 2 Length (approx. %) | Bar 3 Length (approx. %) |
|---------|--------------------------|--------------------------|--------------------------|
| Group 1 | 100 | 95 | 85 |
| Group 2 | 90 | 100 | 100 |
| Group 3 | 95 | 85 | 0 |

- [illegible]

1000 words.

**8434_School Leaders' Mental Health and Wellbeing Support
Package
TQ2 Response Template**

Ref	Questions
TQ2	<p>Recruitment, Marketing and Branding:</p> <p>Please set out your strategy and approach for successfully marketing, branding and recruiting to the programme, in line with the requirements set out in the specification.</p> <p>Your response should include:</p> <ul style="list-style-type: none"> - Clear evidence and rationale to support your approach. - Proposed methods and mediums for recruitment, marketing and branding. - Details of any networks or forums your organisation intends to utilise, to support effective marketing, branding and recruitment. - Considerations in relation to communication and marketing to achieve participant numbers, required geographical coverage and eligibility criteria. - Demonstration on how the proposed approach will have regard to section 149 of the Equality Act 2010 (the Public Sector Equality Duty).⁹ <p style="text-align: right;">(max. 500 words)</p> <div style="background-color: black; width: 100%; height: 30px; margin-top: 10px;"></div> <div style="background-color: black; width: 100%; height: 30px; margin-top: 10px;"></div> <div style="background-color: black; width: 100%; height: 30px; margin-top: 10px;"></div> <div style="background-color: black; width: 100%; height: 30px; margin-top: 10px;"></div>

⁹ The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

-
-
-
-
-
-
-
-

488 words.

8434_School Leaders' Mental Health and Wellbeing Support Package

TQ3 Response Template

Ref	Questions
TQ3	<p>Mobilisation and Resource Capacity:</p> <p>Please set out your strategy for mobilising your resources at the start of the programme and for managing fluctuating demand during the performance of the contract.</p> <p>Your response should include:</p> <ul style="list-style-type: none"> - Clear evidence and rationale to support your approach. - Details of your approach to recruitment and staffing

	<p>arrangements.</p> <ul style="list-style-type: none">- Associated time and organisational considerations.- Your approach to managing changes in demand. <p>(max. 500 words)</p>
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	
<p>[Redacted]</p>	

(442 words)

8434_School Leaders' Mental Health and Wellbeing Support Package
TQ4 Response Template

Ref	Questions
TQ4	<p>Programme Evaluation:</p> <p>Please set out your approach for evaluation of the programme, including but not limited to; capturing lessons learned, evaluating impact and ensuring opportunities for continuous improvement.</p> <p>Your response should include:</p> <ul style="list-style-type: none"> - Clear evidence and rationale to support your approach. - Details of your approach and processes for monitoring progress against service level agreements, milestones and key performance indicators. - Details of how you will collect and process sufficient feedback, learn lessons and ensure opportunities for continuous improvement are implemented. <p>(max. 500 words)</p>

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

439 words.

**8434_School Leaders' Mental Health and Wellbeing Support Package
SVQ1 Response Template**

Ref	Questions
SVQ1	<p>Social Value Theme: Wellbeing</p> <p>Policy outcome: Improve health and wellbeing</p> <p>1. 1 For the question below please describe the commitment your organisation will make to ensure that opportunities under the contract deliver the policy outcome above and the 'award criteria' for each question.</p> <p>2. 2 Your response should include:</p> <ul style="list-style-type: none"> a. your 'method statement', stating how you will achieve this and how your commitment meets the 'award criteria', and b. a timed project plan and process, including how you will implement your commitment and by when. Also, how you will monitor, measure and report on your commitments/the impact of your proposals. You should include but not be limited to: <ul style="list-style-type: none"> ▪ timed action plan ▪ use of metrics ▪ tools/processes used to gather data ▪ reporting ▪ feedback and improvement ▪ transparency <p>Please set out the measures you will take during the Contract Period to deliver improvements to support health and wellbeing in the workforce.</p> <p>Your response should include activities that demonstrate and describe your existing or planned support for health and wellbeing in the workforce and influencing support for health and wellbeing:</p> <ol style="list-style-type: none"> 1. Demonstrate an understanding of issues relating to health and wellbeing, including physical and mental health, in the contract workforce. 2. Inclusive and accessible recruitment practices, development practices and retention-focussed activities including those provided in the guide for line managers on recruiting, managing and developing people with a disability or health condition. 3. Actions to invest in the physical and mental health and wellbeing of the contract workforce. Illustrative examples include: <ul style="list-style-type: none"> • implementing the six standards in the mental health at work

	<p>commitment¹⁰ and, where appropriate, the mental health enhanced standards, for companies with more than 500 employees, in Thriving at Work with respect to the contract workforce, not just 'following the recommendations'.</p> <ul style="list-style-type: none"> • Public reporting by the tenderer and its supply chain on the health and wellbeing of staff comprising the contract workforce, following the recommendations in the Voluntary Reporting Framework. • Plans to engage the contract workforce to decide the most important issues to address. <p>4. Methods to measure staff engagement over time and adapt to any changes in the results.</p> <p>5. Processes for acting on issues identified.</p> <p>6. Measures to raise awareness or increase the influence of staff, suppliers, customers, communities and/or any other appropriate stakeholders to promote health and wellbeing, including physical and mental health, through its performance of the contract, e.g. through engagement; co-design/creation; training and education; partnering/collaborating; and volunteering.</p> <p>Please upload Tenderers Annex A - SV project plan 1 to support this response.</p> <p>Note: Format requirements and word limits do not apply to Annex A.</p>
<div style="background-color: black; height: 40px; width: 100%;"></div> <ul style="list-style-type: none"> • <div style="background-color: black; height: 80px; width: 100%;"></div> • <div style="background-color: black; height: 40px; width: 100%;"></div> • <div style="background-color: black; height: 80px; width: 100%;"></div> 	

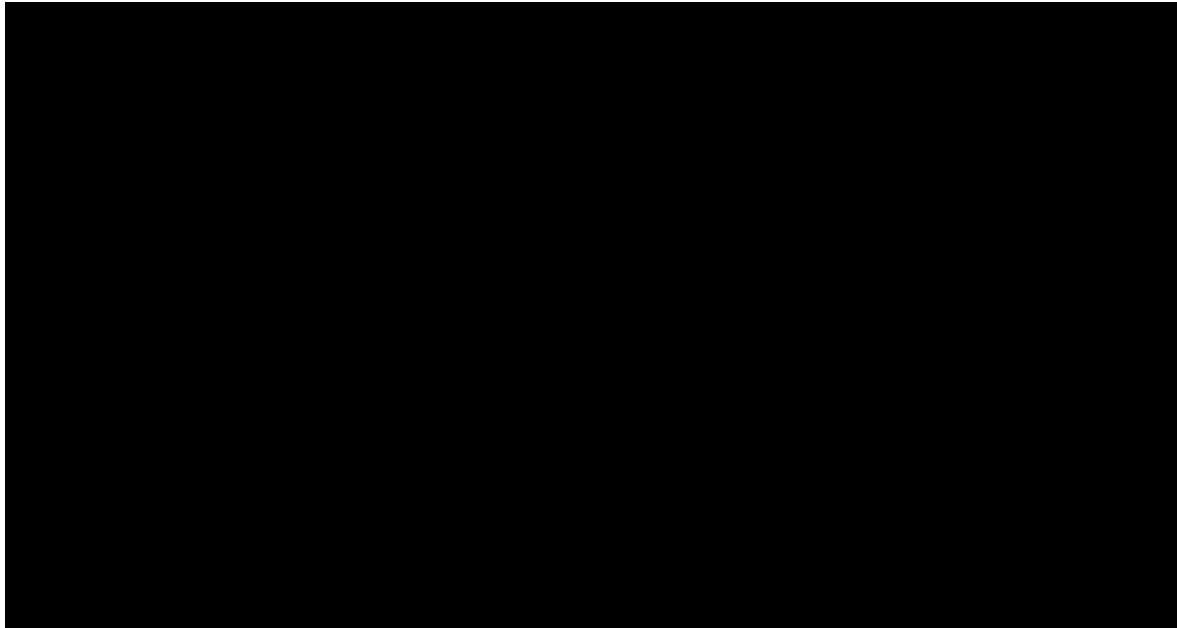
¹⁰ The [Mental Health at Work](#) website includes documents, guides, tips, videos, courses, podcasts, templates and information from key organisations across the UK, all aimed at helping employers get to grips with workplace mental health.

-
- | Age Group | Male (%) | Female (%) |
|-----------|----------|------------|
| 18-24 | 85 | 15 |
| 25-34 | 75 | 25 |
| 35-44 | 65 | 35 |
| 45-54 | 55 | 45 |
| 55-64 | 45 | 55 |
| 65-74 | 35 | 65 |
| 75-84 | 25 | 75 |
| 85+ | 15 | 85 |

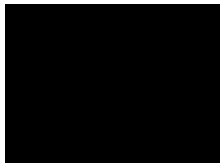
[REDACTED]



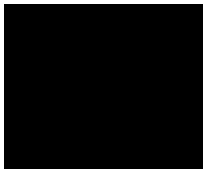
SV Project Plan



Implementation Plan (TQ1)



Implementation Plan as submitted by Education Support to the Department via Jaggaer on 5th January 2024.



Document 3b Pricing Schedule as submitted by Education Support to the Department via Jaggaer on 5th January 2024

Schedule 5 (Commercially Sensitive Information)

1. What is the Commercially Sensitive Information?

- 1.1. In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2. Where possible, the Parties have sought to identify when any relevant information will cease to fall into the category of information to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3. Without prejudice to the Buyer's obligation to disclose information in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following information:

No.	Date	Item(s)	Duration of Confidentiality
1	28/03/2024	Information contained within the TQ1 document – our delivery model	28/03/2024 – 31/03/2027
2	28/03/2024	Information contained within document 3b – our costs/budget	28/03/2024 – 31/03/2027

Schedule 6 (Transparency Reports)

- 1.4. The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.5. Without prejudice to the Supplier's reporting requirements set out in this Contract, within three (3) Months of the Effective Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.6. If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval 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 Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.7. The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

Annex A: List of Transparency Reports

Title	Content	Format	Frequency
Participant management information	Participant registrations and the number of sessions delivered for school and college leaders. Separate reporting of counselling sessions delivered.	MI tracker	Monthly – Each Service Period
Progress against milestones and KPIs	Record of progress made against KPIs and milestones. Evaluation, including feedback from participants. Risks and issues log.	MI tracker	Monthly – Each Service Period
Progress report	Written report summarising recruitment, challenges, successes, feedback and lessons learnt. Anything else to be agreed during monthly meetings	Written report	Annually

Schedule 7 (Staff Transfer)

1. Definitions

- 1.1 In this Schedule, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

"Admission Agreement"

either or both of the CSPA Admission Agreement (as defined in Annex D1: CSPA) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;

"Employee Liability"

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 including in relation to the following:

redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;

unfair, wrongful or constructive dismissal compensation;

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;

compensation for less favourable treatment of part-time workers or fixed term employees;

outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;

	claims whether in tort, contract or statute or otherwise;
	any investigation 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;
"Fair Deal Employees"	as defined in Part D;
"Former Supplier"	a supplier supplying the Services to the Buyer before any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);
"New Fair Deal"	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for staff pensions: staff transfer from central government"</i> issued in October 2013 including:</p> <p>any amendments to that document immediately prior to the Relevant Transfer Date;</p> <p>any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;</p>
"Notified Subcontractor"	a Subcontractor identified in the Annex to this Schedule to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
"Old Fair Deal"	HM Treasury Guidance <i>"Staff Transfers from Central Government: A Fair Deal for Staff Pensions"</i> issued in June 1999 including the supplementary guidance <i>"Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues"</i> issued in June 2004;

"Partial Termination"	the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 (When the Buyer can end this contract) or 14.6 (When the Supplier can end the contract);
"Replacement Subcontractor"	a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);
"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, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;
"Service Transfer"	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;
"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 Staff List or Supplier's Final Supplier Staff List, as the case may be, all information required in Annex E2 (Table of Staffing Information) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in Annex E2 from time to time.
"Statutory Schemes"	means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;

"Supplier's Final Supplier Staff List"	a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Staff List"	a list prepared and updated by the Supplier of all Supplier Staff 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 Buyer Employees"	those employees of the Buyer 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 Subcontractors to whom the Employment Regulations will apply on the Relevant Transfer Date.

2. Interpretation

Where a provision in this Schedule imposes any obligation on the Supplier including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3. Which parts of this Schedule apply

The following parts of this Schedule shall apply to this Contract:

- 3.1 [Part A (Staff Transfer At Operational Services Commencement Date – Transferring Employees from the Buyer to the Supplier)]; **N/A**
- 3.2 [Part B (Staff Transfer At Operational Services Commencement Date – Transfer From Former Supplier)];
- 3.3 [Part C (No Staff Transfer Expected On Operational Services Commencement Date)]; **N/A**
- 3.4 [Part D (*Pensions*)]:
 - 3.4.1 [- Annex D1 (CSPS)];
 - 3.4.2 [- Annex D2NHSPS)];

- 3.4.3 [- Annex D3 (LGPS)];
- 3.4.4 [- Annex D4 (Other Schemes)].
- 3.5 Part E (Staff Transfer on Exit) of this Schedule will always apply to this Contract, including:
 - 3.5.1 Annex E1 (List of Notified Subcontractors);
 - 3.5.2 Annex E2 (Staffing Information).

Part A: Staff Transfer at the Start Date

Transferring Employees from the Buyer to the Supplier

1. What is a relevant transfer

- 1.1 The Buyer and the Supplier agree that:
 - 1.1.1 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 Buyer Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Buyer Employee.
 - 1.1.3 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer 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 Buyer; and (ii) the Supplier and/or any Subcontractor (as appropriate).

2. Indemnities the Buyer must give

- 2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:
 - 2.1.1 any act or omission by the Buyer in respect of any Transferring Buyer Employee or any appropriate employee representative (as

- defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date;
- 2.1.2 the breach or non-observance by the Buyer before the Relevant Transfer Date of:
- (a) any collective agreement applicable to the Transferring Buyer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Buyer Employees which the Buyer is contractually bound to honour;
- 2.1.3 any claim by any trade union or other body or person representing the Transferring Buyer Employees arising from or connected with any failure by the Buyer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;
- 2.1.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Buyer 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
 - (b) in relation to any employee who is not a Transferring Buyer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Buyer to the Supplier and/or any Notified Subcontractor 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.
- 2.1.5 a failure of the Buyer 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 Buyer Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of the Employment Regulations; and
- 2.1.7 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer 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 Subcontractor 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 Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Supplier and/or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that their contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier will, or shall procure that the Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer in writing;
 - 2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Supplier and/or any Subcontractor, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with the Law;
 - 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment or alleged employment;
 - 2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 and in accordance with all applicable proper employment procedures set out in applicable Law, the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3 provided that the Supplier takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:

- 2.4.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or
- 2.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than six (6) Months from the relevant Transfer Date.

2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall ensure that the Notified Subcontractor shall, (a) comply with such obligations as may be imposed upon it under applicable Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

3. Indemnities the Supplier must give and its obligations

3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of:

- 3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;
- 3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Buyer Employees; and/or
 - (b) any custom or practice in respect of any Transferring Buyer Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 3.1.3 any claim by any trade union or other body or person representing any Transferring Buyer Employees arising from or connected with any failure by the Supplier or any Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Subcontractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Buyer Employees to their material detriment on or after their

- transfer to the Supplier or the relevant Subcontractor (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 Buyer 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;
- 3.1.5 any statement communicated to or action undertaken by the Supplier or any Subcontractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;
- 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Buyer 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
 - (b) in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Buyer to the Supplier or a Subcontractor, 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;
- 3.1.7 a failure of the Supplier or any Subcontractor 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 Buyer Employees in respect of the period from (and including) the Relevant Transfer Date;
- 3.1.8 any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Subcontractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- 3.1.9 a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.6 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 Buyer whether occurring or having its origin before, on or after the Relevant Transfer

Date including any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.

- 3.3 The Supplier shall comply, and shall procure that each Subcontractor 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 all its obligations in respect of the Transferring Buyer 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 Buyer and the Supplier

4. Information the Supplier must provide

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Cabinet Office requirements

- 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 Subcontractor shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:
- 5.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - 5.2.2 Old Fair Deal; and/or
 - 5.2.3 the New Fair Deal.
- 5.3 The Supplier acknowledges, in respect of those Transferring Authority Employees who were eligible for compensation under the terms of Civil Service Compensation Scheme ("**CSCS**") immediately prior to transfer, that the right to benefits calculated in accordance with the terms of the CSCS will transfer under the Employment Regulations. The Supplier acknowledges and accepts that for any employee who was eligible for compensation under or in accordance with the terms of the CSCS, the right to compensation, is a right to compensation in accordance with the terms of the CSCS applicable at the time at which the employee becomes entitled to such compensation (including

voluntary or compulsory redundancy). Suppliers are advised to check the Civil Service Pensions website for the current CSCS terms.

- 5.4 Any changes necessary to this Contract as a result of Changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. Pensions

The Supplier shall, and/or shall procure that each of its Subcontractors shall, comply with:

- 6.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- 6.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

Part B: Staff transfer at the Start Date

Transfer from a Former Supplier on Re-procurement

1. What is a relevant transfer

1.1 The Buyer and the Supplier agree that:

- 1.1.1** the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
 - 1.1.2** as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms 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 any Subcontractor and each such Transferring Former Supplier Employee.
- 1.2** The Buyer 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 Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. Indemnities given by the Former Supplier

- 2.1** Subject to Paragraph 2.1, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.1.1** 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;
 - 2.1.2** the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (a)** any collective agreement applicable to the Transferring Former Supplier Employees; and/or

- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
 - 2.1.3 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:
 - (a) 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
 - (b) 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 their employment from the Former Supplier to the Supplier and/or any Notified Subcontractor 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;
 - 2.1.4 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;
 - 2.1.5 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 Subcontractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
 - 2.1.6 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 Subcontractor 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 Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to their working conditions

- proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
- 2.2.2 arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that their contract of employment has been transferred from a Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within five (5) Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing; and
- 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter provided always that such steps are in compliance with applicable Law, within fifteen (15) Working Days of receipt of notice from the Supplier;
- 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Subcontractor shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph 2.3.2:
- (a) no such offer has been made;
 - (b) such offer has been made but not accepted; or
 - (c) the situation has not otherwise been resolved;
 - (d) the Supplier and/or any Subcontractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person,
- and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3 provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.4 The indemnity in Paragraph 2.3:
- 2.4.1 shall not apply to:
- (a) any claim for:
 - (i) for 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

- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

arising as a result of any alleged act or omission of the Supplier and/or any Subcontractor; or

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

2.4.2 shall not apply to any termination of employment occurring later than 6 Months from the relevant Transfer Date.

2.5 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall procure that any Subcontractor shall, (a) comply with such obligations as may be imposed upon it under applicable Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

3. Indemnities the Supplier must give and its obligations

3.1 Subject to Paragraph 3 3.2, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Subcontractor 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;

3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:

- (a) any collective agreement applicable to the Transferring Former Supplier Employee; and/or

- (b) any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;

3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.4 any proposal by the Supplier or a Subcontractor 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 Subcontractor (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;

- 3.1.5 any statement communicated to or action undertaken by the Supplier or a Subcontractor 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 Buyer and/or the Former Supplier in writing;
 - 3.1.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (a) 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
 - (b) 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 their employment from the Former Supplier to the Supplier or a Subcontractor, 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;
 - 3.1.7 a failure of the Supplier or any Subcontractor 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;
 - 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor 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(4) of the Employment Regulations; and
 - 3.1.9 a failure by the Supplier or any Subcontractor 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 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 Subcontractor 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 Subcontractor 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 all such 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 must give

The Supplier shall, and shall procure that each Subcontractor shall, promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and any Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. Cabinet Office requirements

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - 5.1.2 Old Fair Deal; and/or
 - 5.1.3 the New Fair Deal.
- 5.2 Any changes necessary to this Contract as a result of changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Variation Procedure.

6. Limits on the Former Supplier's obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer 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 Buyer's contract with the Former Supplier contains a contractual right in

that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. Pensions

7.1 The Supplier shall, and shall procure that each Subcontractor shall, comply with:

- 7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
- 7.1.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

Part C: No Staff Transfer on the Start Date

1. What happens if there is a staff transfer

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services is not expected to be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that their contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, give notice to the Former Supplier;
 - 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Supplier or the Subcontractor, provided always that such steps are in compliance with applicable Law;
 - 1.2.3 if such offer of employment is accepted, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment; and
 - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.5:

- (a) the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
 - (b) the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 1.3 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.2 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, (a) comply with such obligations as may be imposed upon it under Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.
- 1.4 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.3, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer 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 Subcontractor.
- 1.5 The indemnities in Paragraph 1.2 shall not apply to any claim:
- 1.5.1 for 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;
 - 1.5.2 or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
- 1.5.3 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.6 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 6 Months from the relevant Transfer Date.

- 1.7 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer 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 Subcontractor.

2. Limits on the Former Supplier's obligations

Where in this Part C the Buyer 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 Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

Part D: Pensions

1. Definitions

In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Best Value Direction"	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
"Broadly Comparable"	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPS"	the schemes as defined in Annex D1 to this Part D;
"Direction Letter/Determination"	has the meaning in Annex D2 to this Part D;
"Fair Deal Eligible Employees"	means each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);

"Fair Deal Employees"	<p>those:</p> <p>Transferring Buyer Employees; and/or</p> <p>Transferring Former Supplier Employees; and/or</p> <p>employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C;</p> <p>where the Former Supplier becomes the Supplier those employees;</p> <p>who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;</p>
"Fair Deal Schemes"	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	means Fund Actuary as defined in Annex D3 to this Part D;
"LGPS"	the schemes as defined in Annex D3 to this Part D;
"NHSPS"	the schemes as defined in Annex D2 to this Part D; and
"New Fair Deal"	<p>the revised Fair Deal position set out in the HM Treasury guidance: <i>"Fair Deal for Staff Pensions: Staff Transfer from Central Government"</i> issued in October 2013 including:</p> <p>(a) any amendments to that document immediately prior to the Relevant Transfer Date; and</p> <p>(b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the Buyer.</p>

2. Supplier obligations to participate in the pension schemes

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
 - 2.3.2 subject to Paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Supplier is the Former Supplier (or a Subcontractor is a subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

3. Supplier obligation to provide information

- 3.1 The Supplier undertakes to the Buyer:
- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
 - 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed); and
 - 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former New Deal Eligible Employees arising on expiry or termination of this Contract.

4. Indemnities the Supplier must give

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified [NHS Pensions,] the Buyer and/or any Replacement Supplier and/or any

Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- 4.1.1 arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any Default by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
- 4.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - (a) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
 - (b) arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or
- 4.1.4 arise out of or in connection with the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.
- 4.2 The indemnities in this Part D and its Annexes:
 - 4.2.1 shall survive termination of this Contract; and
 - 4.2.2 shall not be affected by the caps on liability contained in Clause 15 (How much you can be held responsible for).

5. What happens if there is a dispute

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute (i) between the Buyer and the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Buyer and the Supplier be referred to an independent Actuary:
 - 5.1.1 who will act as an expert and not as an arbitrator;
 - 5.1.2 whose decision will be final and binding on the Buyer and the Supplier; and

- 5.1.3 whose expenses shall be borne equally by the Buyer and the Supplier unless the independent Actuary shall otherwise direct.
- 5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

6. Other people's rights

- 6.1 The Parties agree Clause 23 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them or it by the Supplier under this Part D, in their or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in their or its own right under section 1(1) of the CRTPA.

7. What happens if there is a breach of this Part D

- 7.1 The Supplier agrees to notify the Buyer should it Default any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for Material Default and the consequences of termination set out in Clause 14.5.1 shall apply in the event that the Supplier:
 - 7.1.1 commits an irremediable Default of any provision or obligation it has under this Part D; or
 - 7.1.2 commits a Default of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the Default and requiring the Supplier to remedy it.

8. Transferring New Fair Deal Employees

- 8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations or other form of compulsory transfer of employment), the Supplier shall and shall procure that any relevant Subcontractor shall:
 - 8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangement for participation with the relevant Statutory Scheme(s);
 - 8.1.2 consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
 - 8.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references

to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

9. What happens to pensions if this Contract ends

- 9.1 The provisions of Part E: Staff Transfer on Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.
- 9.2 The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

10. Broadly Comparable Pension Schemes On The Relevant Transfer Date

- 10.1 If the terms of any of Paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 10.2 Such Broadly Comparable pension scheme must be:
 - 10.2.1 established by the Relevant Transfer Date;
 - 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
 - 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier has provided a Broadly Comparable pension pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall):
 - 10.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the

Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;

- 10.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
 - 10.3.3 instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
 - 10.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract:
- 10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the

Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph 10.3.3 such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph 10.3.3) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

- 10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph 10.4.1 been complied with, the Supplier shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this Paragraph.

11. Broadly Comparable Pension Schemes In Other Circumstances

- 11.1 If the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

- 11.2 Such Broadly Comparable pension scheme must be:

- 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
- 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
- 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and

- 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):
 - 11.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
 - 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and
 - 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall

procure that any of its Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("**the Shortfall**"), the Supplier or the Subcontractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this Paragraph.

12. Right Of Set-Off

12.1 The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:

- 12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
- 12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or
- 12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

12.2 The Buyer shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 12.1 above.

Annex D1: Civil Service Pensions Schemes (CSPS)

1. Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

"CSPS 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 for the CSPS in respect of the Services;
"CSPS Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
"CSPS Fair Deal Employee"	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal; and
"CSPS"	The "Alpha" pension scheme introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014 available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme.

2. Access to equivalent pension schemes after transfer

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Subcontractors shall procure that the CSPS Fair Deal Employees continue to accrue benefits in the CSPS in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

- 2.2 If the Supplier and/or any of its Subcontractors enters into a CSPA Admission Agreement in accordance with Paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of Paragraph 11 of Part D.

Annex D2: NHS Pension Schemes

1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

"Direction Letter/Determination"	an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;
"NHS Broadly Comparable Employees"	<p>means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <p>their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or</p> <p>their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with</p>

	<p>the Services, prior to being employed by the Former Supplier),</p> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS;</p>
"NHSPS Eligible Employees"	any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter;
"NHSPS Fair Deal Employees"	Means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:
	(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
	(b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),
	and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

	For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;
"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
"NHS Pensions"	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
"NHSPS"	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Arrears"	any failure on the part of the Supplier or its Subcontractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
"NHS Pension Scheme Regulations"	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
"NHS Premature Retirement Rights"	rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and

	section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
"Pension Benefits"	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
"Retirement Benefits Scheme"	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

2. Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
 - 2.2.1 all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
 - 2.2.2 the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Subcontractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health

and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.

- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Subcontractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

3. Continuation of early retirement rights after transfer

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Subcontractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

4. NHS Broadly Comparable Employees

The Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2 below.

5. What the Buyer will do if the Supplier breaches and/or cancels its pension obligations

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Subcontractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Subcontractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 11 of Part D.
- 5.3 If the Buyer is entitled to terminate this Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any

such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Subcontractors.

- 5.4 In addition to the Buyer's right to terminate this Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

6. Compensation when pension scheme access can't be provided

- 6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either membership of:

6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or

6.1.2 a Broadly Comparable pension scheme,

the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.

- 6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate this Contract.

7. Indemnities that a Supplier must give

- 7.1 The Supplier must indemnify and keep indemnified the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of their employment rights.

Annex D3: Local Government Pension Schemes (LGPS)

[Guidance: Note the LGPS unlike the CSPS & NHSPS is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Authority, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether the Buyer can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

1. Definitions

1.1 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

"2013 Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
"Administering Authority"	in relation to the Fund [insert name] , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;
"Fund"	[insert name] , a pension fund within the LGPS;
["Initial Contribution Rate"]	[XX %] of pensionable pay (as defined in the 2013 Regulations);
"LGPS"	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
"LGPS Admission Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;

"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
"LGPS Eligible Employees"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and
"LGPS Fair Deal Employees"	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2. Supplier must become a LGPS admission body

2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement with effect from the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.

OPTION 1

2.2 [Any LGPS Fair Deal Employees who:

2.2.1 were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and

2.2.2 were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

OPTION 2

[Any LGPS Fair Deal Employees whether:

2.2.3 active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or

2.2.4 eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

- 2.3 The Supplier will (and will procure that its Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

3. Broadly Comparable Scheme

- 3.1 If the Supplier and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.
- 3.2 If the Supplier and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with Paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of Paragraph 11 of Part D.

4. Discretionary Benefits

Where the Supplier and/or any of its Subcontractors is an LGPS Admission Body, the Supplier shall (and procure that its Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

5. LGPS Risk Sharing

- 5.1 Subject to Paragraphs 5.4 to 5.10, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the "**Excess Amount**") shall be paid by the Supplier or the Subcontractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.
- 5.2 Subject to Paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to A–B (the "**Refund Amount**") where:
 - 5.2.1 the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and
 - 5.2.2 the amount of contributions or payments actually paid by the Supplier or Subcontractor for that Contract Year, as the case may be, to the Fund.
- 5.3 Subject to Paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Payment**"), such Exit Payment shall be paid by the Supplier or any Subcontractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.
- 5.4 The Supplier and any Subcontractors shall at all times be responsible for the following costs:
 - 5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
 - 5.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
 - 5.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
 - 5.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Subcontractor including without limitation

- any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- 5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
 - 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);
 - 5.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
 - 5.4.8 any cost of the administration of the Fund that are not met through the Supplier's or Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
 - 5.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Subcontractor from the Fund Actuary; and/or
 - 5.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Subcontractors are responsible for in accordance with Paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the "**Exit Credit**"), the Supplier shall (or procure that any Subcontractor shall) reimburse the Buyer an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Supplier shall (or procure that the Subcontractor shall) notify the Buyer in writing within twenty (20) Working Days:
- 5.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of this Contract Year that has just ended and

- provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
- 5.7.2 of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8 Within twenty (20) Working Days of receiving the notification under Paragraph 5.7 above, the Buyer shall either:
- 5.8.1 notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
- 5.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
- 5.8.3 request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with Paragraph 5.8 above, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
- 5.10 Any Excess Amount or Exit Payment agreed by the Buyer or in accordance with the Dispute Resolution Procedure shall be paid by the Buyer within timescales as agreed between Buyer and Supplier. The amount to be paid by the Buyer shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Subcontractor.
- 5.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Subcontractor to the Buyer, shall be paid by the Supplier or any Subcontractor forthwith as the liability has been agreed. In the event the Supplier or any Subcontractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
- 5.12 This Paragraph 5 shall survive termination of this Contract.

Annex D4: Other Schemes

[Guidance: Placeholder for Pension Schemes other than LGPS, CSPA & NHSPA]

Part E: Staff Transfer on Exit

[Guidance: Please note, the reference at paragraphs 1.6.1, 1.6.2, and 1.6.4 is to Supplier Staff to capture all individuals working on the Services. Only employees can participate in public sector pension schemes or pension schemes which are broadly comparable and therefore the information in this paragraph 1.6.3 is limited to employees]

1. Obligations before a Staff Transfer

- 1.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:
 - 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract; and
 - 1.1.3 the date which is twelve (12) Months before the end of the Term; or
 - 1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any six (6) Month period),it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Staff List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Staff List and it shall provide an updated Supplier's Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.
- 1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor
 - 1.2.1 the Supplier's Final Supplier Staff List, which shall identify the basis upon which they are Transferring Supplier Employees and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Staff List (insofar as such information has not previously been provided).
- 1.3 The Buyer 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 Subcontractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor 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 Paragraphs 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional

Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):

- 1.5.1 not replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Staff 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 they replace
- 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);
- 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 not 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 Staff List;
- 1.5.5 not 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);
- 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Staff List save by due disciplinary process;
- 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
- 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9 co-operate with the Buyer 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, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received

- from any persons listed on the Supplier's Provisional Supplier Staff List regardless of when such notice takes effect;
- 1.5.11 not for a period of twelve (12) Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
 - 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
 - 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
 - 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
 - 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
 - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Start Date and up to four times during the last twelve (12) Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of Supplier Staff engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each Supplier Staff engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
 - 1.6.4 a description of the nature of the work undertaken by each Supplier Staff by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of

the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Staff List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay;
 - 1.7.6 a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;
 - 1.7.7 a complete copy of the information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998; and
 - 1.7.8 bank/building society account details for payroll purposes.
- 1.8 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3 the Supplier agrees that following within twenty (20) Working Days of a request from the Authority it shall and shall procure that each Sub-contractor shall use reasonable endeavours to comply with any [reasonable] request to align and assign Supplier Staff to any future delivery model proposed by the Authority for Replacement Services within thirty (30) Working Days or such longer timescale as may be agreed.
- 1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Variation Procedure.

2. Staff Transfer when the contract ends

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10 of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made

between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee

- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations under the Employment Regulations and in particular obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but excluding) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff List arising in respect of the period up to (but excluding) 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 Statutory Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part to the period ending on (but excluding) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
 - 2.3.1 any act or omission of the Supplier or any Subcontractor 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.
 - 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring before but excluding the Service Transfer Date of:
 - (a) any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
 - 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising before but excluding the Service Transfer Date;
 - 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (a) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date; and
 - (b) in relation to any employee who is not identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before but excluding the Service Transfer Date;
 - 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (but excluding) the Service Transfer Date);
 - 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and
 - 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor 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 Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnity 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 Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, Including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
 - 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.

2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that their contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:

2.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;

2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor 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;

2.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;

2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Replacement Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.6 The indemnity in Paragraph 2.5 shall not apply to:

2.6.1 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,

arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor; or

- 2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.
- 2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than six (6) Months from the Service Transfer Date.
- 2.8 If at any point the Replacement Supplier and/or Replacement Subcontract accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.
- 2.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff 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:
 - 2.9.1 the Supplier and/or any Subcontractor; and
 - 2.9.2 the Replacement Supplier and/or the Replacement Subcontractor.
- 2.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.11 Subject to Paragraph 2.12, the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
 - 2.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.

- 2.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
- (a) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List; and/or
 - (b) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
- 2.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (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 Staff 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;
- 2.11.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.11.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and
 - (b) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their

employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;

- 2.11.7 a failure of the Replacement Supplier or Replacement Subcontractor 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 Staff List in respect of the period from (and including) the Service Transfer Date; and
 - 2.11.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff 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 Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.
- 2.12 The indemnity in Paragraph 2.11 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 Subcontractor (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 Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

Annex E1: List of Notified Subcontractors

Annex E2: Staffing Information

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor: [Insert name of Transferor]

Number of Employees in-scope to transfer: []

{Guidance notes

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

[illegible]

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

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

CONTRACTUAL PAY AND BENEFITS

[illegible]

[illegible]

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

PENSIONS

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

Schedule 8 (Implementation Plan and Testing)

Part A - Implementation

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"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 Implementation Plan;
"Deliverable Item"	an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
"Implementation Period"	has the meaning given to it in Paragraph 7.1;
"Milestone Payment"	a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;

2. Agreeing and following the Implementation Plan

- 2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan **10** days after the Effective Date.
- 2.2 The draft Implementation Plan:
- 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
 - 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 2.4 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the

Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.

- 2.5 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

3. Reviewing and changing the Implementation Plan

- 3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.
- 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a Material Default.

4. Security requirements before the Start Date

- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in their Implementation Plan.
- 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Contract Period.
- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

5. What to do if there is a Delay

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
 - 5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
 - 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
 - 5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

6. Compensation for a Delay

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:
 - 6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone;
 - 6.1.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
 - the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 (When the Buyer can end the contract); or
 - the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
 - 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
 - 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
 - 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 15 (How much you can be held responsible for).

7. Implementation Plan

- 7.1 The Implementation Period will be a 1 Month period.

- 7.2 During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise formally agreed with the Buyer. The Supplier's full service obligations shall formally be assumed on the Start Date as set out in Award Form.
- 7.3 In accordance with the Implementation Plan, the Supplier shall:
- 7.3.1 work cooperatively and in partnership with the Buyer and incumbent supplier, where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;
 - 7.3.2 work with the incumbent supplier and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;
 - 7.3.3 liaise with the incumbent supplier to enable the full completion of the Implementation Period activities; and
 - 7.3.4 produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.
- 7.4 The Implementation Plan will include detail stating:
- 7.4.1 how the Supplier will work with the incumbent supplier and the Buyer Authorised Representative to capture and load up information such as asset data; and
 - 7.4.2 a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.
- 7.5 In addition, the Supplier shall:
- 7.5.1 appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;
 - 7.5.2 mobilise all the Services specified in the Specification within this Contract;
 - 7.5.3 produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:
 - the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and
 - the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 7.5.4 manage and report progress against the Implementation Plan;
- 7.5.5 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Award Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent supplier and the Supplier.

Annex 1: Implementation Plan

See Schedule 4 for Education Supports Implementation Plan. See Schedule 2 for milestones.

Part B - Testing

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Component"	any constituent parts of the Deliverables;
"Material Test Issue"	a Test Issue of Severity Level 1 or Severity Level 2;
"Satisfaction Certificate"	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
"Severity Level"	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Issue Management Log"	a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
"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 Reports"	the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
"Test Strategy"	a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Schedule;
"Test Success Criteria"	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule;
"Test Witness"	any person appointed by the Buyer pursuant to Paragraph 9 of this Schedule; and
"Testing Procedures"	the applicable testing procedures and Test Success Criteria set out in this Schedule.

2. How testing should work

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Supplier shall not submit any Deliverable for Testing:
 - 2.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 2.2.2 until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and
 - 2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 2.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3. Planning for testing

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case, no later than twenty (20) Working Days after the Effective Date.
- 3.2 The final Test Strategy shall include:
 - 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
 - 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 3.2.3 the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
 - 3.2.4 the procedure to be followed to sign off each Test;
 - 3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
 - 3.2.6 the names and contact details of the Buyer and the Supplier's Test representatives;
 - 3.2.7 a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;
 - 3.2.8 the technical environments required to support the Tests; and
 - 3.2.9 the procedure for managing the configuration of the Test environments.

4. Preparing for Testing

- 4.1 The Supplier shall develop Test Plans for the relevant Testing as specified in the Implementation Plan and submit these for Approval as soon as practicable but in any case, no later than twenty (20) Working Days prior to the date of the relevant Test.
- 4.2 Each Test Plan shall include as a minimum:
 - 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
 - 4.2.2 a detailed procedure for the Tests to be carried out.
- 4.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

5. Passing Testing

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

6. How Deliverables will be tested

- 6.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
 - 6.2.1 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 Buyer and the extent to which it is equivalent to live operational data;
 - 6.2.2 a plan to make the resources available for Testing;
 - 6.2.3 Test scripts;
 - 6.2.4 Test pre-requisites and the mechanism for measuring them; and
 - 6.2.5 expected Test results, including:
 - a) a mechanism to be used to capture and record Test results; and
 - b) a method to process the Test results to establish their content.

7. Performing the tests

- 7.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 7.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3.
- 7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.
- 7.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 7.5 The Supplier shall provide to the Buyer in relation to each Test:
 - 7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
 - 7.5.2 the final Test Report within 5 Working Days of completion of Testing.
- 7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 7.6.1 an overview of the Testing conducted;
 - 7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
 - 7.6.3 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;

- 7.6.4 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
- 7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 7.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Buyer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 7.9 If the Supplier successfully completes the requisite Tests, the Buyer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Contract.

8. Discovering Problems

- 8.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 8.2 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 Buyer upon request.
- 8.3 The Buyer 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.

9. Test witnessing

- 9.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 9.2 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.
- 9.3 The Test Witnesses:
 - 9.3.1 shall actively review the Test documentation;
 - 9.3.2 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer 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;

- 9.3.3 shall not be involved in the execution of any Test;
 - 9.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - 9.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
 - 9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

10. Auditing the quality of the test

- 10.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**") subject to the provisions set out in the agreed Quality Plan.
- 10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 10.4 The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 10.6 In the event of an inadequate response to the written report from the Supplier, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

11. Outcome of the testing

- 11.1 The Buyer will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
 - 11.2.1 the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
 - 11.2.2 the Buyer 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

- 11.2.3 where the failure to satisfy the Test Success 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 Buyer's other rights and remedies, such failure shall constitute a Material Default.
- 11.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, 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 Success Criteria for that Deliverable to be satisfied.
- 11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
 - 11.4.1 the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 11.4.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.
- 11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).
- 11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Satisfaction Certificate.
- 11.8 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a Material Default.
- 11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
 - 11.9.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 10.5); and
 - 11.9.2 where the Buyer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

12. Risk

12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:

- 12.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or
- 12.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

Annex 1: Test Issues – Severity Levels

1. Severity 1 Error

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.

2. Severity 2 Error

- 2.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
 - 2.1.1 causes a Component to become unusable;
 - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 2.1.3 has an adverse impact on any other Component(s) or any other area of the Deliverables.

3. Severity 3 Error

- 3.1 This is an error which:
 - 3.1.1 causes a Component to become unusable;
 - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.1.3 has an impact on any other Component(s) or any other area of the Deliverables;but for which, as reasonably determined by the Buyer, there is a practicable workaround available;

4. Severity 4 Error

- 4.1 This is an error 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 Deliverables.

5. Severity 5 Error

- 5.1 This is an error 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 Deliverables.

Annex 2: Satisfaction Certificate

To: [insert name of Supplier]

From: [insert name of Buyer]

[insert Date dd/mm/yyyy]

Dear Sirs,

Satisfaction Certificate

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement ("**Contract**") [insert Contract reference number] relating to the provision of the [insert description of the Deliverables] between the [insert Buyer name] ("**Buyer**") and [insert Supplier name] ("**Supplier**") dated [insert Effective Date dd/mm/yyyy].

The definitions for any capitalised terms in this certificate are as set out in this Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted 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 Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Buyer]

Schedule 10 (Service Levels)

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Critical Service Level Failure"	has the meaning given to it in the Award Form;
"Service Credits"	any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Credit Cap"	has the meaning given to it in the Award Form;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
"Service Level Performance Measure"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and
"Service Level Threshold"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

2. What happens if you don't meet the Service Levels

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
- 2.4.1 the Supplier has over the previous twelve (12) Month period exceeded the Service Credit Cap; and/or
- 2.4.2 the Service Level Failure:
- (a) exceeds the relevant Service Level Threshold;

- (b) has arisen due to a Prohibited Act or wilful Default by the Supplier;
 - (c) results in the corruption or loss of any Government Data; and/or
 - (d) results in the Buyer being required to make a compensation payment to one or more third parties; and/or
- 2.4.3 the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (When the Buyer can end the contract).
- 2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:
 - 2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;
 - 2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and
 - 2.5.3 there is no change to the Service Credit Cap.

3. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

- 3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and
- 3.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for Material Default.

Part A: Service Levels/KPIs and Service Credits

Service Levels/KPIs

If the level of performance of the Supplier:

is likely to or fails to meet any Service Level Performance Measure; or

is likely to cause or causes a Critical Service Level Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;

- instruct the Supplier to comply with the Rectification Plan Process;

- if a Service Level Failure has occurred, deduct the applicable Service Credits payable by the Supplier to the Buyer; and/or

- if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for Material Default and the consequences of termination in Clause 14.5.1 shall apply).

Service Credits

The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.

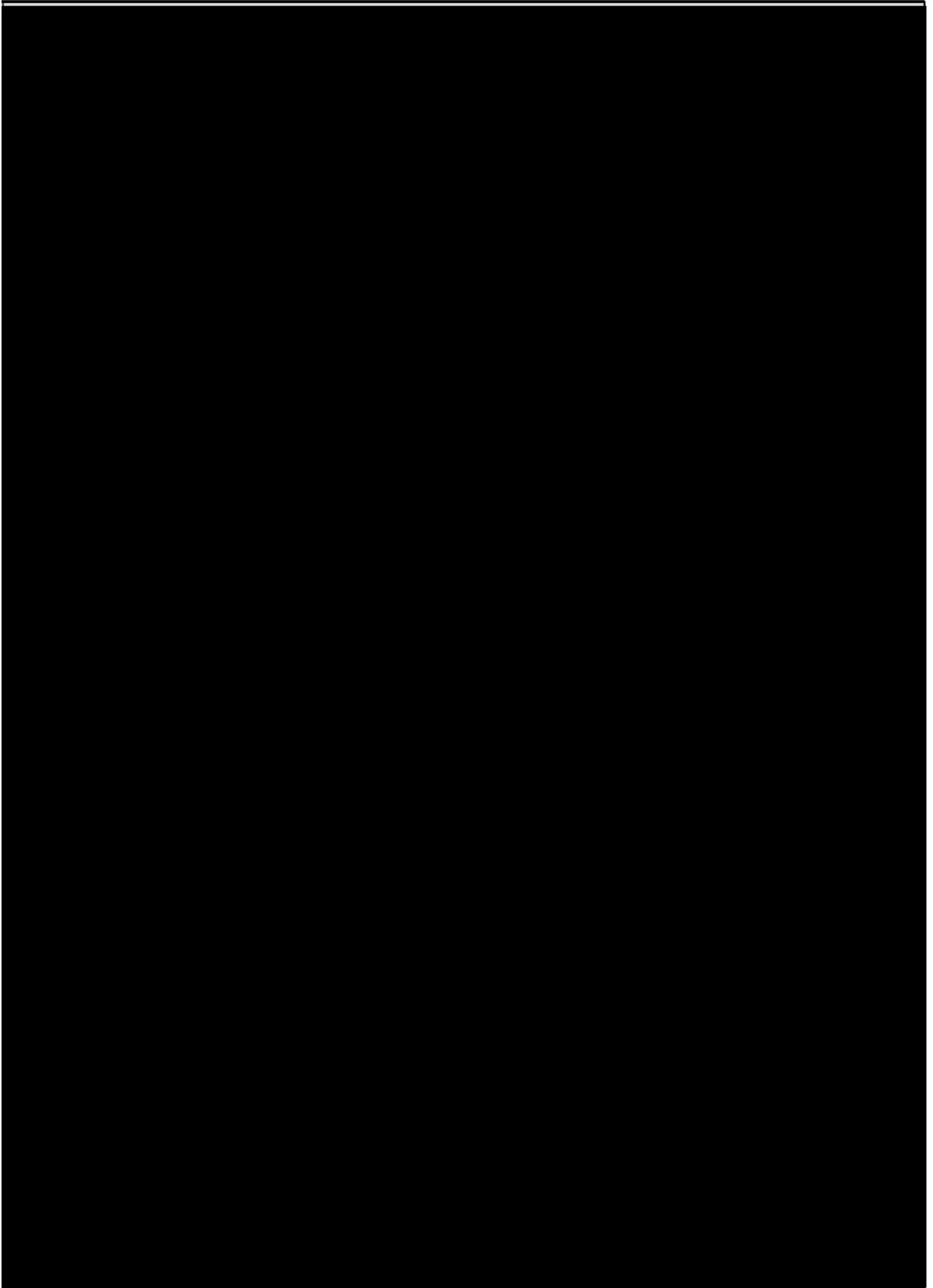
Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

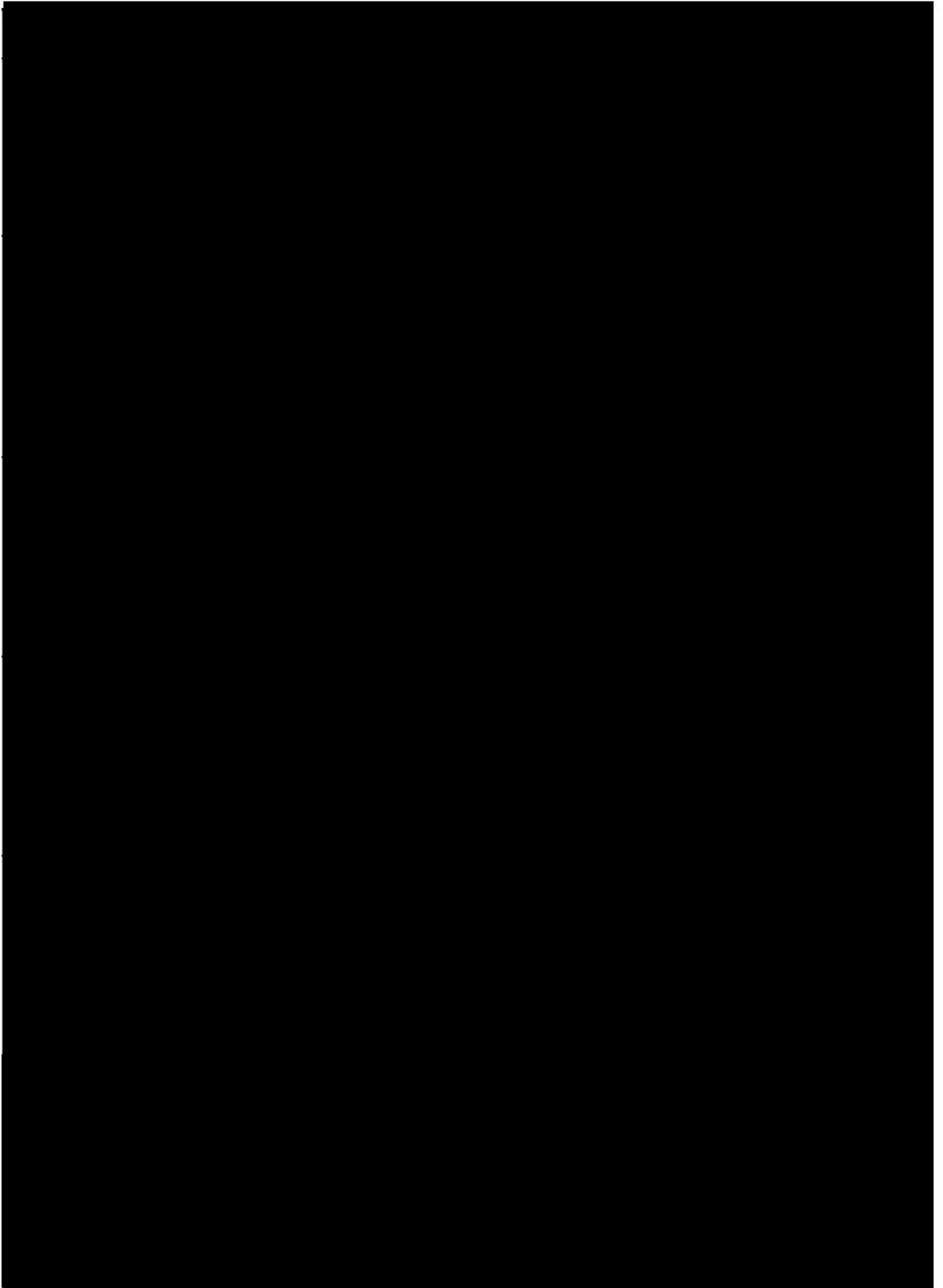
The Buyer may, at its sole discretion, determine that Service Credits should not be applied with respect to an incident of failure to meet the KPIs, or determine that the Service Credit to be applied should be in an amount lower than the maximum applicable as calculated in accordance with the Contract. Any such determination shall not affect the Buyers right to apply Service Credits with respect to future instances in which the Supplier fails to meet the KPIs, whether in relation to the same KPI or others, subject to not exceeding the maximum applicable Service Level Threshold in relation to any individual KPI in any given Contract Year.

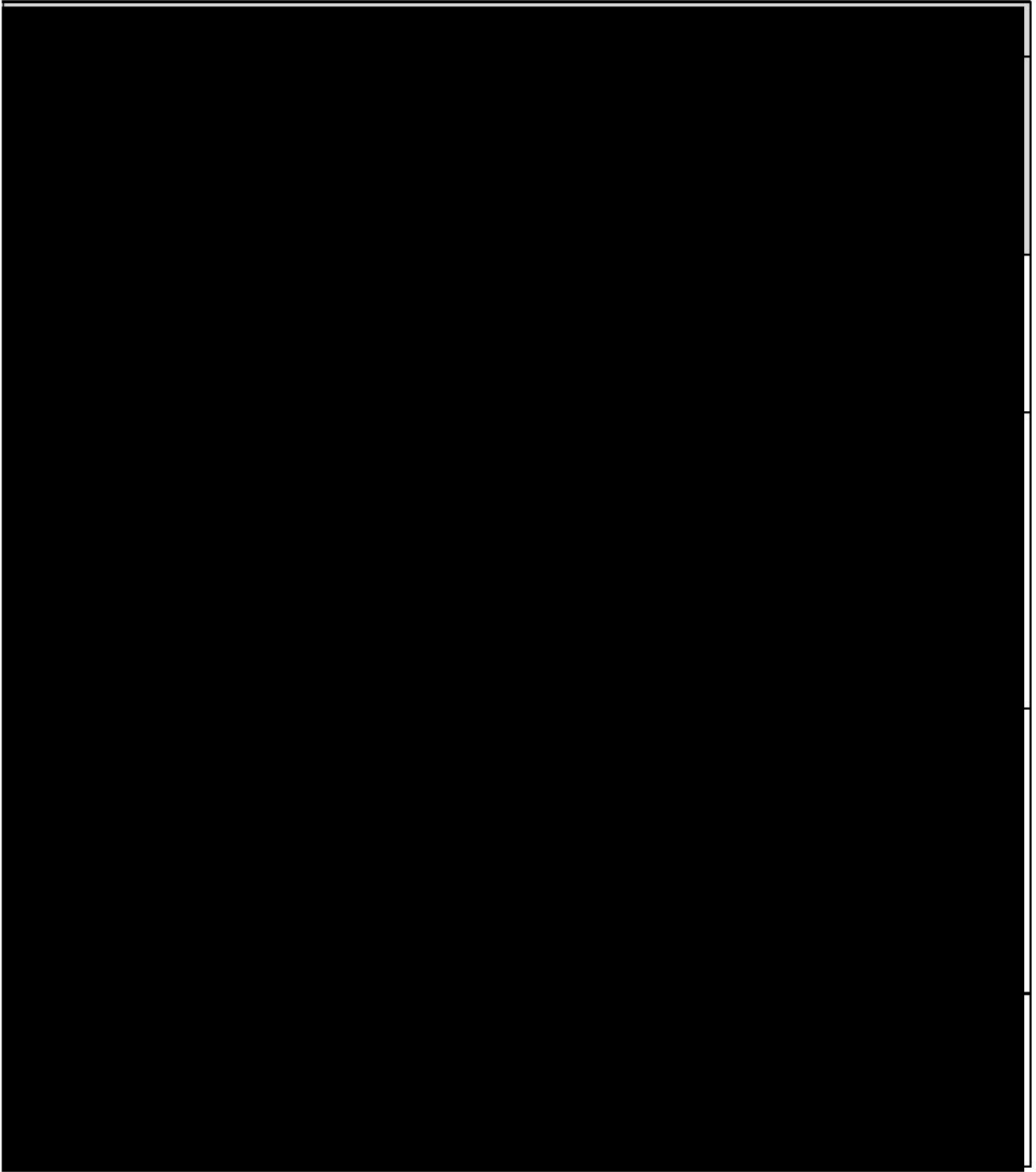
Any decision by the Buyer to apply Service Credit will not affect the Buyers future right to additionally exercise any other right for which provision is made in the Contract including a material Default. A material Default shall specifically include any breach of the Supplier's obligations as set out in Schedule 2 (Specification) which is serious in the widest sense of having a serious effect on the benefit which the Buyer would otherwise derive from the KPIs.

Annex A to Part A: Service Levels/KPIs/Social Value Pls and Service Credits Table

[illegible]







The Service Credits shall be calculated on the basis of the following formula:

Example:

Formula: $x\%$ (Service Level Performance Measure) - $x\%$ (actual Service Level performance)	=	$x\%$ of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer
Using the example of KPI 1 the Service Level is 80%. If the supplier achieved a Service Level of 60%	=	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure. This will mean a 20% shortfall will result in a 10% Service Credit

Part B: Performance Monitoring

1. Performance Monitoring and Performance Review

- 1.1 Within twenty (20) Working Days of the Effective Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 1.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 1.2.3 details of any Critical Service Level Failures;
 - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.2.5 a register of risks and issues which must include a description of the risk or issue, contingencies and countermeasures identified to reduce the likelihood and impact of the risk or issue and a considered reasonable assessment of likelihood and impact of the risk or issue;
 - 1.2.6 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and

- 1.2.7 such other details as the Buyer may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
 - 1.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
 - 1.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
 - 1.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.
- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

2. Satisfaction Surveys

The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

Schedule 11 (Continuous Improvement)

1. Supplier's Obligations

- 1.1. The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Deliverables with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables and their supply to the Buyer.
- 1.2. The Supplier must adopt a policy of continuous improvement in relation to the Deliverables, which must include regular reviews with the Buyer of the Deliverables and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Deliverables. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3. In addition to Paragraph 1.1, the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Deliverables and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's Approval. The Continuous Improvement Plan must include, as a minimum, proposals:
 - 1.3.1. identifying the emergence of relevant new and evolving technologies;
 - 1.3.2. changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 1.3.3. new or potential improvements to the provision of the Deliverables including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Deliverables; and
 - 1.3.4. measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Deliverables, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4. The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Buyer for Approval within six (6) Months following the Effective Date.
- 1.5. The Buyer shall notify the Supplier of its Approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes

required. Once Approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.

- 1.6. The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7. If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8. Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
 - 1.8.1. the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 1.8.2. the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9. The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10. All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11. Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12. At any time during the Contract Period of this Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

Schedule 13 (Contract Management)

1. Definitions

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Operational Board"	the board established in accordance with Paragraph 4 of this Schedule;
"Project Manager"	the manager appointed in accordance with Paragraph 2 of this Schedule;

2. Project Management

- 2.1. The Supplier and the Buyer shall each appoint a Project Manager for the purposes of this Contract through whom the provision of the Services and the Deliverables shall be managed day-to-day.
- 2.2. The Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.
- 2.3. Without prejudice to Paragraph 4 below, the Parties agree to operate the boards specified as set out in the Annex to this Schedule.

3. Role of the Supplier Project Manager

- 3.1. The Supplier Project Manager shall be:
- 3.1.1. the primary point of contact to receive communication from the Buyer and will also be the person primarily responsible for providing information to the Buyer;
 - 3.1.2. able to delegate his position to another person at the Supplier but must inform the Buyer before proceeding with the delegation and it will be delegated person's responsibility to fulfil the Project Manager's responsibilities and obligations;
 - 3.1.3. able to cancel any delegation and recommence the position himself; and
 - 3.1.4. replaced only after the Buyer has received notification of the proposed change.
- 3.2. The Buyer may provide revised instructions to the Supplier's Project Manager in regards to this Contract and it will be the Supplier Project Manager's responsibility to ensure the information is provided to the Supplier and the actions implemented.
- 3.3. Receipt of communication from the Supplier Project Manager by the Buyer does not absolve the Supplier from its responsibilities, obligations or liabilities under this Contract.

4. Role of The Operational Board

- 4.1. The Operational Board shall be established by the Buyer for the purposes of this Contract on which the Supplier and the Buyer shall be represented.
- 4.2. The Operational Board members, frequency and location of board meetings and planned start date by which the board shall be established are set out in Annex to the Schedule.
- 4.3. In the event that either Party wishes to replace any of its appointed board members, that Party shall notify the other in writing for approval by the other Party (such approval not to be unreasonably withheld or delayed). Each Buyer board member shall have at all times a counterpart Supplier board member of equivalent seniority and expertise.
- 4.4. 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 delegate attends the Operational Board meeting in his/her place (wherever possible) and that the delegate is properly briefed and prepared and that he/she is debriefed by such delegate after the board meeting.
- 4.5. The purpose of the Operational Board meetings will be to review the Supplier's performance under this Contract. The agenda for each meeting shall be set by the Buyer and communicated to the Supplier in advance of that meeting.

5. Contract Risk Management

- 5.1. Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 5.2. The Supplier shall develop, operate, maintain and amend, as agreed with the Buyer, processes for:
 - 5.2.1. the identification and management of risks;
 - 5.2.2. the identification and management of issues; and
 - 5.2.3. monitoring and controlling project plans.
- 5.3. The Supplier allows the Buyer to inspect at any time within working hours the accounts and records which the Supplier is required to keep.
- 5.4. The Supplier will maintain a risk register of the risks relating to this Contract which the Buyer and the Supplier have identified.

Annex: Operational Boards

The Parties agree to operate the following boards at the locations and at the frequencies set out below:

[Guidance note: Details of additional boards to be inserted. To be agreed pre contract signatures]

Schedule 14 (Business Continuity and Disaster Recovery)

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"BCDR Plan"	has the meaning given to it in Paragraph 2.1 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
"Related Supplier"	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
"Review Report"	has the meaning given to it in Paragraph 6.3 of this Schedule; and
"Supplier's Proposals"	has the meaning given to it in Paragraph 6.3 of this Schedule,

2. BCDR Plan

- 2.1 At least forty (40) Working Days after the Effective Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
 - 2.1.2 the recovery of the Deliverables in the event of a Disaster.
- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - 2.2.2 Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and
 - 2.2.3 Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).

- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3. General Principles of the BCDR Plan (Section 1)

3.1 Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (b) identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
 - (c) identification of risks arising from an Insolvency Event of the Supplier, any Key Subcontractors and/or Supplier Group member;
 - (d) identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
 - (e) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
- 3.1.9 identify the procedures for reverting to "normal service";

- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
 - 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
 - 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any Default by the Supplier of this Contract.

4. Business Continuity (Section 2)

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Deliverables remain supported and to ensure continuity of the business operations supported by the Services including:
- 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of Deliverables; and
 - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of Deliverables in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Deliverables;
 - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Deliverables;

- 4.2.3 specify any applicable Service Levels with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Business Continuity Plan; and
- 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

5. Disaster Recovery (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer 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 Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
 - 5.2.1 loss of access to the Buyer Premises;
 - 5.2.2 loss of utilities to the Buyer Premises;
 - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
 - 5.2.4 loss of a Subcontractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;
 - 5.2.7 staff training and awareness;
 - 5.2.8 BCDR Plan testing;
 - 5.2.9 post implementation review process;
 - 5.2.10 any applicable Service Levels with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
 - 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - 5.2.13 testing and management arrangements.

6. Review and changing the BCDR Plan

- 6.1 The Supplier shall review the BCDR Plan:
 - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and

- 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs 6.1.1 and 6.1.2 of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph 6.1 shall assess its suitability having regard to any change to the Deliverables 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 BCDR Plan or the last review of the BCDR 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 BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a **"Review Report"**) setting out the Supplier's proposals (the **"Supplier's Proposals"**) for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals 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 Deliverables.

7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
 - 7.1.1 regularly and in any event not less than once in every Contract Year;
 - 7.1.2 in the event of any major reconfiguration of the Deliverables;
 - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance

with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.

- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

8. Invoking the BCDR Plan

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

9. Circumstances beyond your control

The Supplier shall not be entitled to relief under Clause 24 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

Schedule 16 (Security)

Part A: Short Form Security Requirements

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Breach of Security"

the occurrence of:

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

in either case as more particularly set out in the Security Policy where the Buyer has required compliance there with in accordance with Paragraph 2.1; and

"Security Management Plan"

the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time.

2. Complying with security requirements and updates to them

- 2.1 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer it shall also comply with the Security Policy and ICT Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy and ICT Policy.
- 2.2 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Buyer. 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 be subject to the Variation Procedure.

- 2.4 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

3. Security Standards

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security for its own system and any cloud services used which:
- 3.2.1 is in accordance with the Law and this Contract;
 - 3.2.2 as a minimum demonstrates Good Industry Practice;
 - 3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data;
 - 3.2.4 where specified by the Buyer in accordance with Paragraph 2.1 complies with the Security Policy and the ICT Policy; and
 - 3.2.5 complies with the 14 Cloud Security Principles available at: <https://www.ncsc.gov.uk/collection/cloud/the-cloud-security-principles>. The Supplier must document how it and any cloud service providers they use comply with these principles, and provide this documentation upon request by the Buyer.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 0 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. Security Management Plan

4.1 Introduction

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

4.2 Content of the Security Management Plan

The Security Management Plan shall:

- 4.2.1 comply with the principles of security set out in Paragraph 0 and any other provisions of this Contract relevant to security;
- 4.2.2 identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
- 4.2.3 detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;
- 4.2.4 be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;
- 4.2.5 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;
- 4.2.6 set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with the Security Policy as set out in Paragraph 2.1; and
- 4.2.7 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

4.3 Development of the Security Management Plan

- 4.3.1 Within twenty (20) Working Days after the Effective Date and in accordance with Paragraph 0, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.
- 4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 0, or any subsequent revision to it in accordance with

Paragraph 0, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

- 4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 0. However, a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 0 shall be deemed to be reasonable.
- 4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 0 or of any change to the Security Management Plan in accordance with Paragraph 0 shall not relieve the Supplier of its obligations under this Schedule.

4.4 Amendment of the Security Management Plan

- 4.4.1 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
 - a) emerging changes in Good Industry Practice;
 - b) any change or proposed change to the Deliverables and/or associated processes;
 - c) where necessary in accordance with Paragraph 2.1, any change to the Security Policy;
 - d) any new perceived or changed security threats; and
 - e) any reasonable change in requirements requested by the Buyer.
- 4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include:
 - a) suggested improvements to the effectiveness of the Security Management Plan;
 - b) updates to the risk assessments; and
 - c) suggested improvements in measuring the effectiveness of controls.

- 4.4.3 Subject to Paragraph 0, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 0, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.
- 4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

5. Security breach

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph **Error! Reference source not found.**, the Supplier shall:
 - 5.2.1 immediately use all reasonable endeavours (which shall include any action or changes reasonably required by the Buyer) necessary to:
 - a) minimise the extent of actual or potential harm caused by any Breach of Security;
 - b) remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - c) prevent an equivalent breach in the future exploiting the same cause failure; and
 - d) as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.
- 5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with Paragraph 2.1) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

Part B: Long Form Security Requirements - NOT USED

Schedule 20 (Processing Data)

1. Status of the Controller

- 1.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

- 1.1.1. "Controller" in respect of the other Party who is "Processor";
- 1.1.2. "Processor" in respect of the other Party who is "Controller";
- 1.1.3. "Joint Controller" with the other Party;
- 1.1.4. "Independent Controller" of the Personal Data where the other Party is also "Controller",

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (Processing Personal Data) which scenario they think shall apply in each situation.

2. Where one Party is Controller and the other Party its Processor

- 2.1. Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (Processing Personal Data) by the Controller and may not be determined by the Processor.
- 2.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 2.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:
 - 2.3.1. a systematic description of the envisaged Processing and the purpose of the Processing;
 - 2.3.2. an assessment of the necessity and proportionality of the Processing in relation to the Services;
 - 2.3.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 2.3.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.4. The Processor shall, in relation to any Personal Data Processed in connection with its obligations under this Contract:
 - 2.4.1. process that Personal Data only in accordance with Annex 1 (Processing Personal Data) unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly

notify the Controller before Processing the Personal Data unless prohibited by Law;

2.4.2. ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

- a) nature of the data to be protected;
- b) harm that might result from a Data Loss Event;
- c) state of technological development; and
- d) cost of implementing any measures.

2.4.3. ensure that:

- a) the Processor Personnel do not Process Personal Data except in accordance with this Contract (and in particular Annex 1 (Processing Personal Data));
- b) it uses best endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - i. are aware of and comply with the Processor's duties under this Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);
 - ii. are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - iii. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - iv. have undergone adequate training in the use, care, protection and handling of Personal Data;

2.4.4. not transfer Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:

- a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
- b) the Controller and/or the Processor have provided appropriate safeguards in relation to the transfer

(whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into:

- i. where the transfer is subject to UK GDPR:
 - A. the International Data Transfer Agreement issued by the Information Commissioner under S119A(1) of the DPA 2018 (the "**IDTA**"); or
 - B. the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("**EU SCCs**") together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**"), as published by the Information Commissioner's Office from time to time under section 119A(1) of the DPA 2018; and/or
- ii. where the transfer is subject to EU GDPR, the EU SCCs,
as well as any additional measures determined by the Controller being implemented by the importing party;
- c) the Data Subject has enforceable rights and effective legal remedies;
- d) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- e) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data.

- 2.4.5. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this

Contract unless the Processor is required by Law to retain the Personal Data.

- 2.5. Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with this Contract it:
 - 2.5.1. receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 2.5.2. receives a request to rectify, block or erase any Personal Data;
 - 2.5.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 2.5.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract;
 - 2.5.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - 2.5.6. becomes aware of a Data Loss Event.
- 2.6. The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7. Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
 - 2.7.1. the Controller with full details and copies of the complaint, communication or request;
 - 2.7.2. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.7.3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.7.4. assistance as requested by the Controller following any Data Loss Event; and/or
 - 2.7.5. assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller

with the Information Commissioner's Office or any other regulatory authority.

- 2.8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than two hundred and fifty (250) staff, unless:
 - 2.8.1. the Controller determines that the Processing is not occasional;
 - 2.8.2. the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 2.8.3. the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.11. Before allowing any Subprocessor to Process any Personal Data related to this Contract, the Processor must:
 - 2.11.1. notify the Controller in writing of the intended Subprocessor and Processing;
 - 2.11.2. obtain the written consent of the Controller;
 - 2.11.3. enter into a written agreement with the Subprocessor which gives effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
 - 2.11.4. provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 2.12. The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- 2.13. The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

3. Where the Parties are Joint Controllers of Personal Data

- 3.1. In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out

in Annex 2 (Joint Controller Agreement) to this Schedule 20 (Processing Data).

4. Independent Controllers of Personal Data

- 4.1. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 4.2. Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 4.3. Where a Party has provided Personal Data to the other Party in accordance with Paragraph 4.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 4.4. The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of this Contract.
- 4.5. The Parties shall only provide Personal Data to each other:
 - 4.5.1. to the extent necessary to perform their respective obligations under this Contract;
 - 4.5.2. in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
 - 4.5.3. where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
 - a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or Article 45 of the EU GDPR (where applicable); or
 - b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include:
 - I. where the transfer is subject to UK GDPR:
 - A. the International Data Transfer Agreement (the "**IDTA**") ""as published by the Information Commissioner's Office or such updated

version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or

- B. the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "**EU SCCs**"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "**Addendum**") as published by the Information Commissioner's Office from time to time; and/or

- II. where the transfer is subject to EU GDPR, the EU SCCs,

as well as any additional measures determined by the Controller being implemented by the importing party;

- c) the Data Subject has enforceable rights and effective legal remedies;
- d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
- e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

- 4.5.4. where it has recorded it in Annex 1 (Processing Personal Data).

- 4.6. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
- 4.7. A Party Processing Personal Data for the purposes of this Contract shall maintain a record of its Processing activities in accordance with Article 30

UK GDPR and shall make the record available to the other Party upon reasonable request.

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

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

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

- a) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
- b) provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

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

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

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

4.9.3. work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the

Data Protection Legislation (including the timeframes set out therein); and

- 4.9.4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 4.10. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Annex 1 (Processing Personal Data).
- 4.11. Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under this Contract which is specified in Annex 1 (Processing Personal Data).
- 4.12. Notwithstanding the general application of Paragraphs 2 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs 4.2 to 4.12 of this Schedule 20.

Annex 1 - Processing Personal Data

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

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Buyer is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Paragraph 2 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p>
Subject matter of the Processing	<p>The primary purpose of the contract is to offer a programme of support to school leaders, to help meet their mental health and wellbeing needs</p> <p>The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide counselling and/or group peer support services to school leaders.</p>
Duration of the Processing	Processing will begin upon contract start (contract signatures) and end on 31 st March 2027 (31 st March 2028 if the Contract is extended)
Nature and purposes of the Processing	The nature of the processing will be: collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose of the processing: Applicant eligibility assessment, applicant / participant communication

Description	Details
Type of Personal Data being Processed	Role in education, First name, Last name, E-Mail, Phone number, Gender, Ethnicity, Organisation name and address
Categories of Data Subject	Teaching workforce. See Specification.
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under law to preserve that type of data	Personal data may be kept on systems for a maximum of five years and will then be deleted unless we receive explicit consent to retain them.
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract and international transfers and legal gateway	Education Support <ol style="list-style-type: none"> 1. Locations of Data Storage: UK 2. Locations of Service Delivery: UK WPO <ol style="list-style-type: none"> 1. Locations of Data Storage: Ireland and Netherlands 2. Locations of Service Delivery: UK, Europe, US and Canada 3. International Transfers to US and WPO global service delivery centers based on Standard Contractual Clauses, UK IDTA and EU-US Data Privacy Framework, UK US Data Bridge, and individual consent.
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of	Our Data Protection approach is the responsibility of our Director of Finance and Operations, with our Office and IT Manager responsible for the day-to-day management of GDPR activity. Maintaining records of personal data processing activities We have a number of policies, which govern our approach, and outline our data processing activities: <ul style="list-style-type: none"> • Information Security Policy (incl. GDPR requirements) • Data retention policy (incl. for each of our services / programmes) • Acceptable use of ICT Policy • Access Control Policy • Laptop and Mobile Phone Policy

Description	Details
security (insofar as that breach of security relates to data) or a Data Loss Event	<ul style="list-style-type: none"> • Password Policy <p>Our Office and IT Manager has recently undertaken a full review (Oct/Nov 2023) of these policies. Any updates required have been carried out. Future reviews will continue to be carried out annually.</p> <p>In addition to this, we produce service maps for each of the services/programmes we provide, including the existing School Leader Service. These maps serve as a record of the points in which we collect, and process, data for beneficiaries accessing the service. Our CRM Manager works with our service/programme leads to effectively map this out.</p> <p>To ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services.</p> <ul style="list-style-type: none"> • All of Education Support's work is carried out within a secure cloud, which can only be accessed with a password. All staff have a personal user log-in and password. • Systems that store any personal data are password protected and are solely stored in a web based password restricted CRM system, which also has granular access to allow for sensitive personal data to be made inaccessible to all staff that do not need to see it. Our CRM system requires multi-factor authentication to access. We have a dedicated CRM manager who oversees this. • When allocating participants for the Leader Service to Supervisors for support, this is done using a client ID so that personal details are not shared via e-mail. Supervisors then access the client data on our secure system, using the client ID. Personal data remains in the secure system. • Our CRM Manager is responsible for maintaining records of personal data within our CRM system. • All Education Support staff receive training on the most up to date legislation on data protection during their induction. We have a specific e-learning module on data protection, which staff have to pass. Having staff well equipped helps keep the integrity of our processing systems and services. • Part of staff successfully completing their probation is the mandatory requirement to read, and acknowledge to abide by, Education Support's Information Security Policy. • All associate supervisors that work with Education Support also have to read, and acknowledge to abide by, Education Support's Information Security Policy as part of signing their associate's agreement. • We have a process in place for any GDPR breaches, including an escalation process. Any breaches are to be immediately reported to those whose data may have been compromised, the Director of Finance and Operations and if an investigation warrants it, to the ICO. Any GDPR breaches for data linked to the School Leader Service will be reported to the DfE immediately.

Description	Details
	<ul style="list-style-type: none"> • We monitor any emails sent to us, including file attachments, for viruses or malicious software. Currently, we use MessageLabs for scanning and our Antivirus software is provided by Symantec. • Changes to legislation, systems or services are communicated to staff, where substantive changes are implemented. • We go through cyber essential plus certification each year. <p>To comply with the rights of data subjects in respect of receiving privacy information, and access, rectification, deletion and portability of personal data</p> <ul style="list-style-type: none"> • We have a clear privacy policy on our website to ensure transparency at all times. This clearly sets out the three key rights that individuals have under GDPR: to be informed, the right to access and the right to rectification. It's important to us that the beneficiaries of our services understand their rights clearly. We also set out our cookies policy and encourage users to manage these. We have specific information relating to the DfE School Leader Service, which was developed in conjunction with the DfE. • We only collect personal data that is necessary for us to deliver our services. • The rights of data subjects are made clear on any application forms for the services they are signing up to, for example the School Leader Service. We ask for explicit permission to contact them, ask them how they would prefer to be contacted and ask them agree to participate in evaluation surveys that will be sent to them. If they do not agree to this, we will not send the evaluation survey. All of this data, along with informed consent, is captured in our secure CRM system. • It is made clear that data will be deleted after five years unless there is explicit permission to retain it and at any time consents given may be removed and their rights to erasure can be exercised. We have robust processes in place for removing data after five years. We also remove data within one month of receipt of the request or (if later) within one month of receipt of information requested to confirm the requester's identity. • When allocating participants for the School Leader Service to Associate Supervisors for support, this is done using a client ID so that personal details are not shared via e-mail. Supervisors then access the client data on our secure system, using the client ID. Personal data remains in the secure system. • Where we work with any 3rd party suppliers, where data needs to be shared, we have clear contracts in place. This is clearly set out on our privacy policy on our website. • When we transfer data to our sub-contractor, Workplace Options, we upload directly to their secure server, to which we have password protected access.

Description	Details
	<ul style="list-style-type: none"> • A copy of our Data Retention Policy is available to any individual that requests it. This is explicit on the privacy page on our website. <p>To ensure that any consent based processing meets standards of active, informed consent, and that such consents are recorded and auditable</p> <ul style="list-style-type: none"> • We ask all individuals to provide informed consent, including when they sign up / access the services we provide or to any of our communications. This informed consent is recorded on our secure CRM system and when they unsubscribe this is picked up through the system immediately. • For people who have come to us through Education Support owned platforms, we only email newsletters and other general communications to those who have subscribed by explicitly opting in. If people sign up through our partner websites, via events or other Education Support services, we only email people who have given an explicit permission. The opportunity to unsubscribe is provided on every email we send. • All our emails include a two click option to unsubscribe from future emails. We use a third-party email service provider, Mailchimp, to process our email distribution and this service is governed by a contract with appropriate terms to protect data. • We never sell or pass on personal data to a third party for their use. On occasion, we may pass data to a third party who is employed as a contractor to process data on behalf of Education Support. In this instance, we will always have agreements and contracts in place to ensure individuals' data is processed legally and securely and to ensure it is not held for any longer than necessary. <p>To regularly test, assess and evaluate the effectiveness of the above measures.</p> <ul style="list-style-type: none"> • Our Office and IT Manager has recently undertaken a full review (Oct/Nov 2023) of the policies that govern our Data Protection approach. Any updates required have been carried out. Future reviews will continue to be carried out annually. • In addition to this, we believe that it's important to have an independent external audit of our Data Protection processes and systems. This audit will have taken place by 31st March 2024. • We regularly review sign-up forms to our services to ensure they still adhere to GDPR regulation. Every time we set up a new service, for the current Leader Service, our CRM manager meets with the programme lead to decide the necessary personal data that needs to be collected. A discussion will be had about what is

Description	Details
	<p>'essential' to ensure we are not collecting any personal data that will not be used.</p> <ul style="list-style-type: none"> • We have specific risks identified within our organisational risk register around ICT and Data, which outline a range of existing controls to manage the risk. The risk register is reviewed quarterly by our CEO and Director team, as well as our Finance and Risk committee made up of Education Support trustees. • We go through cyber essential plus certification each year.

Annex 2 - Joint Controller Agreement - NOT USED

Schedule 21 (Variation Form)

This form is to be used in order to change a contract in accordance with Clause 28 of the Core Terms (Changing this Contract).

Contract Details		
This variation is between:	<div>[insert name of Buyer] ("the Buyer")</div> <div>And</div> <div>[insert name of Supplier] ("the Supplier")</div>	
Contract name:	[insert name of contract to be changed] ("this Contract")	
Contract reference number:	[insert contract reference number]	
Details of Proposed Variation		
Variation initiated by:	[delete as applicable: Buyer/Supplier]	
Variation number:	[insert variation number]	
Date variation is raised:	[insert date]	
Proposed variation		
Reason for the variation:	[insert reason]	
An Impact Assessment shall be provided within:	[insert number] days	
Impact of Variation		
Likely impact of the proposed variation:	[Supplier to insert assessment of impact]	
Outcome of Variation		
Contract variation:	This Contract detailed above is varied as follows: <ul style="list-style-type: none"> [Buyer to insert original Clauses or Paragraphs to be varied and the changed clause] 	
Financial variation:	Original Contract Value:	£ [insert amount]
	Additional cost due to variation:	£ [insert amount]
	New Contract value:	£ [insert amount]

1. This Variation must be agreed and signed by both Parties to this Contract and shall only be effective from the date it is signed by the Buyer.
2. Words and expressions in this Variation shall have the meanings given to them in this Contract.
3. The Contract, including any previous Variations, shall remain effective and unaltered except as amended by this Variation.

Signed by an authorised signatory for and on behalf of the Buyer

Signature

Date

Name (in Capitals)

Address

Signed by an authorised signatory to sign for and on behalf of the Supplier

Signature

Date

Name (in Capitals)

Address

Schedule 22 (Insurance Requirements)

1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule 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 Effective Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
 - 1.2.1 maintained in accordance with Good Industry Practice;
 - 1.2.2 (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;
 - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
 - 1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

2. How to manage the insurance

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

3. What happens if you aren't insured

- 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 or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. Evidence of insurance you must provide

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

5. Making sure you are insured to the required amount

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

6. Cancelled Insurance

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

7. Insurance claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of this Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of **£1000** relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.
- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 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 Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

Annex 1: Required Insurances

The Supplier shall hold the following insurance cover from the Start Date in accordance with this Schedule:

1.1 professional indemnity insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000);

1.2 public liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than one million pounds (£1,000,000); and

1.3 employers' liability insurance with cover (for a single event or a series of related events and in the aggregate) of not less than five million pounds (£5,000,000).

Schedule 24 (Financial Difficulties)

1 INTRODUCTION AND DEFINITIONS

- 1.1 In this Schedule, the following definitions shall apply and supplement Schedule 1 (Definitions):

“Economic and Financial Standing Assessment” or “Assessment”	means an assessment of the Supplier's and their Key Subcontractors' economic and financial standing undertaken by the Supplier in accordance with this Schedule;
“Financial Distress Event”	means any one of the instances described in 5.1.1 to 5.1.11 of this Schedule;
“Financial Distress Service Continuity Plan”	The plan produced by the Supplier in the event the Supplier suffers a Financial Distress Event;
“Financial Monitoring Plan”	The plan produced by the Supplier and updated in accordance with this Schedule;
“Monitored Supplier”	any entity identified as such in paragraph 8.2 of this Schedule.
“Consortium Member”	A group or consortium of economic operators that are, or intend to become, an established legal entity in order to deliver this Contract

2 GENERAL

- 2.1 The Supplier acknowledges and agrees that the financial stability and solvency of the Supplier, its Affiliates and its Key Subcontractors is critical to the successful delivery of the Services and that any deterioration, or potential deterioration, of their financial position may have an adverse effect on the performance by them of the Contract including the Services.
- 2.2 The Supplier shall annually undertake and submit a completed Economic and Financial Standing assessment for the Supplier and each of its Key Subcontractors, in the format specified by the Buyer, along with their last two sets of audited accounts.
- 2.3 If the Buyer deems, from the assessment and audited accounts submitted, that there is a risk to continued performance of the Services, the Buyer may ask the Supplier to submit a Financial Distress Service Continuity Plan, in line with paragraph 6.
- 2.4 The Supplier shall monitor its own financial standing and that of its Key Subcontractors on a regular basis throughout the Contract Period using a Financial Monitoring Plan and shall report on this to the Buyer.
- 2.5 The Buyer will independently monitor the financial standing of the Supplier and/or Key Subcontractors using credit rating agency information as well as other publicly available information. If at any time the Buyer has reason to be concerned as to the financial standing of the Supplier and/or Key Subcontractors, the Buyer reserves the right to invoke any, or all, of the subsequent remedies as set out in paragraph 2 through paragraph 7 below.

3 FINANCIAL STANDING

- 3.1 If during the Contract Period the Buyer has reason to believe that the Supplier and/or Key Subcontractor's financial standing presents concern as to the on-going delivery of Services then, at the Buyer's discretion, the Supplier and/or Key Subcontractors shall procure that:
- 3.1.1 An Affiliate of the Supplier and/or the Key Subcontractors which at the relevant time and thereafter is, in its own right, of sufficient financial standing shall become a Guarantor and shall provide a guarantee in the form set out in Schedule 23 (Guarantee) ("**Guarantee**"); or
 - 3.1.2 in the event that such Affiliate is not able to provide sufficient financial standing, the Supplier shall provide suitable alternative security in the form of:
 - 3.1.2.1 an ABI Model Form of Guarantee Bond, or an equivalent bond to the Buyer's satisfaction, to the benefit of the Buyer to a value that will be determined by the Buyer; or
 - 3.1.2.2 an alternative guarantee, the provision of funds or reserves by a third party under guarantee, cash, deposit or escrow account as the Buyer may Approve (such Approval not to be unreasonably withheld or delayed).
- 3.2 The Supplier shall:
- 3.2.1 regularly monitor compliance with the Guarantee provisions for itself and/or Key Subcontractors; and
 - 3.2.2 promptly notify the Buyer 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).

4 FINANCIAL MONITORING PLAN

- 4.1 The Supplier shall develop and maintain a Financial Monitoring Plan.
- 4.2 The Financial Monitoring Plan shall be designed by the Supplier and agreed with the Buyer to ensure that the Buyer has an early and clear warning indicator of any Financial Distress Event affecting the Supplier and/or Key Subcontractors which may affect the Services. The content and design is to be proportionate for the circumstances taking into account the delivery and nature of the Services, the use and type of Subcontractors and the identity of the Supplier.
- 4.3 Except where the Buyer has agreed otherwise, the Supplier shall within four (4) weeks of the Effective Date, prepare and submit for Approval by the Buyer, a Financial Monitoring Plan which shall set out the Supplier's proposals for the monitoring and reporting of its financial stability, and the financial stability of its Key Subcontractors, to the Buyer on a regular basis throughout the Contract Period.
- 4.4 The Financial Monitoring Plan may include (but shall not be limited to):
- (i) A summary of the Supplier's and Key Subcontractors' financial positions at the Effective Date and on a Quarterly thereafter report to the Buyer including but not limited to credit ratings, financial ratios, details of current liabilities, value of marketable securities, cash in hand and bank, account receivables, Trustees' reports, routine management accounts etc;

- (ii) how the Supplier and Key Subcontractors' financial standing will be reviewed on a Quarterly throughout the Contract Period against historical financial standing to show trend (including use of credit ratings, financial ratios and/or other financial indicators);
 - (iii) the Supplier's proposals for reporting financial standing to the Buyer (including the template reporting forms which the Supplier intends to use);
 - (iv) the frequency of monitoring and reporting activity;
 - (v) provision of reporting lines for the supply chain to notify the Buyer of incidents of non-payment of valid and undisputed invoices;
 - (vi) any other provisions which in the reasonable opinion of the Supplier may be required by the Buyer to assess current financial standing of the Supplier and Key Subcontractors and which enable quick and easy assessment of any movement in financial standing.
- 4.5 The Buyer shall notify the Supplier of its approval or rejection of the proposed Financial Monitoring Plan (or any updates to it) within twenty (20) Working Days of receipt. The Supplier shall make any reasonable amendments to the Financial Monitoring Plan as may be requested by the Buyer.
- 4.6 Within ten (10) Working Days of receipt of the Buyer's notice of rejection and of the deficiencies of the proposed Financial Monitoring Plan, the Supplier shall submit to the Buyer a revised Financial Monitoring Plan reflecting the changes required.
- 4.7 If Approved by the Buyer, the Supplier shall promptly implement the Financial Monitoring Plan throughout the Contract Period.
- 4.8 Following the Approval of the submission of the first Financial Monitoring Plan, the Supplier shall regularly review, maintain and provide the Buyer with an updated version of the Financial Monitoring Plan on at least a quarterly basis thereafter.
- 4.9 The Supplier shall comply with their Financial Monitoring Plan throughout the Contract Period.

5 FINANCIAL DISTRESS EVENTS

- 5.1 In addition to its obligations under the paragraph 3, the Supplier shall promptly notify the Buyer in writing if any of the following Financial Distress Events occur in respect of the Supplier, and/or a Key Subcontractor and/or a Monitored Supplier:
- 5.1.1 there is a material deterioration of its (or any Consortium Member's or respective parent company's) financial standing;
 - 5.1.2 the appointment of an administrator or receiver;
 - 5.1.3 late filing of statutory accounts with Companies House;
 - 5.1.4 it issues a profits warning or other similar public announcement about a deterioration in its finances or prospects;
 - 5.1.5 it is being publicly investigated for improper financial accounting and reporting, fraud or any other financial impropriety;

- 5.1.6 it commits a material breach of covenant to its lenders;
 - 5.1.7 a Key Subcontractor not being paid any sums properly due under a specified invoice that is not subject to a genuine dispute;
 - 5.1.8 it is subject to any claims, litigation, investigations, actions or decisions in respect of financial indebtedness worth greater than £5,000,000 (Five Million Pounds or equivalent), and/or obligations under a service contract with a total contract value greater than £5,000,000 (Five Million Pounds) and which is reasonably likely to be adversely determined;
 - 5.1.9 in the auditor's opinion the Supplier and/or Key Subcontractor and/or Monitored Supplier is no longer a 'going concern';
 - 5.1.10 there is a sudden and/or unexpected change in the Chief Executive Officer and/or the Finance Director (or equivalents);
 - 5.1.11 the Supplier is required to include within their Financial Monitoring Plan reference to the Financial Indicators at Paragraph 8.1 (and Annexes 1-3) below as breaches of the indicative thresholds will constitute a Financial Distress Event.
- 5.2 The notification shall include a summary explanation and background information relevant to the Financial Distress Event.

6 CONSEQUENCES OF FINANCIAL DISTRESS EVENT

- 6.1 In the event of a Financial Distress Event occurring, then the Supplier shall, and shall procure that any affected Key Subcontractor shall, as soon as reasonably practicable, comply with the obligations of paragraph 4 of this schedule.
- 6.2 Where the Buyer reasonably believes that the Financial Distress Event is likely to adversely impact on the performance of the Services, or on the Buyer's request in accordance with paragraph 2.3, the Supplier shall submit to the Buyer for Approval a Financial Distress Service Continuity Plan as soon as is reasonably practicable and shall provide any further financial information as the Buyer may reasonably require to assess financial standing and risks.
- 6.3 The Financial Distress Service Continuity Plan shall set out how the Supplier intends to ensure it is still able to deliver the Services under this Contract and resolve any issues that were a contributory factor to the event occurring.
- 6.4 If the Buyer acting reasonably considers that the Financial Distress Service Continuity Plan is insufficient to remedy the effects of the Financial Distress Event on the Service, then it may require the Supplier (and/or Key Subcontractor) to redraft and resubmit an improved and updated plan or may require the issue to be escalated via the Dispute Resolution Procedure.
- 6.5 If the Buyer Approves the Financial Distress Service Continuity Plan, then the Supplier shall execute and continue to review the plan (with submissions to the Buyer for Approval where it is updated).
- 6.6 Where the Parties agree that the Financial Distress Event no longer adversely affects the delivery of the Services, the Supplier shall be relieved of its obligations in respect of the current Financial Distress Service Continuity Plan.

7 TERMINATION RIGHTS

7.1 The Buyer shall be entitled to terminate this Contract for Material Default if:

- (i) The Supplier fails to notify the Buyer of a Financial Distress Event in accordance with paragraph 5.1;
- (ii) the Buyer and the Supplier fail to agree a Financial Distress Service Continuity Plan in accordance with paragraph 6.2 or any updates to a plan within a reasonable timescale (taking into account the effects of the Financial Distress Event on the Services);
- (iii) the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan or any updates to the plan in accordance with paragraph 6.2 above;
- (iv) the severity of the Financial Distress Event means the Supplier will no longer be able to deliver the Services to the required standard and it is not practicable to put in place a Financial Distress Service Continuity Plan.

8 FINANCIAL INDICATORS

8.1 Subject to the calculation methodology set out at Annex 3 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 Error! Reference source not found.]
1 Operating Margin	<i>Operating Margin = Operating Profit / Revenue</i>	<i>= or > 5%</i>	<i>See paragraph 3</i>
2 Turnover Ratio	<i>Annual Supplier Turnover to Annual Contract Value</i>	<i>> 1.5 times</i>	<i>See paragraph 3</i>
3 Net Debt to EBITDA ratio	<i>Net Debt to EBITDA Ratio</i>	<i>< 2.5 times</i>	<i>See paragraph 3</i>
4 Acid Ratio	<i>Acid Ratio = (Current Assets – Inventories) / Current Liabilities</i>	<i>> 1 times</i>	<i>See paragraph 3</i>

Key: 1 – see Annex 3 to this Schedule which sets out the calculation methodology to be used in the calculation of each financial indicator.

8.2 Monitored Suppliers –the monitoring of financial indicators will apply to the following entities

Monitored Supplier	Applicable Financial Indicators
Education Support	1 – Operating Margin 2 – Turnover 3 - Net Debt to EBITDA 4 – Acid Test

Annex 1: Rating Agencies and their Standard Rating System

The Buyer utilises the service from Dun and Bradstreet identified as 'Financial Analytics' as the basis of its supplier monitoring. Annex 2 identifies the indicators and thresholds the Buyer utilises from Financial Analytics.

The Buyer may at time to time replace Dun and Bradstreet with an alternative service. If an alternative service is used, the Buyer will utilise equivalent rating indicators that most closely match Dun and Bradstreet's Financial Analytics.

Annex 2: Credit Ratings and Credit Rating Thresholds

Entity	Credit Rating	Financial Strength score	Risk Indicator
Supplier	Financial Failure Score = or > 50	1A 2A 3A 4A 5A	1 or 2 or 3 (3 with a failure score of less than 50)
[Guarantor]	As above	As above	As above
[Key Subcontractor]	As above	As above	As above

Annex 3: Calculation Methodology for Financial Indicators

The Buyer uses the Cabinet Office's Financial Viability Risk Assessment Tool (FVRAT) to calculate financial indicators. The FVRAT is periodically updated and the Buyer will default to using the latest published version when undertaking calculations. The prevailing FVRAT will take primacy over all other Financial Indicator methodologies as set out in this Annex 3.

For information, and to guide the Supplier to ensure that it provides appropriate calculations and sources of information, the following sets out a general methodology as well as methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

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).

Groups: Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.

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.

Treatment of non-underlying items: Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Financial Indicator Methodology

Financial Indicator	Methodology
1 Operating Margin	<p>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.</p> <p>Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.</p> <p>Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.</p>
2 Turnover Ratio	Annual Supplier turnover shown within the Income Statement compared to the average annual GiTIS contract value
3 Net Debt to EBITDA ratio	"Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents

	<p>"EBITDA" = Operating profit + Depreciation charge + Amortisation charge</p> <p>The majority of the elements used to calculate the Net Debt + Net Pension Deficit to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p><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.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p><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.</p> <p>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.</p> <p>Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless 'Net Debt + Net Pension Deficit' is also negative, in which case the relevant Financial Target Threshold should be regarded as having been met).</p>
4 Acid Ratio	<p>All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.</p>

Schedule 25 (Rectification Plan)

Request for [Revised] Rectification Plan		
Details of the Notifiable Default:	<i>[Guidance: Explain the Notifiable Default, with clear schedule and clause references as appropriate]</i>	
Deadline for receiving the [Revised] Rectification Plan:	[add date (minimum 10 days from request)]	
Signed by Buyer:		Date: <input type="text"/>
Supplier [Revised] Rectification Plan		
Cause of the Notifiable Default	[add cause]	
Anticipated impact assessment:	[add impact]	
Actual effect of Notifiable Default:	[add effect]	
Steps to be taken to rectification:	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]
	4.	[date]
	[...]	[date]
Timescale for complete Rectification of Notifiable Default	[X] Working Days	
Steps taken to prevent recurrence of Notifiable Default	Steps	Timescale
	1.	[date]
	2.	[date]
	3.	[date]

	4.	[date]	
	[...]	[date]	
Signed by the Supplier:		Date:	
Review of Rectification Plan Buyer			
Outcome of review	[Plan Accepted] [Plan Rejected] [Revised Plan Requested]		
Reasons for rejection (if applicable)	[add reasons]		
Signed by Buyer		Date:	

Schedule 26 (Sustainability)

1. Definitions

“Modern Slavery Assessment Tool”	means the modern slavery risk identification and management tool which can be found online at: https://supplierregistration.cabinetoffice.gov.uk/msat
“Supply Chain Map”	<p>means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least:</p> <ul style="list-style-type: none">(a) the name, registered office and company registration number of each entity in the supply chain;(b) the function of each entity in the supply chain; and(c) the location of any premises at which an entity in the supply chain carries out a function in the supply chain; and]
“Waste Hierarchy”	<p>means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011:</p> <ul style="list-style-type: none">(a) Prevention;(b) Preparing for re-use;(c) Recycling;(d) Other Recovery; and(e) Disposal.

Part A

1. Public Sector Equality Duty

- 1.1 In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under this Contract in a way that seeks to:
 - 1.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and
 - 1.1.2 advance:
 - (a) equality of opportunity; and
 - (b) good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

2. Employment Law

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

3. Modern Slavery

3.1 The Supplier:

- 3.1.1 shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;
- 3.1.2 shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;
- 3.1.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
- 3.1.4 warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- 3.1.5 shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- 3.1.6 shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;
- 3.1.7 shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under this Contract;
- 3.1.8 shall prepare and deliver to the Buyer, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business with its annual certification of compliance with this Paragraph 3;

[Guidance - a statement under section 54 of the Modern Slavery Act would be sufficient for the required 'annual slavery and human trafficking report required by Paragraph 3.18]

- 3.1.9 shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;

- 3.1.10 shall not use or allow child or slave labour to be used by its Subcontractors;
- 3.1.11 shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its Subcontractors to the Buyer and Modern Slavery Helpline and relevant national or local law enforcement agencies;
- 3.1.12 if the Supplier is in Default under Paragraphs 3.1.1 to 3.1.11 of this Part A of Schedule 26 the Buyer may by notice:
 - (a) require the Supplier to remove from performance of this Contract any sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply; and
- 3.1.13 shall, if the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Buyer to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains).
- 3.2 If the Supplier notifies the Buyer pursuant to Clause 3.1.11 it shall respond promptly to the Buyer'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 this Contract.
- 3.3 If the Supplier is in Default under Paragraph 3.1 of this Part A of Schedule 26 [Guidance: Include if Optional paragraph **Error! Reference source not found.** of Part B of this Schedule is included or Paragraph **Error! Reference source not found.** of Part B of Schedule 26] the Buyer may by notice:
 - 3.3.1 require the Supplier to remove from performance of this Contract any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - 3.3.2 immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply.

4. Environmental Requirements

- 4.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.
- 4.2 In performing its obligations under this Contract, the Supplier shall, where applicable to this Contract, to the reasonable satisfaction of the Buyer:
 - 4.2.1 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
 - 4.2.2 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and
 - 4.2.3 ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.
- 4.3 In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.
- 4.4 In performing its obligations under this Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.
- 4.5 The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:
<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

5. Supplier Code of Conduct

- 5.1 In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf
The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

6. Reporting

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within fourteen (14) days of such request, [provided that such requests are limited to [two (2)] per requirement per Contract Year].

Schedule 27 (Key Subcontractors)

1. Restrictions on certain subcontractors

- 1.1. The Supplier is entitled to sub-contract its obligations under this Contract to the Key Subcontractors set out in the Award Form.
- 1.2. Where during the Contract Period the Supplier wishes to enter into a new Key Sub-contract or replace a Key Subcontractor, it must obtain the prior written consent of the Buyer and the Supplier shall, at the time of requesting such consent, provide the Buyer with the information detailed in Paragraph 1.4. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. Where the Buyer consents to the appointment of a new Key Subcontractor then they will be added to Key Subcontractor section of the Award Form. The Buyer may reasonably withhold their consent to the appointment of a Key Subcontractor if it considers that:
 - 1.2.1. the appointment of a proposed Key Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;
 - 1.2.2. the proposed Key Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
 - 1.2.3. the proposed Key Subcontractor employs unfit persons.
- 1.3. The Supplier shall provide the Buyer with the following information in respect of the proposed Key Subcontractor:
 - 1.3.1. the proposed Key Subcontractor's name, registered office and company registration number;
 - 1.3.2. the scope/description of any Deliverables to be provided by the proposed Key Subcontractor;
 - 1.3.3. where the proposed Key Subcontractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable

- satisfaction of the Buyer that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
- 1.3.4. the Key Sub-Contract price expressed as a percentage of the total projected Charges over the Contract Period; and
- 1.3.5. (where applicable) Credit Rating Threshold (as defined in Schedule 24 (Financial Difficulties)) of the Key Subcontractor.
- 1.4. If requested by the Buyer, within ten (10) Working Days of receipt of the information provided by the Supplier pursuant to Paragraph 1.3, the Supplier shall also provide:
 - 1.4.1. a copy of the proposed Key Sub-Contract; and
 - 1.4.2. any further information reasonably requested by the Buyer.
- 1.5. The Supplier shall ensure that each new or replacement Key Sub-Contract shall include:
 - 1.5.1. provisions which will enable the Supplier to discharge its obligations under the this Contract;
 - 1.5.2. a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-Contract which confer a benefit upon the Buyer;
 - 1.5.3. a provision enabling the Buyer to enforce the Key Sub-Contract as if it were the Supplier;
 - 1.5.4. a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to the Buyer;
 - 1.5.5. obligations no less onerous on the Key Subcontractor than those imposed on the Supplier under this Contract in respect of:
 - a) the data protection requirements set out in Clause 18 (Data protection);
 - b) the FOIA and other access request requirements set out in Clause 20 (When you can share information);
 - c) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute;
 - d) the keeping of records in respect of the goods and/or services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
 - e) the conduct of audits set out in Clause 6 (Record keeping and reporting);
- 1.6. provisions enabling the Supplier to terminate the Key Sub-Contract on notice on terms no more onerous on the Supplier than those imposed on

the Buyer under Clauses 14.4 (When the Buyer can end this Contract) and 14.5 (What happens if this Contract ends) of this Contract;

- 1.7. a provision restricting the ability of the Key Subcontractor to sub-contract all or any part of the provision of the Deliverables provided to the Supplier under the Key Sub-Contract without first seeking the written consent of the Buyer; and
- 1.8. a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 13 (Step-in rights).
 - 1.8.1. The Supplier shall not terminate or materially amend the terms of any Key Sub-Contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

Schedule 29 (Key Supplier Staff)

1. Key Supplier Staff

- 1.1. The Annex 1 (Key Role) to this Schedule lists the key roles ("Key Roles") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date ("Key Staff").
- 1.2. The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the Contract Period.
- 1.3. The Buyer 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 Staff.
- 1.4. The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
 - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
 - 1.4.2 the person concerned resigns, retires or dies or is on parental or long-term sick leave; or
 - 1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5. The Supplier shall:
 - 1.4.4 notify the Buyer promptly of the absence of any Key Staff (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);
 - 1.5.1 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 1.5.2 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
 - 1.5.3 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
 - 1.5.4 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key

Role and is fully competent to carry out the tasks assigned to the Key Staff whom they have replaced.

- 1.6. The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

Annex 1- Key Roles

Key Role	Key Staff	Contract Details
[REDACTED]	[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] - [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] - [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] - [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] - [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] - [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]	[REDACTED] - [REDACTED] [REDACTED]

Schedule 30 (Exit Management)

1. Definitions

- 1.1. In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Exclusive Assets"	Supplier Assets used exclusively by the Supplier [or a Key Subcontractor] in the provision of the Deliverables;
"Exit Information"	has the meaning given to it in Paragraph 3.1 of this Schedule;
"Exit Manager"	the person appointed by each Party to manage their respective obligations under this Schedule;
"Net Book Value"	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	those Supplier Assets used by the Supplier [or a Key Subcontractor] in connection with the Deliverables but which are also used by the Supplier [or Key Subcontractor] for other purposes;
"Replacement Goods"	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Services"	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Transferable Assets"	Exclusive Assets which are capable of legal transfer to the Buyer;
"Transferable Contracts"	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
"Transferring Contracts"	has the meaning given to it in Paragraph 8.2.3 of this Schedule; and
"Virtual Library"	the data repository hosted by the Supplier containing the accurate information about this Contract and the Deliverables in accordance with Paragraph 2.2 of this Schedule.

2. Supplier must always be prepared for contract exit

- 2.1. The Supplier shall within thirty (30) days from the Effective Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2. During the Contract Period, the Supplier shall within thirty (30) days from the Effective Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:
 - 2.2.1. a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and
 - 2.2.2. a configuration database detailing the technical infrastructure, a schedule of the IPRs (consistent with Annex 1 of Schedule 36 (Intellectual Property) which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 (Business Continuity and Disaster Recovery) or Schedule 24 (Financial Difficulties) and operating procedures through which the Supplier provides the Deliverables,and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in this Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should be maintained and kept up to date in accordance with the time period set out in the Award Form.
- 2.3. The Supplier shall add to the Virtual Library a list of Supplier Staff and Staffing Information (as that term is defined in Schedule 7 (Staff Transfer)) in connection with the Deliverables in accordance with the timescales set out in Paragraphs 1.1, 1.2 of Part E of Schedule 7 (Staff Transfer).
- 2.4. The Supplier shall:
 - 2.4.1. ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and
 - 2.4.2. procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may

require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

- 2.5. Each Party shall appoint an Exit Manager within three (3) Months of the Effective Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

3. Assisting re-competition for Deliverables

- 3.1. The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "Exit Information").
- 3.2. The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3. The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4. The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

4. Exit Plan

- 4.1. The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "Exit Plan").
- 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 twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3. The Exit Plan shall set out, as a minimum:

- 4.3.1. how the Exit Information is obtained;
- 4.3.2. a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under this Contract;
- 4.3.3. the management structure to be employed during the Termination Assistance Period;
- 4.3.4. a detailed description of both the transfer and cessation processes, including a timetable;
- 4.3.5. how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
- 4.3.6. details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
- 4.3.7. the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable);
- 4.3.8. how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
- 4.3.9. any charges that would be payable for the provision of Termination Assistance (calculated in accordance with

Paragraph 4.4 below) together with a capped estimate of such charges;

- 4.3.10. proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
 - 4.3.11. proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
 - 4.3.12. proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
 - 4.3.13. proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
 - 4.3.14. proposals for the disposal of any redundant Deliverables and materials;
 - 4.3.15. how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
 - 4.3.16. any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4. Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (Charges). The Supplier shall be entitled to increase or vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to the Charges resulting from the provisions of Termination Assistance will be strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.
- 4.5. The Supplier shall:
- 4.5.1. maintain and update the Exit Plan (and risk management plan) no less frequently than:
 - a) every six (6) months throughout the Contract Period;
 - b) no later than twenty (20) Working Days after a request from the Buyer for an up-to-date copy of the Exit Plan;
 - c) as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than ten (10) Working Days after the date of the Termination Assistance Notice;
 - d) as soon as reasonably possible following, and in any event no later than twenty (20) Working Days following,

any material change to the Deliverables (including all changes under the Variation Procedure); and

- 4.5.2. jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.
- 4.6. Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.
- 4.7. A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

5. Termination Assistance

- 5.1. The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "Termination Assistance Notice") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
 - 5.1.1. the nature of the Termination Assistance required; and
 - 5.1.2. the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.
- 5.2. The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:
 - 5.2.1. no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and
 - 5.2.2. the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days' written notice upon the Supplier.
- 5.3. The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.4. In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

6. Termination Assistance Period

- 6.1. Throughout the Termination Assistance Period the Supplier shall:

- 6.1.1. continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
- 6.1.2. provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
- 6.1.3. use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
- 6.1.4. subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
- 6.1.5. at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and
- 6.1.6. seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2. If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3. If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

7. Obligations when the contract is terminated

- 7.1. The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2. Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
 - 7.2.1. cease to use the Government Data;
 - 7.2.2. vacate any Buyer Premises;
 - 7.2.3. remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The

Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;

7.2.4. provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:

- a) such information relating to the Deliverables as remains in the possession or control of the Supplier; and
- b) such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.

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

8. Assets, Sub-contracts and Software

8.1. Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:

- 8.1.1. terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
- 8.1.2. (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.

8.2. Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:

- 8.2.1. which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("Transferring Assets");
- 8.2.2. which, if any, of:
 - a) the Exclusive Assets that are not Transferable Assets; and

b) the Non-Exclusive Assets,

the Buyer and/or the Replacement Supplier requires the continued use of; and

- 8.2.3. which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "Transferring Contracts"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.
- 8.3. With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4. Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.
- 8.5. Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
 - 8.5.1. procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 8.5.2. procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6. The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7. The Buyer shall:
 - 8.7.1. accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 8.7.2. once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the

obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.

- 8.8. The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
- 8.9. The Supplier shall indemnify the Buyer (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 Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

9. No charges

Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

10. Dividing the bills

All outgoings, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

- 10.1. the amounts shall be annualised and divided by three hundred and sixty five (365) to reach a daily rate;
- 10.2. the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 10.3. the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

Annex 1: Scope of Termination Assistance

1. Scope of Termination Assistance

- 1.1. The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:
 - 1.1.1. notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.2. 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 Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - 1.1.3. providing details of work volumes and staffing requirements over the twelve (12) Months immediately prior to the commencement of Termination Assistance;
 - 1.1.4. providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and re-writing and implementing these during and for a period of twelve (12) Months after the Termination Assistance Period;
 - 1.1.5. providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;
 - 1.1.6. agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;
 - 1.1.7. agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
 - 1.1.8. providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;
 - 1.1.9. answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;
 - 1.1.10. agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;
 - 1.1.11. providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not

exceeding six (6) Months afterwards for the purpose of the smooth transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:

- a) to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
- b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;

1.1.12. knowledge transfer services, including:

- a) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
- b) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;
- c) providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which may, as appropriate, include information, records and documents;
- d) providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and
- e) allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions,

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

1.2. The Supplier will:

- 1.2.1. provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of this Contract; and
- 1.2.2. co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable standard.

1.3. To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.

1.4. The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:

- 1.4.1. copies of up-to-date procedures and operations manuals;
- 1.4.2. product information;
- 1.4.3. agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and
- 1.4.4. key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,

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

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

- 1.5.1. any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:
 - a) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - b) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and

- 1.5.2. the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

Schedule 36 (Intellectual Property Rights)

Part A: Intellectual Property Rights (no ICT Services)

1. General Provisions and Ownership of IPR

- 1.1. Any New IPR created under this Contract is owned by the Buyer.
- 1.2. Each Party keeps ownership of its own Existing IPR.
- 1.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 1.1 and 1.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.4. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 1.5. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 1.6. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex **Error! Reference source not found.** to this Schedule and keep this updated throughout the Contract Period.
- 1.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 2 and 6, the Supplier must, within 10 Working Days notify the Buyer:
 - 1.7.1 the specific Intellectual Property Rights the Buyer has not received licences to; and
 - 1.7.2 the Deliverables affected.
- 1.8. For the avoidance of doubt:
 - 1.8.1 except as provided for in Paragraphs 1 or 6.1.2.2 and 6.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 2 and 6;
 - 1.8.2 the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

- a) Sections 55 and 56 of the Patents Act 1977;
- b) section 12 of the Registered Designs Act 1949; or
- c) sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

2. Licences in respect of Supplier Existing IPR

- 2.1. The Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 2.3 in respect of each Deliverable where:
 - 2.1.1. the Supplier Existing IPR is embedded in the Deliverable;
 - 2.1.2. the Supplier Existing IPR is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 2.4; or
 - 2.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR.
- 2.2. The categories of Supplier Existing IPR described in Paragraph 2.1 are mutually exclusive.
- 2.3. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:
 - 2.3.1. in the case of Supplier Existing IPR embedded in a Deliverable:
 - 2.3.1.1. has no restriction on the identity of any transferee or sub-licensee;
 - 2.3.1.2. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR for any of the purposes set out in Paragraph 2.4; and
 - 2.3.1.3. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;
 - 2.3.2. in the case of Supplier Existing IPR that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:
 - 2.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs for any of the purposes set out in Paragraph 2.4;

2.3.2.2. is transferrable to only:

- a) a Crown Body;
- b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
 - 1. enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
 - 2. enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

2.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

- a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

2.3.2.4. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph.

2.4. For the purposes of Paragraph 2.3, the relevant purposes are:

- 2.4.1. to allow the Buyer or any End User to receive and use the Deliverables;
- 2.4.2. to allow the Buyer to commercially exploit the New IPR and New IPR Items; and
- 2.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

3. Licences granted by the Buyer

- 3.1. The Buyer grants the Supplier a licence to the New IPR and Buyer Existing IPR that either:
 - 3.1.1. where terms are agreed by the Buyer and Supplier under Paragraph 4, is on those terms; or
 - 3.1.2. where terms are not agreed by the Buyer and Supplier under Paragraph 4:
 - 3.1.2.1. is non-exclusive, royalty-free and non-transferable;
 - 3.1.2.2. is sub-licensable to any Sub-contractor where:
 - a) the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and
 - b) the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph; and
 - 3.1.2.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of fulfilling its obligations under this Contract; and
 - 3.1.2.4. terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.
- 3.2. When the licence granted under Paragraph 3.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 3.1.2:
 - 3.2.1. immediately cease all use of the Buyer Existing IPR and New IPR (including the Government Data within which the Buyer Existing IPR or New IPR may subsist);
 - 3.2.2. either:
 - 3.2.2.1. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR and the Government Data; or
 - 3.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR and the Government Data (as the case may be); and

- 3.2.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

4. Buyer approval for Supplier to exploit New IPR and Buyer Existing IPR

- 4.1. Before using, copying or adapting any New IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.
- 4.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in that licence.
- 4.3. The Supplier must provide a proposal setting out:
 - 4.3.1. the purpose for which it proposes to use the New IPR;
 - 4.3.2. the activities the Supplier proposes to undertake with or in respect of the New IPR;
 - 4.3.3. any licence the Supplier requests in respect of Buyer Existing IPR; and
 - 4.3.4. such further information as the Buyer may reasonably require to properly consider the proposal.
- 4.4. The Buyer may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:
 - 4.4.1. the Buyer's reputation; or
 - 4.4.2. the Buyer's interests.
- 4.5. Where the Buyer has not:
 - 4.5.1. approved or declined proposal; or
 - 4.5.2. required further information, within 20 Working Days of the later of:
 - 4.5.3. the date the proposal was first provided to the Buyer; or
 - 4.5.4. the date on which further information was provided to the Buyer, then the proposal is, for the purposes of this Contract, approved.

5. Provision of information on New IPR

- 5.1. The Buyer may, at any time, require the Supplier to provide information on:
 - 5.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR; and
 - 5.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR.
- 5.2. The Supplier must provide the information required by the Buyer:
 - 5.2.1. within twenty (20) Working Days of the date of the requirement; and
 - 5.2.2. in the form and with the content specified by the Buyer.

6. Licences in respect of Third-party IPR

- 6.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:
 - 6.1.1. Approval is granted by the Buyer; and
 - 6.1.2. one of the following conditions is met:
 - 6.1.2.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 6.2;
 - 6.1.2.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 6.1.2.1, all the following conditions are met:
 - a) the Supplier has notified the Buyer in writing giving details of:
 - 1. what licence terms can be obtained from the relevant third party; and
 - 2. whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
 - b) the Buyer has agreed to accept the licence terms of one of those third parties; and

- c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

6.1.2.3. the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

6.2. The Third Party IPR licence referred to in Paragraph 6.1 is the licence set out in Paragraph 2.3 as if:

6.2.1. the term Third Party IPR were substituted for the term Supplier Existing IPR; and

6.2.2. the term third party were substituted for the term Supplier, in each place they occur.

7. Patents

7.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date] 20

BETWEEN:

[insert name] of [insert address] (the “Sub-licensee”); and

[insert name] of [insert address] (the “Supplier” and together with the Supplier, the “Parties”).

WHEREAS:

- (A) [insert name of Buyer] (the “Buyer”) 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 Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to this Contract (the “Sub-licence”).
- (C) It is a requirement of this Contract that, before the Buyer 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 Buyer.

IT IS AGREED as follows:

1 Interpretation

In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:

the Supplier; or

the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

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 Buyer pursuant to or in connection with the Sub-licence;

other Information provided by the Buyer 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

Information derived from any of the above, but not including any Information that:

was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;

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

was independently developed without access to the 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:

1.1.1. a reference to any gender includes a reference to other genders;

1.1.2. the singular includes the plural and vice versa;

1.1.3. the words “include” and cognate expressions shall be construed as

if they were immediately followed by the words “without limitation”;

- 1.1.4. 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;
- 1.1.5. headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 1.1.6. references to Clauses are to clauses of this Agreement.

2. Confidentiality Obligations

- 2.1. In consideration of the Buyer entering into the Sub-licence, the Sub- licensee shall:
 - 2.1.1. treat all Confidential Information as secret and confidential;
 - 2.1.2. 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);
 - 2.1.3. 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;
 - 2.1.4. not transfer any of the Confidential Information outside the United Kingdom;
 - 2.1.5. not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub- licence;
 - 2.1.6. 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
 - 2.1.7. upon the expiry or termination of the Sub-licence:
 - a. destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - b. 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
 - c. 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:
- 3.1.1. reasonably need to receive the Confidential Information in connection with the Sub-licence; and
 - 3.1.2. have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
 - 3.1.3. 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:
- 3.3.1. 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
 - 3.3.2. 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:
- 4.2.1. to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - 4.2.2. to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - 4.2.3. 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:

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:

24810_Contract_SLMental Health & Wellbeing Support_v1.0

Final Audit Report

2024-04-05

Created:	2024-04-05
By:	[Redacted]
Status:	Signed
Transaction ID:	[Redacted]

