

SCHEDULE 2.1

SERVICES DESCRIPTION

1. INTRODUCTION

The Authority supports the successful delivery of all types of infrastructure and major projects. The Authority works with government and industry to ensure infrastructure and major projects are delivered efficiently and effectively, and to improve performance over time. The Authority wants to create the best performing projects system in the world. PLP has been created to develop project leadership skills across government and create a cadre of elite project leaders. The Authority requires the Supplier to provide the Services to deliver the next iteration of the programme building upon its success and preparing leaders for government projects of the future. This schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

2. SERVICES DESCRIPTION

The Service Description as set out in the Annex to this Schedule.

2.1 OPTIONAL SERVICES

2.2 Upon request by the Authority in accordance with clause 5.10 to 5.12, the Supplier shall provide suitably qualified and suitably experienced personnel to provide Optional Services in respect of the PLP, including, but not limited to:

- (a) Updating significant elements of existing course content / learning resources, to ensure that the PLP retains its currency;
- (b) Developing new learning modules, resources or materials as required by the Authority;
- (c) Running ad-hoc workshops or specialist events for current or previous PLP Participants and other senior project leaders;
- (d) IT development to improve existing eLearning resources and /or create new learning resources;
- (e) Running ad-hoc workshops and / or specialist events for senior civil servants to address development needs and / or civil service skills and knowledge gap relating to project leadership;
- (f) Additional cohorts of the PLP (up to 50 participants per cohort);
- (g) Introducing new elements in response to emerging, new or changing government policies, priorities to help improve the leadership and delivery of projects e.g. leadership development activities relevant to the complexities of leading projects/programmes internationally especially when operating in fragile and conflict situations.

2.3 Any Optional Services provided by the Supplier in respect of the PLP shall be provided either:

(a) in accordance with the maximum rates as set out in Agreement Schedule 7.1;
or

(b) on the basis of a fixed price (if requested by the Authority).

2.4 Upon request by the Authority, the Supplier shall provide support to senior civil servants, government Ministers, and government committees in respect of the PLP. The support required may include providing advice, producing or contributing to written submissions or reports and attendance at hearings, briefings and events.

ANNEX 1 SERVICE DESCRIPTION

SCHEDULE 2.2

PERFORMANCE LEVELS 1.

DEFINITIONS

In this Schedule, the following definitions shall apply:

“Available”	has the meaning given in Paragraph 1.2 of Part II of Annex 1;
“End User”	any person authorised by the Authority to use the IT Environment and/or the Services;
“Help Desk”	the single point of contact help desk set up and operated by the Supplier for the purposes of this Agreement;
“Non-Available”	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
“Performance Monitoring Report”	has the meaning given in Paragraph 1.1(a) of Part B;
“Performance Review Meeting”	the regular meetings between the Supplier and the Authority to manage and review the Supplier's performance under this Agreement, as further described in Paragraph 1.5 of Part B;
“Repeat KPI Failure”	has the meaning given in Paragraph 3.1 of Part A;
“Satisfaction Survey”	has the meaning given in Paragraph 5.1 of Part II of Annex 1;
“Service Availability”	has the meaning given in Paragraph 2 of Part II of Annex 1
“Service Downtime”	any period of time during which any of the Services are not Available; and
“System Response Time”	has the meaning given in Paragraph 2.1 of Part II of Annex 1.

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1 PERFORMANCE INDICATORS

- 1.1 Subject to clause 7.7, Annex 1 sets out the minimum Key Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 5.

2. SERVICE POINTS

- 2.1 If the level of performance of the Supplier during a Quarter achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Quarter is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.

3. REPEAT KPI FAILURES

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a “Repeat KPI Failure”.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows: $SP = P \times 2$ where:

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service

Threshold.

Worked example based on the following Service Points regime for Service Availability:

Service Availability Severity Levels	Service Points
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Target Performance Level $\geq 99\%$	0
Minor KPI Failure: $\geq 98\%$ and $< 99\%$	1
Serious KPI Failure: $\geq 97\%$ and $< 98\%$	2
Severe KPI Failure: $\geq 96\%$ and $< 97\%$	3
KPI Service Threshold: $< 96\%$	4

Example 1:

If the Supplier achieves Service Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.5%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will again incur 6 Service Points.

Example 2:

If the Supplier achieves Service Availability of 96.5% in a given Measurement Period, it will incur a Severe KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 Service Points.

4. SERVICE CREDITS

4.1 Schedule 7.1 (*Charges and Invoicing*) sets out the mechanism by which Service Points shall be converted into Service Credits.

4.2 The Authority shall use the Performance Monitoring Reports provided pursuant to Part B, among other things, to verify the calculation and accuracy of the Service Credits (if any) applicable to each Quarter.

PART B: PERFORMANCE MONITORING

1 PERFORMANCE MONITORING AND PERFORMANCE REVIEW

1.1 Within 10 Working Days of the end of each Quarter, the Supplier shall provide:

- (a) a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”); and

- (b) a report to the Authority's senior responsible officer which summarises the Supplier's performance over the relevant Quarter as more particularly described in Paragraph 1.3 (the "**Balanced Scorecard Report**").

Performance Monitoring Report

1.2 The Performance Monitoring Report shall be in such format as agreed between the Parties from time to time and contain, as a minimum, the following information:

Information in respect of the Quarter just ended

- (a) for each Key Performance Indicator the actual performance achieved over the Quarter, and that achieved over the previous 3 Measurement Periods;
- (b) a summary of all Performance Failures that occurred during the Quarter;
- (c) the severity level of each KPI Failure which occurred during the;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures occurring during the Quarter, the cause of the relevant KPI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the status of any outstanding Rectification Plan processes, including:
 - (i) whether or not a Rectification Plan has been agreed; and
 - (ii) where a Rectification Plan has been agreed, a summary of the Supplier's progress in implementing that Rectification Plan;
- (g) for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- (h) the number of Service Points awarded in respect of each KPI Failure;
- (i) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (j) the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- (k) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Agreement;
- (l) such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Quarters

- (m) a rolling total of the number of Performance Failures that have occurred over the past four Quarters;
- (n) the amount of Service Credits that have been incurred by the Supplier over the past four Quarters;
- (o) the conduct and performance of any agreed periodic tests that have occurred in such Quarter such as the annual failover test of the Service Continuity Plan.

Balanced Scorecard Report

1.3 The Balanced Scorecard Report shall be presented in the form of an online accessible dashboard and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Quarter, including details of the following:

- (a) financial indicators;
- (b) the Target Performance Levels achieved;
- (c) behavioural indicators;
- (d) performance against its obligation to pay its Sub-contractors within 30 days of receipt of an undisputed invoice;
- (e) Milestone trend chart, showing performance of the overall programme; and
- (f) sustainability and energy efficiency indicators, for example energy consumption and recycling performance.

1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.5.

1.5 The Parties shall attend meetings on a quarterly basis (unless otherwise agreed) to review the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):

- (a) take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
- (b) take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
- (c) be attended by the Supplier Representative and the Authority Representative.

1.6 The Authority shall be entitled to raise any additional questions or request any further information from the Supplier regarding any KPI Failure.

2. PERFORMANCE RECORDS

2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.

2.2 In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.

2.3 The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

3. PERFORMANCE VERIFICATION

The Authority reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier's performance under this Agreement against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.

ANNEX 1: KEY PERFORMANCE INDICATORS

The Key Performance Indicators that shall apply to the Operational Services are set out below:

No.	Key Performance Indicator Title	Key Performance Measure	Frequency of Measurement	Severity Levels	Service Points
KPI1	Availability of named Supplier Representative during working hours.	The Supplier's Representative shall be available to contact by the Authority between 9am - 5pm on Working Days. The definition of "available" shall	Quarterly	Target Performance Level - $\geq 98\%$	0
				Minor KPI Failure - $\geq 96\%$ and $< 98\%$	1

		include a same day call back/email but excludes any automated responses, including an “out of office” message.		Serious KPI Failure - $\geq 94\%$ and $< 96\%$	2
				Severe KPI Failure - $\geq 92\%$ and $< 94\%$	3
				KPI Service Threshold - $< 92\%$	4
KPI2	Query resolution time	All queries from Authority representatives, Programme attendees and potential attendees, and representatives of their organisations, are resolved within 5 Working Days of receipt by the Supplier unless a longer timescale is formally agreed in advance with the Authority in writing via email.	Quarterly	Target Performance Level - $\geq 88\%$	0
				Minor KPI Failure - $\geq 86\%$ and $< 88\%$	1
				Serious KPI Failure - $\geq 84\%$ and $< 86\%$	2
				Severe KPI Failure - $\geq 82\%$ and $< 84\%$	3

				KPI Service Threshold $< 82\%$	4
KPI3	Booking confirmation	Following the application by a potential participant by the agreed nominations deadline, the Supplier will inform the applicant of their offer or rejection no	Quarterly	Target Performance Level - $\geq 98\%$	0
				Minor KPI Failure - $\geq 96\%$ and $< 98\%$	1

		<p>less than 4 weeks before the launch of the first cohort activity within 3 day of 4 week deadline.</p> <p>Within 3 days of 4 week deadline unless a longer timescale is formally agreed in advance with the Authority in writing via email.</p> <p>Notification for this means:</p> <p>Where applicants are being offered a place the supplier will provide full joining instructions (to include, as a minimum, confirmation of logistics information such as dates, venue, catering requirements, accommodation etc.; course overview, and any pre-course work)</p> <p>Where they are not being offered a place on this cohort the Supplier will supply reasons for this decision and a place on the waiting list for</p>		<p>Serious KPI Failure - $\geq 94\%$ and $< 96\%$</p> <p>Severe KPI Failure - $\geq 92\%$ and $< 94\%$</p> <p>KPI Service Threshold $< 92\%$</p>	<p>2</p> <p>3</p> <p>4</p>
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		the next cohort if appropriate.			
KPI4	Online Platform Access Issues Provision	All online platform access issues from Authority		Target Performance Level - $\geq 83\%$	0

		representatives and Programme attendees or their representatives are resolved from point of acknowledgement within 3 Working Days unless a longer timescale is formally agreed in advance with the Authority in writing.		Minor KPI Failure - $\geq 81\%$ and $< 83\%$	1
				Serious KPI Failure - $\geq 79\%$ and $< 81\%$	2
				Severe KPI Failure - $\geq 77\%$ and $< 79\%$	3
				KPI Service Threshold $< 77\%$	4
KPI5	Participant Feedback - 'good'	Participants who judge their experience to have been 'good' or above in satisfaction survey	Quarterly	Target Performance Level - $\geq 80\%$	0
				Minor KPI Failure - $\geq 77.5\%$ and $< 80\%$	1
				Serious KPI Failure - $\geq 75\%$ and $< 77.5\%$	2
				Severe KPI Failure - ≥ 72.5 and $< 75\%$	3
				KPI Service Threshold - $< 72.5\%$	4
KPI6	Participant Feedback - 'excellent'	Participants who judge their experience to have	Quarterly	Target Performance Level - $\geq 20\%$	0

		been 'excellent' in satisfaction survey		Minor KPI Failure - ≥ 17.5 and $< 20\%$	1
				Serious KPI Failure - $\geq 15\%$ and $< 17.5\%$	2
				Severe KPI Failure - $\geq 12.5\%$ and $< 15\%$	3
				KPI Service Threshold - $< 12.5\%$	4
KPI7	Participant completion of programme	Participants who complete the formal elements of the programme	Quarterly	Target Performance Level - $\geq 85\%$	0
				Minor KPI Failure - $\geq 82.5\%$ and $< 85\%$	1
				Serious KPI Failure - $\geq 80\%$ and $< 82.5\%$	2
				Severe KPI Failure - $\geq 77.5\%$ and $< 80\%$	3
				KPI Service Threshold - $< 77.5\%$	4
KPI8	Participant pass rate	Participants who pass the final evidenced learning assessment	Quarterly	Target Performance Level - $\geq 85\%$	0
				Minor KPI Failure -	1
				$\geq 82.5\%$ and $< 85\%$	

			2
			3
			4

SCHEDULE 2.3

STANDARDS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Standards Hub”	the Government’s open and transparent standards adoption process as documented at http://standards.data.gov.uk/ ; and
“Suggested Challenge”	a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2. GENERAL

2.1 Throughout the term of this Agreement, the Parties shall monitor and notify each other of any new or emergent standards which could affect the Supplier’s provision, or the Authority’s receipt, of the Services. Any changes to the Standards, including the adoption of any such new or emergent standard, shall be agreed in accordance with the Change Control Procedure.

2.2 Where a new or emergent standard is to be developed or introduced by the Authority, the Supplier shall be responsible for ensuring that the potential impact on the Supplier’s provision, or the Authority’s receipt, of the Services is explained to the Authority (in a reasonable timeframe), prior to the implementation of the new or emergent standard.

2.3 Where Standards referenced conflict with each other or with Good Industry Practice, then the later Standard or best practice shall be adopted by the Supplier. Any such alteration to any Standard(s) shall require the prior written agreement of the Authority and shall be implemented within an agreed timescale.

3. TECHNOLOGY AND DIGITAL SERVICES PRACTICE

The Supplier shall (when designing, implementing and delivering the Services) adopt the applicable elements of HM Government’s Technology Code of Practice as documented at <https://www.gov.uk/service-manual/technology/code-ofpractice.html>.

4. OPEN DATA STANDARDS & STANDARDS HUB

4.1 The Supplier shall comply to the extent within its control with UK Government’s Open Standards Principles as documented at <https://www.gov.uk/government/publications/open-standards-principles/openstandards-principles>, as they relate to the specification of standards for software interoperability, data and document formats in the IT Environment.

4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier

Solution where there is a requirement under this Agreement or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government's Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Agreement, an illustration of such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.

4.3 The Supplier shall ensure that all documentation published on behalf of the Authority pursuant to this Agreement is provided in a non-proprietary format (such as PDF or Open Document Format (ISO 26300 or equivalent)) as well as any native file format documentation in accordance with the obligation under Paragraph 4.1 to comply with the UK Government's Open Standards Principles, unless the Authority otherwise agrees in writing.

5. TECHNOLOGY ARCHITECTURE STANDARDS

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with TOGAF 9.1 or its equivalent, then this shall be deemed acceptable.

6. ACCESSIBLE DIGITAL STANDARDS

The Supplier shall comply with (or with equivalents to):

- (a) the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and
- (b) ISO/IEC 13066-1: 2011 Information Technology - Interoperability with assistive technology (AT) - Part 1: Requirements and recommendations for interoperability.

7. SERVICE MANAGEMENT SOFTWARE & STANDARDS

7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:

- (a) ITIL v3 2011;
- (b) ISO/IEC 20000-1 2011 "ITSM Specification for Service Management";
- (c) ISO/IEC 20000-2 2012 "ITSM Code of Practice for Service Management";
- (d) ISO 10007 "Quality management systems - Guidelines for configuration management"; and
- (e) BS25999-1:2006 "Code of Practice for Business Continuity Management" and, ISO/IEC 27031:2011, ISO 22301 and ISO/IEC 24762:2008 in the provision of "IT Service Continuity Strategy" or "Disaster Recovery" plans.

7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to “Bronze Level”, then this shall be deemed acceptable.

8. ENVIRONMENTAL STANDARDS

8.1 The Supplier warrants that it has obtained ISO 14001 (or equivalent) certification for its environmental management and shall comply with and maintain certification requirements throughout the Term. The Supplier shall follow a sound environmental management policy, ensuring that the Services are procured, produced, packaged, delivered, and are capable of being used and ultimately disposed of in ways appropriate to such standard.

8.2 The Supplier shall comply with relevant obligations under the Waste Electrical and Electronic Equipment Regulations 2006 in compliance with Directive 2002/96/EC and subsequent replacements (including those in compliance with Directive 2012/19/EU).

8.3 The Supplier shall (when designing, procuring, implementing and delivering the Services) ensure compliance with Article 6 and Annex III of the Energy Efficiency Directive 2012/27/EU and subsequent replacements.

8.4 The Supplier shall comply with the EU Code of Conduct on Data Centres’ Energy Efficiency. The Supplier shall ensure that any data centre used in delivering the Services are registered as a Participant under such Code of Conduct.

8.5 The Supplier shall comply with the Authority and HM Government’s objectives to reduce waste and meet the aims of the Greening Government: IT strategy contained in the document “Greening Government: ICT Strategy issue (March 2011)” at <https://www.gov.uk/government/publications/greening-government-ict-strategy>.

9. HARDWARE SAFETY STANDARDS

9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:

- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN 60950-1:2006+A12:2011 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
- (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN 60065:2002+A12:2011 or any subsequent replacements;
- (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN

60825-1:2007 or any subsequent replacements ; and

- (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 41003:2009 or any subsequent replacements.

9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Agreement in accordance with the relevant health and safety regulations.

SCHEDULE 2.4

SECURITY MANAGEMENT

1. Definitions

In this schedule:

Authority Data (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- a. supplied to the Supplier by or on behalf of the Authority; and/or
 - b. which the Supplier is required to generate, process, store or transmit pursuant to this Agreement; or
- (b) any Personal Data for which the Authority is the Data Controller;

Breach of Security

an event that results, or could result, in:

- (c) any unauthorised access to or use of the Authority Data, the Services and/or the Information Management System; and/or
- (d) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including any copies of such information or data, used by the Authority and/or the Supplier in connection with this Agreement;

Certification Requirements

means the information security requirements set out in Paragraph **Error! Reference source not found.** of Schedule 2.4 (Security Management);

CHECK Service Provider	means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the ITHC services required by the Paragraph 6.2 of Schedule 2.4 (Security Management);
Core Information Management System	those information assets, ICT systems and/or Sites which will be used by the Supplier and/or its Sub-contractors to Process Authority Data, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources, which the Authority has determined in accordance with Paragraph 7.2.
Incident Management Process	is the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Authority Data, the Authority, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 3 of Schedule 2.4 (Security Management) using the template set out in Annex 2 to Schedule 2.4 (Security Management);
Information Management System	comprises: (i) the Supplier Equipment; (ii) the Supplier System; and (ii) the Sites at which Authority Data;
Information Security Approval Statement	a notice issued by the Authority which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that the Authority: (i) is satisfied that the identified risks have been adequately and appropriately addressed; and (ii) the Supplier may use the Information Management System to Process Authority Data;

Information Assessment	Assurance	is the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 3 of Schedule 2.4 (Security Management) in order to manage, mitigate and, where possible, avoid information security risks including cyberattacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in Annex 2 to Schedule 2.4 (Security Management);
Information Management Set	Security Document	comprises: (i) the Information Assurance Assessment; (ii) the Personal Data Processing Statement; (iii) the Required Changes Register; and, (iv) the Incident Management Process, which shall be prepared by the Supplier using the templates set out in Annex 2 to Schedule 2.4 (Security Management);
ITHC		has the meaning given in Paragraph 6.1 of Schedule 2.4 (Security Management);
Personal Data		has the meaning given in the Data Protection Legislation;
Personal Data Breach		has the meaning given in the Data Protection Legislation;
Personal Data Processing Statement		sets out: (i) the types of Personal Data which the Supplier and/or its Subcontractors are Processing on behalf of the Authority; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors are Processing on behalf of the Authority; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Subcontractors Process Authority Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect the Authority Data against a Security Breach including a Personal Data Breach, which shall be prepared by the Supplier in accordance with Paragraph 3 of Schedule 2.4 (Security Management) and included in the Information Security Management Document Set ;

Process Authority Data

any operation which is performed on Authority Data, whether or not by automated means, including adapting, altering, collecting, combining, copying, destroying, erasing, organising, publishing retrieving, storing, structuring, transmitting or otherwise using Authority Data;

Protective Measures

appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it

Required Register

Changes

is the register within the Information Security Management Document Set which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Information Security Management Document Set as a consequence of the occurrence of any of the events set out in Paragraph 4.2 of (Security Management) together with the date by which such change shall be implemented and the date on which such change was implemented;

Risk Register

is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Authority for approval in accordance with Paragraph 3 of Schedule 2.4 (Security Management);

Sites

comprise: (i) those premises from which the Services are to be provided; (ii) those premises from which Supplier manages, organises or otherwise administers the provision of the Services; and, (iii) those premises at which any Supplier Equipment or any party of the Supplier System is located.

Supplier Equipment the hardware, computer and telecoms devices and equipment used by the Supplier or its Subcontractors (but not hired, leased or loaned from the Authority) for the provision of the Services;

Supplier System the information and communications technology system used by the Supplier in implementing and performing the Services, including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System)

2. Introduction

2.1 This Schedule addresses:

2.1.1 the arrangements which the Supplier shall implement and comply with when performing its obligations under this Agreement and/or providing the Services in order to ensure the security of the Authority Data and the Information Management System;

2.1.2 the Certification Requirements applicable to the Supplier and each of those Subcontractors which Processes Authority Data;

2.1.3 The security requirements in Annex 1 to this Schedule which the Supplier must comply with;

2.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term in Paragraph 7;

2.1.5 the Supplier's obligations to:

(a) return or destroy Authority Data on the expiry or earlier termination of this Agreement; and

(b) prevent the introduction of Malicious Software into the Service and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Services in Paragraph 9; and

(c) report Breaches of Security to the Authority.

3. Principles of Security

3.1 The Supplier acknowledges that the Authority places great emphasis on the confidentiality, integrity and availability of the Authority Data and, consequently on the security of:

3.1.1 the Supplier System; and 3.1.2 the Supplier Solution; and

- 3.1.3 the Service.
- 3.2 Notwithstanding the involvement of the Authority in assessing the arrangements which the Supplier shall implement in order to ensure the security of the Authority Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:
 - 3.2.1 the security, confidentiality, integrity and availability of the Authority Data whilst that Authority Data is under the control of the Supplier or any of its Subcontractors;
 - 3.2.2 the security of the Information Management System.
- 3.3 The Supplier shall provide the Authority with access to members of its information assurance personnel to facilitate the Authority's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.
- 4. Information Security Approval Statement
 - 4.1 The Supplier may not use the Information Management System to Process Authority Data unless and until:
 - 4.1.1 the Supplier has conducted a CHECK IT Health Check of the Supplier System in accordance with Paragraph 7.1; and
 - 4.1.2 the Authority has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 3.
 - 4.2 The Supplier shall document in the Information Security Management Document Set how the Supplier and its Subcontractors shall comply with the requirements set out in this Schedule 2.4 and the Agreement in order to ensure the security of the Authority Data and the Information Management System.
 - 4.3 The Supplier shall prepare and submit to the Authority within 20 Working Days of the date of this Agreement, the Information Security Management Document Set, which comprises:
 - 4.3.1 an Information Assurance Assessment;
 - 4.3.2 the Required Changes Register;
 - 4.3.3 the Personal Data Processing Statement; and
 - 4.3.4 the Incident Management Process.
 - 4.4 The Authority shall review the Supplier's proposed Information Security Management Document Set as soon as possible and, in any event within 20 Working Days of receipt and shall either issue the Supplier with:
 - 4.4.1 a Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Authority Data; or

- 4.4.2 a rejection notice which shall set out the Authority's reasons for rejecting the Information Security Management Document Set.

If the Authority rejects the Supplier's proposed Information Security Management Document Set, the Supplier shall take the Authority's reasons into account in the preparation of a revised Information Security Management Document Set, which the Supplier shall submit to the Authority for review within 10 Working Days or such other timescale as agreed with the Authority.

- 4.5 The Authority may require and the Supplier shall provide the Authority and its authorised representatives with:

4.5.1 access to the Supplier Personnel;

4.5.2 access to the Information Management System to audit the Supplier and its Sub-contractors compliance with this Agreement; and

4.5.3 such other information and/or documentation that the Authority or its authorised representatives may reasonably require,

to assist the Authority to establish whether the arrangements which the Supplier and its Subcontractors have implemented in order to ensure the security of the Authority Data and the Information Management System are consistent with the representations in the Information Security Management Document Set. The Supplier shall provide the access required by the Authority in accordance with this Paragraph within 10 Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Authority with the access that it requires within 24 hours of receipt of such request.

5. Compliance Reviews

5.1 The Supplier shall regularly review and update the Information Security Management Document Set, and provide such to the Authority, at least once each year and as required by this Paragraph.

5.2 The Supplier shall notify the Authority within 2 Working Days after becoming aware of:

5.2.1 a significant change to the components or architecture of the Service;

5.2.2 a new risk to the components or architecture of the Service;

5.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 10.2 of Annex 1 to this Schedule;

5.2.4 a change in the threat profile;

5.2.5 a significant change to any risk component;

5.2.6 a significant change in the quantity of Personal Data held within the Service;

- 5.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or
- 5.2.8 an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns.

Within 10 Working Days of such notifying the Authority or such other timescale as may be agreed with the Authority, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Authority for review and approval.

- 5.3 Where the Supplier is required to implement a change, including any change to the Information Management System, in order to remedy any noncompliance with this Agreement, the Supplier shall effect such change at its own cost and expense.

6. CERTIFICATION REQUIREMENTS

- 6.1 The Supplier shall be, and shall ensure that each Sub-contractor which Processes Authority Data is, certified as compliant with Cyber Essentials PLUS and shall provide the Authority with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Authority's Data. Any exceptions to the flow-down of the certificate requirements to third party suppliers and sub-contractors must be agreed with the Authority.

- 6.2 The Supplier shall ensure, at all times during the Term, that the Supplier and each Sub-contractor who is responsible for the secure destruction of Authority Data:

6.2.1 securely destroys Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and

6.2.2 are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Authority.

- 6.3 The Supplier shall provide the Authority with evidence of its and its Subcontractor's compliance with the requirements set out in this Paragraph before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Authority Data.

- 6.4 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from the Authority, shall or shall procure that the relevant Sub-contractor shall:

6.4.1 immediately ceases using the Authority Data; and

6.4.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Authority Data in accordance with the requirements set out in this Paragraph.

7. Security Testing

- 7.1 The Supplier shall, at its own cost and expense procure and conduct:
- 7.1.1 an IT Health CHECK ("ITHC") of the Supplier System by a CHECK Service Provider;
and
- 7.1.2 such other security tests as may be required by the Authority and which are set out in this Agreement,
- 7.2 The Supplier shall complete all of the above security tests before the Supplier submits the Information Security Management Document Set to the Authority for review in accordance with Paragraph 3; and it shall repeat the ITHC not less than once every 12 months during the Term and submit the results of each such test to the Authority for review in accordance with this Paragraph.
- 7.3 In relation to each ITHC, the Supplier shall:
- 7.3.1 agree with the Authority the aim and scope of the ITHC;
- 7.3.2 promptly, following receipt of each IT Health Check report, provide the Authority with a copy of the IT Health Check report;
- 7.3.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:
- (a) prepare a remedial plan for approval by the Authority (each a "Vulnerability Correction Plan") which sets out in respect of each vulnerability identified in the IT Health Check report:
 - (i) how the vulnerability will be remedied;
 - (ii) the date by which the vulnerability will be remedied;
 - (iii) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Authority, include a further IT Health Check) to confirm that the vulnerability has been remedied;
 - (b) comply with the Vulnerability Correction Plan; and
 - (c) conduct such further tests on the Service as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with.
- 7.4 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Authority.
- 7.5 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to

affect the security of the Information Management System, the Supplier shall within 2 days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Authority with a copy of the test report and:

- 7.5.1 propose interim mitigation measures to vulnerabilities in the Information System known to be exploitable where a security patch is not immediately available; and
- 7.5.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Authority.
- 7.6 The Supplier shall conduct such further tests of the Supplier System as may be required by the Authority from time to time to demonstrate compliance with its obligations set out this Schedule and the Agreement.
- 7.7 The Supplier shall notify the Authority immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Annex 1 to this Schedule.

8. Security Monitoring and Reporting

8.1 The Supplier shall:

- 8.1.1 monitor the delivery of assurance activities;
- 8.1.2 maintain and update the Information Security Management Document Set in accordance with Paragraph 5;
- 8.1.3 agree a document which presents the residual security risks to inform the Authority's decision to give approval to the Supplier to process, store and transit the Authority's data;
- 8.1.4 monitor security risk impacting upon the operation of the Service;
- 8.1.5 report Breaches of Security in accordance with the approved Incident Management Process;
- 8.1.6 agree with the Authority the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Authority within 30 days of the date of this Agreement.

9. Malicious Software

- 9.1 The Supplier shall install and maintain anti-Malicious Software or procure that anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and ensure that such anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where

Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.

9.2 If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

9.3 Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph **Error! Reference source not found.** shall be borne by the Parties as follows:

9.3.1 by the Supplier where the Malicious Software originates from the Supplier Software, the Third Party Software supplied by the Supplier or the Authority Data (whilst the Authority Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Authority when provided to the Supplier; and

9.3.2 by the Authority, in any other circumstance.

10. Breach of Security

10.1 If either Party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.

10.2 The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:

10.2.1 Immediately take all reasonable steps necessary to:

- (a) minimise the extent of actual or potential harm caused by such Breach of Security;
- (b) remedy such Breach of Security to the extent possible;
- (c) apply a tested mitigation against any such Breach of Security; and
- (d) prevent a further Breach of Security in the future which exploits the same root cause failure;

10.2.2 as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Subcontractors and/or all or any part of the Information Management

System with this Agreement, then such remedial action shall be completed at no additional cost to the Authority.

Annex 1: Baseline Security Requirements

1. Security Classification of Information

If the provision of the Services requires the Supplier to Process Authority Data which is classified as:

- 1.1 OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards; and/or
- 1.2 SECRET or TOP SECRET, the Supplier shall only do so where it has notified the Authority prior to receipt of such Authority Data and the Supplier shall implement additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

2. End User Devices

- 2.1 The Supplier shall ensure that any Authority Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Authority except where the Authority has given its prior written consent to an alternative arrangement.
- 2.2 The Supplier shall ensure that any device which is used to Process Authority Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

3. Networking

The Supplier shall ensure that any Authority Data which it causes to be transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

4. Personnel Security

- 4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such preemployment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 4.2 The Authority and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Authority to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to

require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Authority Data or data which is classified as OFFICIAL-SENSITIVE.

4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Authority has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.

4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Authority Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.

4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Authority Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Authority Data revoked within 1 Working Day.

5. Identity, Authentication and Access Control

5.1 The Supplier shall operate an access control regime to ensure:

5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and

5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.

5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.

5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Authority on request.

6. Audit and Protective Monitoring

6.1 The Supplier shall collect audit records which relate to security events in Core Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Core Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data.

6.2 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the Core Information Management System.

6.3 The retention periods for audit records and event logs must be agreed with the Authority and documented in the Risk Management Documentation.

7. Secure Architecture

7.1 The Supplier shall design the Core Information Management System in accordance with:

7.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principlesdigital-services-main>;

7.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and

7.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:

- (a) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
- (b) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
- (c) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
- (d) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
- (e) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
- (f) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;
- (g) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- (h) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;

- (i) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Authority to securely manage the Authority's use of the Service;
- (j) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- (k) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (l) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (m) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data held by the Supplier and/or its Subcontractors;
- (n) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

Annex 2

CORE INFORMATION MANAGEMENT SYSTEM DIAGRAM

[**Bidder Note:** To be completed by the bidder after the effective date in agreement with the Authority]

Annex 3

Risk Management Documentation Template

1 EXECUTIVE SUMMARY

<This section should contain a brief summary of the business context of the system, any key IA controls, the assurance work done, any off-shoring considerations and any significant residual risks that need acceptance.>

Change History

Version Number	Date of Change	Change made by	Nature and reason for change

References, Links and Dependencies

This document is dependent on the supporting information and assurance provided by the following documents.

ID	Document Title	Reference	Date
1.			
2.			
3.			

2 SYSTEM DESCRIPTION

2.1 Background

< A short description of the project/product/system. Describe its purpose, functionality, aim and scope.>

2.2 Organisational Ownership/Structure

< Who owns the system and operates the system and the organisational governance structure. This should include how any ongoing security management is integrated into the project governance e.g. how a Security Working Group reports to the project board.>

2.3 Information assets and flows

<The information assets processed by the system which should include a simple high level diagram on one page. Include a list of the type and volumes of data that will be processed, managed and stored within the supplier system. If personal data, please include the fields used such as name, address, department DOB, NI number etc.>

2.4 System Architecture

<A description of the physical system architecture, to include the system management. A diagram will be needed here>

2.5 Users

<A brief description of the system users, to include HMG users as well as any service provider users and system managers. If relevant, security clearance level requirements should be included.>

2.6 Locations

<Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001:2013) these should be noted. Any off-shoring considerations should be detailed.>

2.7 Test and Development Systems

<Include information about any test and development systems, their locations and whether they contain live system data.>

2.8 Key roles and responsibilities

<A brief description of the lead security roles such as that of the SIRO, IAO, Security manager, Accreditor >

3 RISK ASSESSMENT

3.1 Accreditation/Assurance Scope

<This section describes the scope of the Accreditation/Assurance for the system. The scope of the assurance assessment should be clearly indicated, with components of the architecture upon which reliance is placed but assurance will not be done clearly shown e.g. a cloud hosting service. A logical diagram should be used along with a brief description of the components.>

3.2 Risk appetite

<A risk appetite should be agreed with the SIRO/SRO and included here.>

3.3 Business impact assessment

< A description of the information assets and the impact of their loss or corruption (e.g. large amounts of Official Sensitive personal data the loss of which would be severely damaging to individuals, embarrassing to HMG, and make HMG liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.>

3.4 Risk assessment

<The content of this section will depend on the risk assessment methodology chosen, but should contain the output of the formal information risk assessment in a prioritised list using business language. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below should be used as the format to identify the risks and document the controls used to mitigate those risks. >

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring C5: Application access control C16: Anti-virus for incoming files C54: Files deleted when processed C59: Removal of departmental identifier	Very low
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	C12. System administrators hold SC clearance. C13. All changes to user information are logged and audited. C14. Letters are automatically sent to users home addresses when bank details are altered. C15. Staff awareness training	Low

3.5 Controls

<The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.>

ID	Control title	Control description	Further information and assurance status
C1	Internetfacing firewalls	Internet-facing firewalls are in place between the internet and the system', which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internetfacing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC
C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO27001 certification

3.6 Residual risks and actions

<A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.>

4 IN-SERVICE CONTROLS

< This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO27001 certification should be included. This section should include at least:

- a) information risk management and timescales and triggers for a review;*
- b) contractual patching requirements and timescales for the different priorities of patch;*
- c) protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;*
- d) configuration and change management;*

- e) *incident management;*
- f) *vulnerability management;*
- g) *user access management; and*
- h) *data sanitisation and disposal.>*

5 SECURITY OPERATING PROCEDURES (SYOPS)

< If needed any SyOps requirements should be included and referenced here.>

6 MAJOR HARDWARE AND SOFTWARE AND END OF SUPPORT DATES

< This should be a table which lists the end of support dates for hardware and software products and components. An example table is shown below.>

Name	Version	End of mainstream Support/Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

7 INCIDENT MANAGEMENT PROCESS

<The suppliers' process, as agreed with the Authority/Customer, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to the Authority/customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.>

8 SECURITY REQUIREMENTS FOR USER ORGANISATIONS

<Any security requirements for connecting organisations or departments should be included or referenced here.>

9 REQUIRED CHANGES REGISTER

<The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.>

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
-----	---------	--------	-------------	-------------	----------------------	--------

1	6.4	A new Third Party supplier XXXX will be performing the print capability.	Authority name	11/11/2018	Jul-2019	Open
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10 PERSONAL DATA PROCESSING STATEMENT

<This should include: (i) the types of Personal Data which the Supplier and/or its Sub-contractors are Processing on behalf of the Authority; (ii) the categories of Data Subjects whose Personal Data the Supplier and/or its Subcontractors are Processing on behalf of the Authority; the nature and purpose of such Processing; (iii) the locations at which the Supplier and/or its Subcontractors Process Authority Data; and, (iv) the Protective Measures that the Supplier and, where applicable, its Subcontractors have implemented to protect the Authority Data against a Security Breach including a Personal Data Breach.>

11 ANNEX A. ISO27001 AND/OR CYBER ESSENTIAL PLUS CERTIFICATES

<Any certifications relied upon should have their certificates included>

12 ANNEX B. CLOUD SECURITY PRINCIPLES ASSESSMENT

<A spreadsheet may be attached>

13 ANNEX C. PROTECTING BULK DATA ASSESSMENT if REQUIRED BY THE AUTHORITY/CUSTOMER

<A spreadsheet may be attached>

14 ANNEX E. LATEST ITHC REPORT AND VULNERABILITY CORRECTION PLAN

SCHEDULE 2.5

INSURANCE REQUIREMENTS

1. OBLIGATION TO MAINTAIN INSURANCES

1.1 Without prejudice to its obligations to the Authority under this Agreement, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 and any other insurances as may be required by applicable Law (together the “Insurances”). The Supplier shall ensure that each of

the Insurances is effective no later than the date on which the relevant risk commences.

1.2 The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.

1.3 The Insurances shall be taken out and maintained with insurers who are:

- (a) of good financial standing;
- (b) appropriately regulated;
- (c) regulated by the applicable regulatory body and is in good standing with that regulator; and
- (d) except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.

1.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

2. GENERAL OBLIGATIONS

Without limiting the other provisions of this Agreement, the Supplier shall:

- (a) take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
- (b) promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
- (c) hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. FAILURE TO INSURE

3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.

3.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the

Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. EVIDENCE OF INSURANCES

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

5. CANCELLATION

5.1 Subject to Paragraph 6.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

5.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 6.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

6. INSURANCE CLAIMS, PREMIUMS AND DEDUCTIBLES

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

6.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow the Authority to review such register at any time.

6.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

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

ANNEX 1: REQUIRED INSURANCES

PART A: INSURANCE CLAIM NOTIFICATION

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of

£500,000 relating to or arising out of the provision of the Services or this Agreement on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Authority) full details of the incident giving rise to the claim.

PART B: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1. Insured

The Supplier

2. Interest

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

- (a) death or bodily injury to or sickness, illness or disease contracted by any person; and
- (b) loss of or damage to physical property;

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

3. Limit of indemnity

Not less than £3,000,000 in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £3,000,000 in the aggregate per annum in respect of products and pollution liability.

4. Territorial limits

United Kingdom

5. Period of insurance

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

6. Cover features and extensions

6.1 Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Supplier is legally liable.

7. Principal exclusions

7.1 War and related perils.

7.2 Nuclear and radioactive risks.

- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.
- 7.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- 7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

PART C: UNITED KINGDOM COMPULSORY INSURANCES

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

SCHEDULE 3

AUTHORITY RESPONSIBILITIES

1. INTRODUCTION

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Agreement. Any obligations of the Authority in Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be "Authority Responsibilities".
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

2. GENERAL OBLIGATIONS

The Authority shall:

- (a) perform those obligations of the Authority which are set out in the Clauses of this Agreement and the Paragraphs of the Schedules (except Schedule 2.1 (*Services Description*) and Schedule 4.1 (*Supplier Solution*));
- (b) use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority's staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;

- (c) provide sufficient and suitably qualified staff to fulfil the Authority's roles and duties under this Agreement as defined in the Implementation Plan;
- (d) use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Agreement provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
- (e) procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Agreement, such access to be provided during the Authority's normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

SCHEDULE 4.1

SUPPLIER SOLUTION

The bid response in this Schedule 4.1 forms the basis of the Supplier Solution.

As per Paragraph 3 'The Requirement' of the Services Description (Annex 1, Schedule 2.1):

'Phase 1 (Programme Design) - The Supplier shall ensure that appropriately qualified and experienced academic subject experts, who are recognised in their field and have a proven track record in teaching and/or facilitation, lead the revision, innovation and development of the design of the PLP, working collaboratively with the Authority to finalise the content, structure, teaching and learning approach and other services including course administration, quality assurance, performance management and participant learning support processes. The Supplier will be required to propose a programme design that can be delivered through a residential model and be able to be adapted to a more flexible non residential version.' (Para 3.1)

'Phase 1 will be the design stage and will require the development of the broad structure and components for the core 12 month programme. It is anticipated that December 2020 to May 2021 will be the initial phase for this development and will provide the minimum requirement to recruit for, launch and begin to deliver modules for a first cohort in May 2021. The end to end design of the programme will have been agreed and the content will be finalised in detail as the programme for this cohort is delivered.' (Para 3.2.1)

AQA1 - Required Services - Schedule 2 Specification

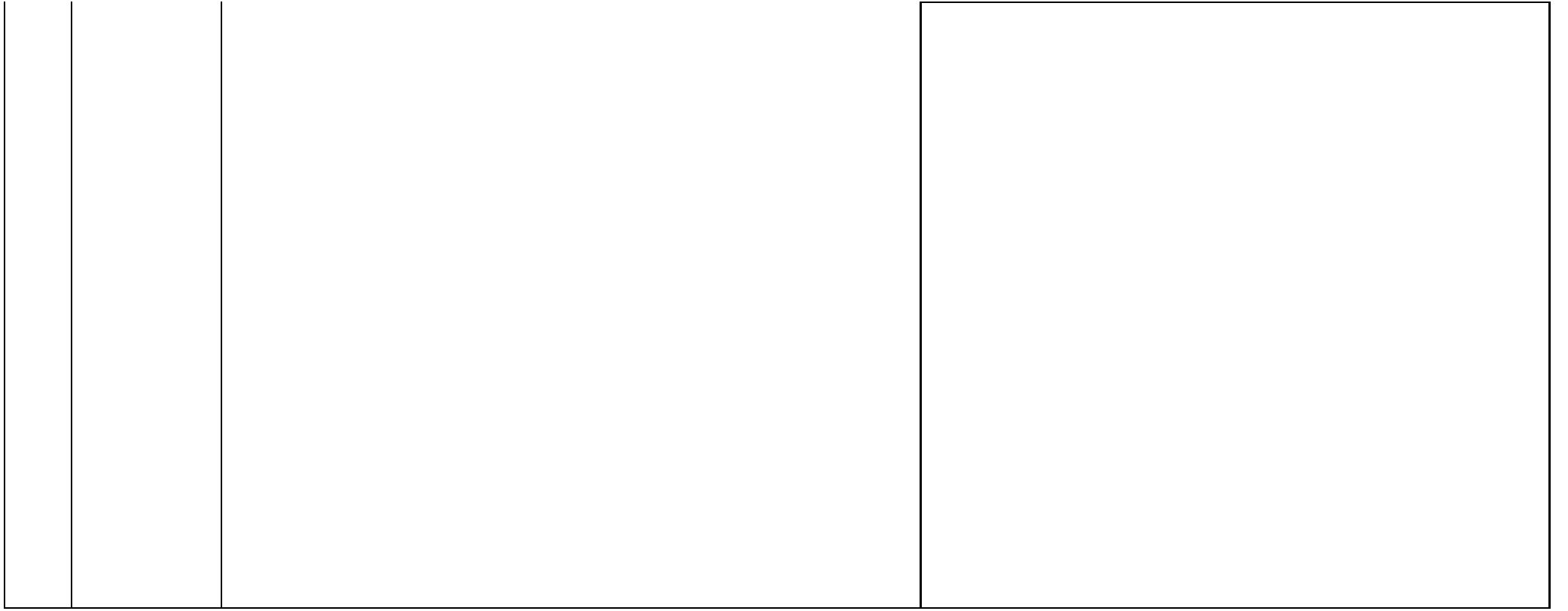
2.1.1	AQA1 Required Services- Schedule 2 Specification	(*) Please indicate by selecting option YES that in the event you are awarded the Contract that you will be able to deliver in full all of the relevant Services listed in Schedule 2.1 Annex 1 (Specification) of Contract without caveats. 1. YES, you will be able to deliver in full all of the relevant Services listed Schedule 2.1 Annex 1 (Specification) of Contract without caveats. 2. NO, you will not be able to deliver in full all of the relevant Services listed in Schedule 2.1 Annex 1 (Specification) of Contract).	REDACTED
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AQB1 - Develop and Finalise Design

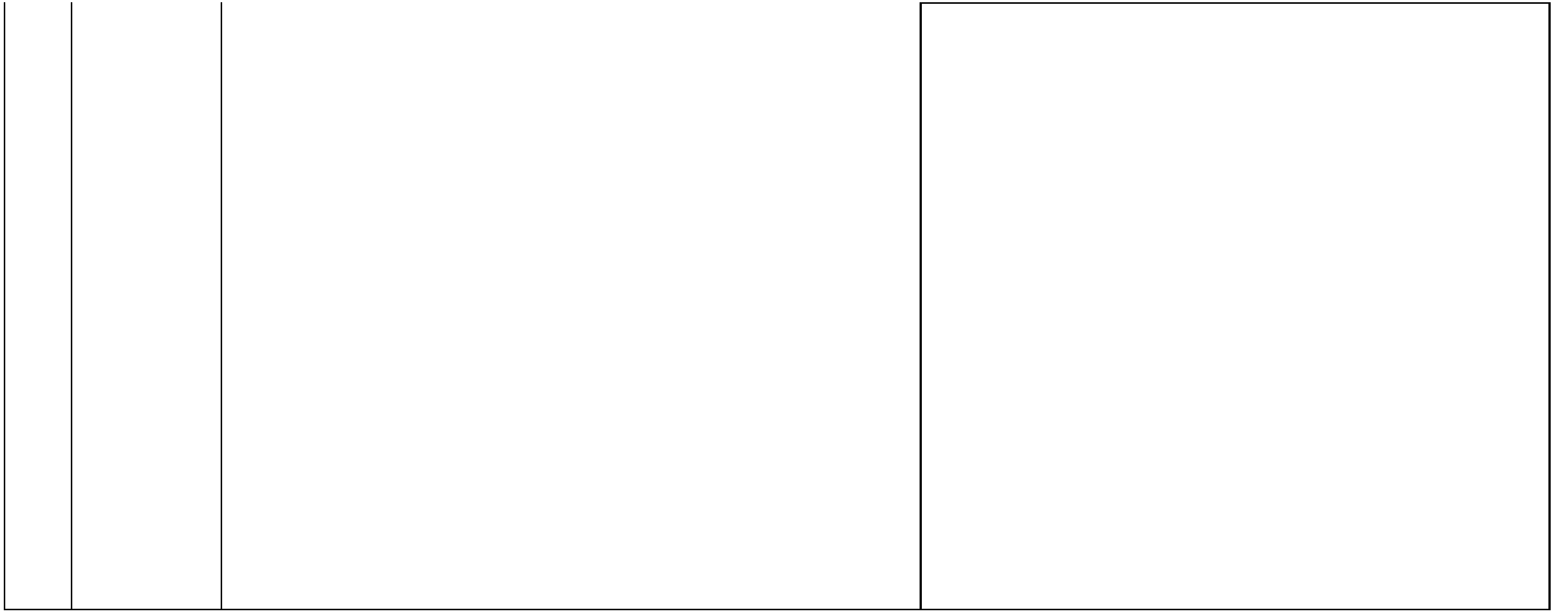
2.2.2	AQB1 - Develop and Finalise Design	The Authority will require the bidder to work collaboratively with the Infrastructure and Projects Authority to develop and finalise an innovative, revised design of the Project Leadership Programme (the “PLP”) in terms of the content and structure (see Schedule 2.1 Annex A -Current PLP Outline). Please demonstrate your approach to developing and finalising the design of the Project Leadership Programme (the “PLP”).
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Question AQB1	Description	Response
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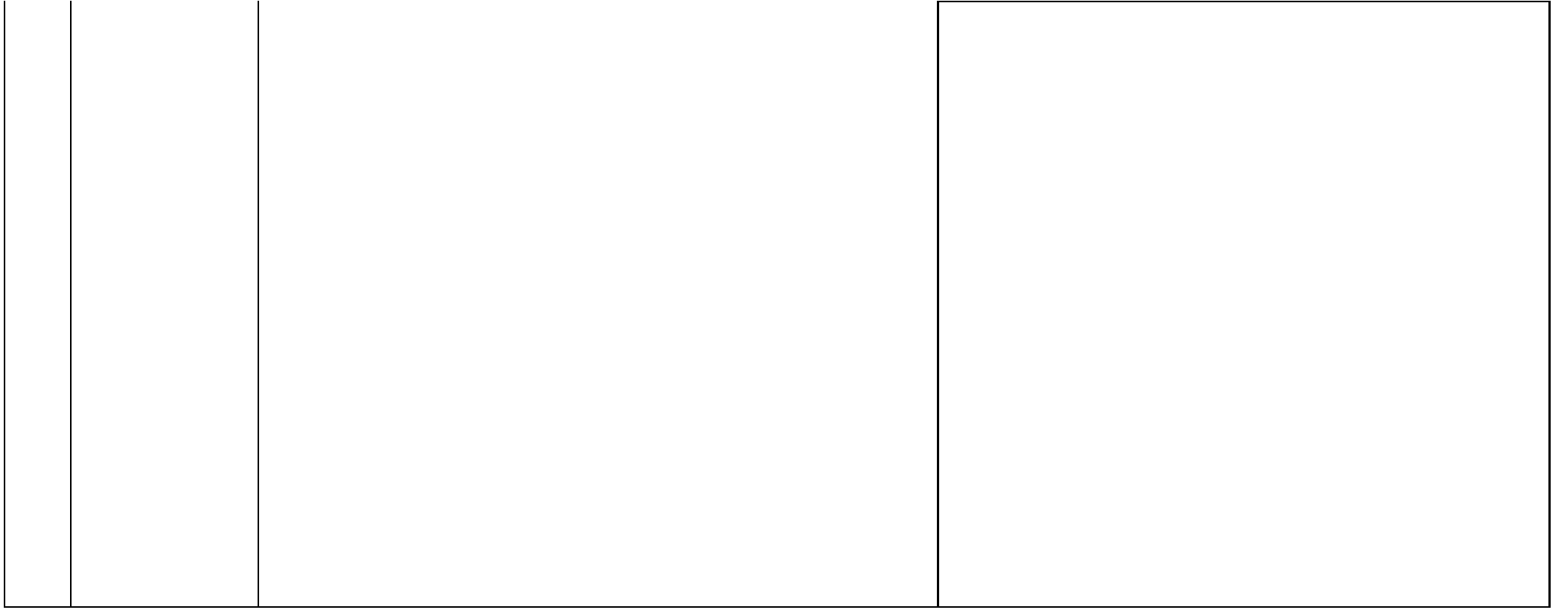
2.2.4	Component Part 1	(*) How you will design, a high quality, adult learning, leadership development programme and how you will ensure content which is a balance of 40% theory and 60% practice over 12 months (see Schedule 2.1 Annex 1, paragraph 4.1.14)	REDACTED
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2.2.5	Component Part 2	<p>(*) How you will ensure that the revised design of the PLP content, the Competency framework and Learning Outcomes reflect the skills, knowledge and behaviours required for successful project leadership in government (see schedule 2.1, Annex 1 4.1.15 i. ii. & iii. AND Annex B and C), the Government Functional Standard for Project Delivery (https://www.gov.uk/government/publications/project-deliveryfunctional-standard) and core principles for successful delivery (see Schedule 2.1, Annex 1 Paragraph 4.1.15), such as:</p> <ul style="list-style-type: none">Focusing on outcomesPlanning realisticallyPrioritising PeopleCreating an open cultureControlling scopeManaging complexity and riskBeing a good clientLearning from experience	REDACTED
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2.2.6	Component Part 3	(*) How you will ensure that appropriately qualified and experienced academics design the content of the programme, utilising project practitioner expertise and working with experienced learning facilitators, in order to develop world class, project leadership capability across government (see Schedule 2.1, Annex 1 Paragraph, 3.1)	REDACTED
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2.2.7	Component Part 4	(*) How you will assure the design process meets the timelines for the launch of cohort 1 whilst maintaining the quality as set out in the specification (see Schedule 2.1, Annex 1 Paragraph 3.2.1 and Paragraph 3.4).	REDACTED
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2.2.8	Component Part 5	(*) How your design will ensure that volumes associated with the programme (see Schedule 2.1, Annex 1 Paragraph 3.8 and 3.9) are adequately managed through the contract and demonstrate your process for managing any additional demand if there should be such increase in cohort activity.	REDACTED
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AQB2 - Proposal for formal professional recognition for the PLP

2.2.10	AQB2 - Proposal for formal professional recognition for the PLP	REDACTED	
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	Question AQB2	Description	Response
2.2.12	Component Part 1	(*) How you would ensure the programme aligns to the APM criteria for programme accreditation, or the criteria of an equivalent professional project delivery organisation, , whilst offering the specific capability development required for project leaders in government (see Schedule 2.1, Annex 1 Paragraph 4.3.16)	REDACTED

2.2.13	Component Part 2	(*) How you would collaborate with the APM, or equivalent professional project delivery organisation, to implement the required programme accreditation for the PLP in time for the graduation of cohort 1, ensuring that this accreditation then applies to all cohorts	REDACTED
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2.2.14	Component Part 3	(*) How you would align the programme to the competencies of ChPP to provide PLP graduates with evidence of technical knowledge to support their application for ChPP certification, (see Schedule 2.1, Annex 1 Paragraph 4.3.17).	REDACTED
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AQB3 Diversity and Inclusion

2.2.16	AQB3 Diversity and Inclusion	REDACTED
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	Question AQB3	Description	Response
2.2.18	Component Part 1	(*) How you will market and administer the PLP to ensure inclusivity and make it accessible for all (see Schedule 2.1, Annex 1 Paragraph 4.1.3).	REDACTED

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2.2.19	Component Part 2	<p>(*) 2. How you will ensure the resourcing of the team delivering the PLP, including guest speakers, is diverse and representative of the Civil Service workforce</p> <p>https://www.gov.uk/government/publications/civilservice-diversity-inclusion-dashboard (see Schedule 2.1, Annex 1 Paragraph 4.1.3).</p>	REDACTED
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2.2.20	Component Part 3	(*) How you will ensure your team and delivery partners have a good understanding and appreciation of diversity and inclusion and are committed to promoting and ensuring equality.	REDACTED
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2.2.21	Component Part 4	(*) How you will ensure both residential and nonresidential designs are inclusive and accessible for all participants, including content, format and delivery methods	REDACTED
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2.2.22	Component Part 5	(*) How you will use Diversity and Inclusion data to identify opportunities for improved inclusivity of the programme (see Schedule 2.1, Annex 1 Paragraph 4.3.20).	REDACTED
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2.2.24	AQB4 - Participants and Learning Approach	REDACTED
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	Question AQB4	Description	Response
2.2.26	Component Part 1	(*) How you will assess each participant's leadership experience and competence, against the competency framework, at the start and at the close of the programme in order to evidence the progress through their learner journey (see Schedule 2.1, Annex A Paragraph 4.3.10).	REDACTED

2.2.27	Component Part 2	(*) How you will utilise the data collected on experience and competence to support each participant to set, progress and track their personal development goals (see Schedule 2.1, Annex A Paragraph 4.3.10).	REDACTED
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2.2.28	Component Part 3	(*) How you will evaluate and assess participants throughout the programme to ensure the understanding and embedding of learning required to pass the PLP (see Schedule 2.1, Annex A Paragraph 4.3.10).	REDACTED
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2.2.29	Component Part 4	<p>(*) 4. How you will maintain and deliver a high quality and consistent coaching experience for all participants (see Schedule 2.1, Annex 1 Paragraph 4.3.11 – 4.3.12) including but not limited to:</p> <ul style="list-style-type: none">● Ensuring appropriately experienced and qualified coaching staff● Embedding of the coaching across the programme to support development and learning● How you will monitor and maintain the quality of the coaching delivery	REDACTED
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2.2.30	Component Part 5	(*) How the overall approach and structure of the programme will enable participant networking and a sustaining peer network which supports ongoing development	REDACTED
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2.2.32	AQB5 - Continuous Improvement and Innovation	REDACTED
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	Question AQB5	Description	Response
2.2.34	Component Part 1	(*) How you will keep the curriculum relevant and up to date for project delivery in government throughout the life of the contract and manage significant changes, such as those in government policies or priorities, external influences and project delivery methodologies	REDACTED

2.2.35	Component Part 2	(*) How you will maintain consistency of the learning and participant experience of the PLP, whilst ensuring content and delivery methods are kept up-to-date, relevant and world class through innovation	REDACTED
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AQC1 - Course Delivery

2.3.1	AQC1 - Course Delivery	REDACTED
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	Question AQC1	Description	Response
2.3.3	Component Part 1	(*) A description of your proposed overarching structure of the curriculum including summary themes, modules or core stages of the programme and how they align to the competency domains and framework.	REDACTED

2.3.4	Component Part 2	(*) The core teaching methods and participant activities proposed for the residential format of the programme, and how this offers the optimum learning experience for participants, including but not limited to: <ul style="list-style-type: none">● The balance and alignment of online learning with face to face elements (see Schedule 2.1, Annex 1 Paragraph 4.3.7 - 4.3.8)● The location(s) for the delivery of the residential format of the programme (see Schedule 2.1, Annex 1 Paragraph 4.1.16 - 4.1.17)	REDACTED
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2.3.5	Component Part 3	(*) How the delivery of the nonresidential format of the programme will flex structure, methods, activities and location from the primary format and how it will deliver an equally high quality experience for participants (see Schedule 2.1, Annex 1 Paragraph 4.3.9) such as: <ul style="list-style-type: none">● quality of teaching staff● curriculum and content coherence● building relationships and networks	REDACTED
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2.3.6	Component Part 4	<p>(*) Your approach to forming the teaching faculty including: ● Selection, appointment and retention of appropriately qualified and experienced academic subject experts, who are recognised in their field and have a proven track record in teaching and/or facilitation (see Schedule 2.1, Annex 1 Paragraph 4.4.3)</p> <ul style="list-style-type: none">● Selection, appointment and retention of experienced project practitioners (see Schedule 2.1, Annex 1 Paragraph 4.4.3)● Quality Assurance of the teaching to ensure a consistent and high quality participant experience● How you will adequately resource the programme in the event you need to access additional academic subject expert resources quickly to meet volume/demand (see Schedule 2.1, Annex 1 Section 5)	REDACTED
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AQC2 - Support Services

2.3.8	AQC2 - Support Services	REDACTED
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	Question AQC2	Description	Response
2.3.10	Component Part 1	(*) How you will adequately resource the programme administration office to balance a high quality programme delivery service whilst maintaining cost and process efficiency.	REDACTED

2.3.11	Component Part 2	(*) How you will implement from the launch of nomination for Cohort 1, a tested, secure and deployable online platform solution that delivers the functionality described in the Specification (see Schedule 2.1, Annex 1 Paragraph 4.2.3) and ensure an effective and consistent user experience.	REDACTED
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2.3.12	Component Part 3	(*) Your nomination and application processes for participants, including but not limited to the user experience, compliance to entry requirements and ensuring a mix of participants for cohort balance	REDACTED
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2.3.13	Component Part 4	(*) How will you ensure that the nominated cohort manager for each group has the required availability and breadth of experience to support participants (see Schedule 2.1, Annex 1 Paragraph 4.3.13).	REDACTED
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2.3.14	Component Part	(*) Your process and systems for securely maintaining and storing participant data/management information and how you would use this to ensure accessible, comprehensive, timely and accurate reporting to the Authority	REDACTED
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AQC3 - Evaluation of the Programme

2.3.16	AQC3 - Evaluation of the Programme	REDACTED
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	Question AQC3	Description	Response
2.3.18	Component Part 1	(*) How you will assess the participant's experience, including quality of delivery and the learning environment (see Schedule 2.1, Annex 1 Paragraph 4.4.10).	REDACTED

2.3.19	Component Part 2	(*) How you will assess the impact and success of the programme for participants and their personal learning outcomes	REDACTED
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2.3.20	Component Part 3	(*) How you will assess the broader benefits of the programme for government projects and government project delivery professional capability (see Schedule 2.1, Annex 1 Paragraph 6.2).	REDACTED
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2.3.21	Component Part 4	(*) How you will monitor, assess, report and act upon your performance in terms of quality of delivery as well as meeting the contractual key performance indicators (see Schedule 2.1, Annex 1 Paragraph 4.4.10).	REDACTED
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SCHEDULE 4.2

COMMERCIALLY SENSITIVE INFORMATION

No.	Date	Item(s)	Duration of Confidentiality
1	REDACTED	REDACTED	REDACTED

SCHEDULE 4.3

NOTIFIED KEY SUB-CONTRACTORS

1. In accordance with Clause 15.7 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Agreement to the Key Subcontractors listed in the table below.
2. The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Key Subcontractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Subcontract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
REDACTED	REDACTED	REDACTED	REDACTED		
REDACTED	REDACTED	REDACTED	REDACTED		
REDACTED	REDACTED	REDACTED	REDACTED		

SCHEDULE 4.4

THIRD PARTY CONTRACTS

1. The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.
2. The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

Third party supplier name and address (if not the same as the registered office)	Registered office and company number	Related product/service description
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED

SCHEDULE 4.5

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SCHEDULE 5

SOFTWARE

1. THE SOFTWARE

1.1 The Software below is licensed to the Authority in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Licences Granted by the Supplier*).

1.2 The Parties agree that they will update this Schedule to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

2. SUPPLIER SOFTWARE

The Supplier Software includes the following items:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/ Expiry

3. THIRD PARTY SOFTWARE

The Third Party Software shall include the following items:

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies	Type (COTS or Non-COTS)	Term/ Expiry

[Supplier letterhead]

[insert Authority name
and address]

[Date]

Dear Sirs

LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs

We refer to the agreement between us dated [insert date] in respect of [brief summary of subject of the Agreement] (the "Agreement"). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Clause 17.4(b) of the Agreement we confirm that:

1. the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the "Appendix") on the terms of the licences identified in the second column of the Appendix (the "Licences"); and
2. notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Clause 17.4(b) of the Agreement. Yours faithfully,

Signed:

On behalf of [name of the Supplier]

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT THIS

AGREEMENT is made on [date] 20

BETWEEN:

- (1) [insert name] of [insert address] (the "Sub-licensee"); and
- (2) [insert name] of [insert address] (the "Supplier" and together with the Supplier, the "Parties").

WHEREAS:

- (A) *[insert name of Authority]* (the “**Authority**”) and the Supplier are party to a contract dated *[insert date]* (the “**Contract**”) for the provision by the Supplier of *[insert brief description of services]* to the Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “**Sub-licence**”).
- (C) It is a requirement of the Contract that, before the Authority grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the Supplier in or substantially in the form of this Agreement to protect the Confidential Information of the Supplier.

IT IS AGREED as follows:

1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information” means:

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

(i) the Supplier; or

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

(b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Authority pursuant to or in connection with the Sub-licence;

(c) other Information provided by the Authority pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee’s

attention or into the Sub-licensee's possession in connection with the Sub-licence; and

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

(a) Was in in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Authority;

(b) the Sub-licensee obtained on a non-confidential basis from a third party who is not, to the Sub-licensee's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Sub-licensee;

(c) 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

(d) was independently developed without access to the Confidential Information;

“Information” means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence” has the meaning given to that expression in recital (B) to this Agreement.

1.2 In this Agreement:

- (a) a reference to any gender includes a reference to other genders;
- (b) the singular includes the plural and vice versa;
- (c) the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;
- (d) references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;
- (e) headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- (f) references to Clauses are to clauses of this Agreement.

2. Confidentiality Obligations

2.1 In consideration of the Authority entering into the Sub-licence, the Sub-licensee shall:

- (a) treat all Confidential Information as secret and confidential;
- (b) have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);
- (c) not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;
- (d) not transfer any of the Confidential Information outside the United Kingdom;
- (e) not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;
- (f) immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
- (g) upon the expiry or termination of the Sub-licence:
 - (i) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
 - (ii) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
 - (iii) make no further use of any Confidential Information.

3. Permitted Disclosures

3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

- (a) reasonably need to receive the Confidential Information in connection with the Sub-licence; and
- (b) have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and
- (c) have agreed to terms similar to those in this Agreement.

- 3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.
- 3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:
- (a) notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and
 - (b) ask the court or other public body to treat the Confidential Information as confidential.

4. General

- 4.1 The Sub-licensee acknowledges and agrees that all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- (a) to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
 - (b) to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
 - (c) as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).

- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

5. Notices

5.1 Any notice to be given under this Agreement (each a “**Notice**”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

(a) if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

(b) 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:

SCHEDULE 6.1

IMPLEMENTATION PLAN

1. INTRODUCTION

1.1 This Schedule:

- (a) defines the process for the preparation and implementation of the Outline Implementation Plan and Detailed Implementation Plan; and
- (b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate.

2. OUTLINE IMPLEMENTATION PLAN

2.1 The Outline Implementation Plan is set out in Annex 1.

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 31 (*Authority Cause*)).

3. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within 20 Working Days of the Effective Date.

3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (i) the completion of the programme design phase;
 - (ii) the completion of any Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and
 - (iii) training and roll-out activities;
- (c) clearly outlines all the steps required to implement the Milestones to be achieved in the next 18 months, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
- (d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- (e) is produced using a software tool as specified, or agreed by the Authority.

3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:

- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
 - (i) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (i) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (ii) any other work in progress in relation to the Detailed Implementation Plan; and
- (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.

3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:

- (a) review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.

3.5 If the Authority rejects the draft Detailed Implementation Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.

4. UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN

4.1 Following the approval of the Detailed Implementation Plan by the Authority:

- (a) the Supplier shall submit a revised Detailed Implementation Plan to the Authority every 3 months starting 3 months from the Effective Date;
- (b) without prejudice to Paragraph 4.1(a), the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);
- (c) any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
- (d) the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Schedule 8.1 (*Governance*)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.

4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:

- (a) any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
- (b) in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 31 (*Authority Cause*).

4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

5. GOVERNMENT REVIEWS

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

SCHEDULE 6.2

TESTING PROCEDURES

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Issue Threshold”	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan ;
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Plan”	a plan: <ol style="list-style-type: none">(a) for the Testing of Deliverables; and(b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
“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 7;
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;
“Test Success Criteria”	in relation to a Test, the test success criteria Criteria for that Test as referred to in Paragraph 6;

“Test Witness” any person appointed by the Authority pursuant to Paragraph 10.1; and

“Testing the applicable testing procedures and Test Procedures” Success Criteria set out in this Schedule .

2. RISK

2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:

- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or
- (b) affect the Authority's right subsequently to reject:
 - (i) all or any element of the Deliverables to which a Test Certificate relates; or
 - (i) any Milestone to which the Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:

- (a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;
- (b) the Services are implemented in accordance with this Agreement; and
- (c) each Target Performance Level is met from the relevant Operational Service Commencement Date.

3. TESTING OVERVIEW

3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.

3.2 The Supplier shall not submit any Deliverable for Testing:

- (a) unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
- (b) until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
- (c) until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

3.3 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.

3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3.5 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

4. TEST STRATEGY

4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Effective Date but in any case no later than 20 Working Days (or such other period as the Parties may agree in writing) after the Effective Date.

4.2 The final Test Strategy shall include:

- (a) an overview of how Testing will be conducted in accordance with the Implementation Plan;
- (b) the process to be used to capture and record Test results and the categorisation of Test Issues;
- (c) the method for mapping the expected Test results to the Test Success Criteria;
- (d) the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
- (e) the procedure to be followed to sign off each Test;
- (f) the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
- (g) the names and contact details of the Authority's and the Supplier's Test representatives;
- (h) a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Tests;
- (i) the technical environments required to support the Tests; and
- (j) the procedure for managing the configuration of the Test environments.

5. TEST PLANS

5.1 The Supplier shall develop Test Plans and submit these for the approval of the Authority as soon as practicable but in any case no later than 20 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start date for the relevant Testing (as specified in the Implementation Plan).

5.2 Each Test Plan shall include as a minimum:

- (a) 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;

- (b) a detailed procedure for the Tests to be carried out, including:
 - (i) the timetable for the Tests, including start and end dates;
 - (i) the Testing mechanism;
 - (ii) dates and methods by which the Authority can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;
 - (iii) the mechanism for ensuring the quality, completeness and relevance of the Tests;
 - (iv) the format and an example of Test progress reports and the process with which the Authority accesses daily Test schedules;
 - (v) the process which the Authority will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;
 - (vi) the Test Schedule;
 - (vii) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and
 - (viii) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

5.3 The Authority shall not unreasonably withhold or delay its approval of the Test Plans provided that the Supplier shall incorporate any reasonable requirements of the Authority in the Test Plans.

6. TEST SUCCESS CRITERIA

The Test Success Criteria for:

- (a) each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in Annex 4; and
- (b) all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

7. TEST SPECIFICATION

7.1 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 (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

7.2 Each Test Specification shall include as a minimum:

- (a) the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
- (b) a plan to make the resources available for Testing;

- (c) Test scripts;
- (d) Test pre-requisites and the mechanism for measuring them; and
- (e) expected Test results, including:
 - (i) a mechanism to be used to capture and record Test results; and
 - (ii) a method to process the Test results to establish their content.

8. TESTING

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 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 10.
- 8.3 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Authority shall ensure that the Test Witnesses attend the Tests, except where the Authority has specified in writing that such attendance is not necessary.
- 8.4 The Authority may raise and close Test Issues during the Test witnessing process.
- 8.5 The Supplier shall provide to the Authority in relation to each Test:
- (a) a draft Test Report not less than 2 Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - (b) the final Test Report within 5 Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- (a) an overview of the Testing conducted;
 - (b) identification of the relevant Test Success Criteria that have been satisfied;
 - (c) identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
 - (d) the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - (e) 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 9.1; and

- (f) the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9. TEST ISSUES

9.1 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.

9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.

9.3 The Authority shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

10. TEST WITNESSING

10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

10.2 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.

10.3 The Test Witnesses:

- (a) shall actively review the Test documentation;
- (b) will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether

a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
- (c) shall not be involved in the execution of any Test;
- (d) shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- (e) may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
- (f) may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- (g) may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11. TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Authority 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.
- 11.2 The focus of the Testing Quality Audits shall be on:
- (a) adherence to an agreed methodology;
 - (b) adherence to the agreed Testing process;
 - (c) adherence to the Quality Plan;
 - (d) review of status and key development issues; and
 - (e) identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Authority will give the Supplier at least 5 Working Days’ written notice of the Authority’s intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier’s reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:
- (a) discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - (b) subsequently prepare a written report for the Supplier detailing its concerns,
- and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority’s report.
- 11.7 In the event of an inadequate response to the Authority’s report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

12. OUTCOME OF TESTING

12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:

- (a) the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;
- (b) where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
- (c) where the failure to satisfy the Test 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 Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (*Rectification Plan Process*).

12.3 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13. ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

13.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:

- (a) the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
- (b) performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*).

13.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier setting out:

- (a) the applicable Test Issues ; and
- (b) any other reasons for the relevant Milestone not being Achieved.

- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.
- 13.5 Without prejudice to the Authority's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 27.1 (Rectification Plan Process) and the Authority shall refuse to issue a Milestone Achievement Certificate where:
- (a) there is one or more Material Test Issue(s); or
 - (b) the information required under Schedule 8.4 (Reports and Records Provisions) Annex 3 (Virtual Library) has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.
- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- (a) any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to Paragraph 13.3); and
 - (b) where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES - SEVERITY LEVELS

1. **Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
2. **Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:
 - (a) causes a Component to become unusable;
 - (b) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - (c) has an adverse impact on any other Component(s) or any other area of the Services;
3. **Severity Level 3 Test Issue:** a Test Issue which:
 - 3.1 causes a Component to become unusable;
 - 3.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.3 has an impact on any other Component(s) or any other area of the Services;

but for which, as reasonably determined by the Authority, there is a practicable workaround available;

4. **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
5. **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services

ANNEX 2: TEST CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [*insert description of Deliverables*]

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the [*name of Authority*] (the “**Authority**”) and [*name of Supplier*] (the “**Supplier**”) dated [*date*].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 (*Testing Procedures*) of the Agreement.

[We confirm that the Deliverables listed above have been tested successfully in accordance with the Test Plan relevant to those Deliverables.]

OR

[This Test Certificate is issued pursuant to Paragraph 12.1 of Schedule 6.2 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name] [Position] acting on behalf of

[name of Authority] ANNEX 3:

MILESTONE ACHIEVEMENT

CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [*insert description of Milestone*]

We refer to the agreement (the “**Agreement**”) relating to the provision of the Services between the [*name of Authority*] (the “**Authority**”) and [*name of Supplier*] (the “**Supplier**”) dated [*date*].

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (*Definitions*) or Schedule 6.2 (*Testing Procedures*) of the Agreement.

[We confirm that all the Deliverables relating to Milestone [*number*] have been tested successfully in accordance with the Test Plan relevant to this Milestone [or that a conditional Test Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria.]]*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of Schedule 6.2 (*Testing Procedures*) of the Agreement on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 7.1 (*Charges and Invoicing*)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [*Authority*]

ANNEX 4: TEST SUCCESS CRITERIA

1. Tests to be Achieved in order to Achieve the ATP Milestone

Test	Pre-conditions*	Test Success Criteria

* Note: The Pre-Conditions are that e.g. the Success Criteria for the previous Tests must be satisfied before the ATP Milestone tests are commenced

2. Tests to be Achieved in order to Achieve a CPP Milestone

CPP Milestone Charge No.	Test	Test Success Criteria

SCHEDULE 7.1

CHARGES AND INVOICING

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Delay Payment Rate”	has the meaning given in Paragraph 1.1(a) of Part C;
“European Standard”	in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
“Reimbursable Expenses”	reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Optional Services, calculated at the rates and in accordance with the Authority's expenses policy current from time to time, but not including: (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Optional Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and subsistence expenses incurred by Supplier Personnel whilst performing the Optional Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
“Supporting Documentation”	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;

PART A: Pricing

1 CHARGES

- 1.1 The Charges which are applicable to this Contract are set out in Annex 1 of this Schedule.
- 1.2 The Supplier acknowledges and agrees that, subject to paragraph 4 of Part B of this Schedule (Adjustment of Contract Charges), the Charges cannot be increased during the Term.

2. COSTS AND EXPENSES

- 2.1 Except as expressly set out in paragraph 3 of this Schedule (Reimbursable Expenses), the Charges include all costs and expenses relating to the Services and/or the Supplier's performance of its

obligations under this Contract and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:

- (a) any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs required by the Supplier Personnel, network or data interchange costs or other telecommunications charges; or
- (b) any amount for any services or costs incurred by the Supplier prior to the Effective Date

3. REIMBURSABLE EXPENSES

3.1 The Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges under this Agreement), provided that such Reimbursable Expenses are supported by Supporting Documentation and relate to the provision of Optional Services only. The Authority shall provide a copy of their current expenses policy to the Supplier upon request.

3.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.

PART B: ADJUSTMENTS TO THE CHARGES AND RISK REGISTER

1 DELAY PAYMENTS

1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay A Delay Payment to the Authority in respect of that Key Milestone. Delay Payments shall accrue:

- (a) at the daily rate (the “**Delay Payment Rate**”) determined in accordance with Paragraph 1.2;
- (b) from (but excluding) the relevant Milestone Date to (and including) the later of:
 - (i) the date on which the Key Milestone is Achieved; and
 - (ii) the expiry of the Delay Deduction Period; and
- (c) on a daily basis, with any part day’s Delay counting as a day.

1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Date shall be the amount set out in Implementation Plan.

1.3 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.

1.4 The Delay Payment in respect of a Key Milestone shall be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within 10 Working Days of expiry of the Delay Deduction Period, then the Supplier shall within 10 Working Days of expiry of the Delay Deduction Period:

- (a) issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Key Milestone; and

- (b) pay to the Authority as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

2. SERVICE CREDITS

2.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Quarter pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

2.2 For each Quarter:

- (a) the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Quarter on the basis of one point equating to a 0.10% (nought point one percent) deduction in the Service Charges; and
- (b) the total Service Credits applicable for the Quarter shall be calculated in accordance with the following formula:

$$SC = TSP \times X \times AC$$

where:

- SC is the total Service Credits for the relevant Quarter;
- TSP is the total Service Points that have accrued for the relevant Quarter;
- X is 0.10% (nought point one percent); and
- AC is the total Services Charges payable for the relevant Quarter (prior to deduction of applicable Service Credits).

2.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 25.4(c) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of Schedule 2.2 (*Performance Levels*).

2.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.

2.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Quarter immediately succeeding the Quarter to which they relate.

3. INVOICING PROCEDURE

3.1 The Authority shall pay, or shall procure that a Customer pays, all sums properly due and payable to the Supplier in cleared funds within thirty (30) days of receipt of a Valid Invoice, submitted to the address specified by the Authority in paragraph 7.4 of this Schedule and in accordance with the provisions of this Contract.

3.2 The Supplier shall ensure that each invoice (whether submitted electronically or in a paper form, as the Authority or Customer may specify):

- (a) contains:

- (i) all appropriate references, including any unique order reference number; and
- (ii) a detailed breakdown of the Services, including the Milestone(s) (if any) and Deliverable(s) within this Agreement to which the invoice relate, against the applicable due and payable Contract Charges; and

(b) shows separately:

- (i) the VAT added to the due and payable Charges and the tax point date relating to the rate of VAT shown; and
- (ii) it is supported by any other documentation reasonably required by the Authority to substantiate that the invoice is a Valid Invoice.

3.3 All payments due by one Party to the other shall be made within thirty (30) days of receipt of a Valid Invoice unless otherwise specified in this Agreement, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

3.4 The Supplier shall submit invoices directly to the Customer at the address provided by the Authority to the Supplier.

4. ADJUSTMENT OF CHARGES

4.1 The Charges shall only be varied:

- (a) due to a Specific Change in Law in relation to which the Parties agree that a change is required to all or part of the Charges in accordance with Clauses 13.2 to 13.4 of this Agreement (Change in Law);
- (b) where all or part of the Charges are reduced as a result of a review of the Charges in accordance with Clause 8 of this Agreement (Service Improvement);
- (c) where all or part of the Charges are reduced as a result of a review of Charges in accordance with Clause 10.8 of this Agreement (Benchmarking);
- (d) where all or part of the Charges are reviewed and reduced in accordance with paragraph 5 of this Schedule;

4.2 Subject to paragraphs 4.1 of this Schedule, the Charges will remain fixed for the first three Contract Years.

5. SUPPLIER PERIODIC ASSESSMENT OF CONTRACT CHARGES

5.1 Every six (6) Months during the Contract Period, the Supplier shall assess the level of the Charges to consider whether it is able to reduce them.

5.2 Such assessments by the Supplier under paragraph 5 of this Schedule shall be carried out on 1 May and 1 December in each Contract Year (or in the event that such dates do not, in any Contract Year, fall on a Working Day, on the next Working Day following such dates). To the extent that the Supplier is able to decrease all or part of the Charges it shall promptly notify the Authority in writing and such reduction shall be implemented in accordance with paragraph 7 of this Schedule.

6. SUPPLIER REQUEST FOR INCREASE OF THE CHARGES

6.1 The Supplier may request an increase in all or part of the Charges in accordance with the remaining provisions of this paragraph 6 subject always to:

- (a) the Supplier's request being submitted in writing at least three (3) Months before the effective date for the proposed increase in the relevant Charges ("Review Adjustment Date") which shall be subject to paragraph 6.2 of this Schedule; and
- (b) the prior approval of the Authority which shall be granted in the Authority's sole discretion.

6.2 The earliest Review Adjustment Date will be the first (1st) Working Day following the third (3rd) anniversary of the Effective Date. Thereafter any subsequent increase to any of the Charges in accordance with this paragraph 6 of this Schedule shall not occur before the anniversary of the previous Review Adjustment Date during the Contract Period.

6.3 To make a request for an increase of some or all of the Charges in accordance with this paragraph 6, the Supplier shall provide the Authority with:

- (a) a list of the Charges it wishes to review;
- (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 Charge;
- (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 Effective Date.

7. IMPLEMENTATION OF ADJUSTED CONTRACT CHARGES

7.1 Variations in accordance with the provisions of this Schedule to all or part the Charges (as the case may be) shall be made by the Authority to take effect:

- (a) in accordance with Clause 13.2 this Agreement (Change in Law) where an adjustment to the Charges is made in accordance with paragraph 4.1(a) of this Schedule;
- (b) in accordance with Clause 8 of this Agreement (Service Improvement) where an adjustment to the Charges is made in accordance with paragraph 4.1(b) of this Schedule;
- (c) in accordance with Clause 7.3 of this Agreement (Benchmarking) where an adjustment to the Contract Charges is made in accordance with paragraph 4.1(c) of this Schedule or
- (d) on 1 June for assessments made on 1 May and on 1 January for assessments made on 1 December where an adjustment to the Contract Charges is made in accordance with paragraph 6 of this Schedule; or

- (e) on the Review Adjustment Date where an adjustment to the Charges is made in accordance with paragraph 6.1 of this schedule.

8. CANCELLATIONS

- 8.1 If a Customer cancels a participant's place before the course starts (i.e. before the opening event), the department shall be able to substitute the participant for another participant, or move the original participant to another cohort.
- 8.2 In the event that the Supplier cannot accommodate the participant in the next cohort, the department shall not be liable to pay the course fee and the Supplier shall refund any fees already paid.
- 8.3 Where a participant leaves the course after the course has started, (due to moving to a new job for example), the Supplier shall not be required to provide a refund in respect of that participant and the department will be liable to pay the course fee for that participant.
- 8.4 Where a participant is unable to attend a course which has already started, and where the Customer has given reasonable notice to the Supplier, the Supplier shall make available a place on a further course for that participant without further charge within one Contract Year of notification that participant is unable to attend the course.

9. DEFERMENT

If a participant wishes to defer their place on the course (due to unexpected illness for example) and the request to defer occurs after the course has started, the Supplier shall allow the participant to defer their place and resume the course at the same point on another cohort, without making an additional charge, subject to places still being available.

10. RISK REGISTER

The Parties shall review the Risk Register set out in Annex 2 from time to time and as otherwise required for the purposes of Schedule 8.1 (*Governance*).

PART C: INVOICING AND PAYMENT TERMS

1 SUPPLIER INVOICES

1.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.

1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European Standard the Supplier shall comply with the requirements of the Authority's e-invoicing system. In the alternative the Supplier shall:

- (a) prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum, the details set out in Paragraph 1.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
- (b) make such amendments as may be reasonably required by the Authority if the template invoice outlined in (b) is not approved by the Authority.

1.3 The Supplier shall ensure that each invoice contains the following information:

- (a) the date of the invoice;
- (b) a unique invoice number;
- (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
- (d) the Customer to which the relevant Charge(s) relate;
- (e) the correct reference for this Agreement;
- (f) the reference number of the purchase order to which it relates (if any);
- (g) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
- (h) a description of the Services;
- (i) the pricing mechanism used to calculate the Charges;
- (j) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
- (k) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Agreement, and, separately, any VAT or other sales tax payable in respect of each of the same;
- (l) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (m) reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);

- (n) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - (o) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - (p) where the Services have been structured into separate Service lines, the information at (a) to (n) of this paragraph 1.3 shall be broken down in each invoice per Service line.
- 1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
- 1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 1.6 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.
- 1.7 The Authority shall regard an invoice as valid only if it complies with the provisions of this Part C. Where any invoice does not conform to the Authority's requirements set out in this Part C, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.8 If the Authority fails to consider and verify an invoice in accordance with paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 after a reasonable time has passed.

2. PAYMENT TERMS

- 2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within 30 days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

PART D: INNOVATION AND IMPROVEMENT PAYMENTS

1. INNOVATION AND IMPROVEMENT ALLOWANCE

- 1.1 The Authority may require the Supplier to include an additional allowance on any invoice for innovation and improvement (the "Innovation and Improvement Allowance") prior to any such invoice being raised. The amount of any Innovation and Improvement Allowance shall be set by the Authority at its sole discretion.
- 1.2 Where the Supplier collects any Innovation and Improvement Allowance it must do as agent for the Authority and must hold any Innovation and Improvement Allowance and any accrued interest on such allowance on trust for the Authority.
- 1.3 If the Authority requires the Supplier to collect an Innovation and Improvement Allowance under clause 1.1 of this Part D of Schedule 7.1, the Supplier must open a separately designated interestbearing

bank account (the “Innovation and Improvement Trust Account”) for the collection of any Innovation and Improvement Allowance and the bank operating the account must be notified that the account is a trust account operated for the benefit of the Authority for the purpose of collecting any Innovation and Improvement Allowance under this Agreement.

1.4 Upon request by the Authority, the Supplier shall promptly provide the terms of the Innovation and Improvement Trust Account, historic or current account statements or any other information reasonably requested by the Authority.

2. DRAWDOWN FROM THE INNOVATION AND IMPROVEMENT TRUST ACCOUNT

2.1 Any drawdown by the Supplier from the Innovation and Improvement Trust Account shall be subject to the Change Control Procedure.

2.2 Notwithstanding paragraph 2.1 of this Part D of Schedule 7.1, the Authority may at any time require the Supplier to transfer any or all of the moneys held in the Innovation and Improvement Trust Account by electronic transfer to a bank account notified to the Supplier by the Authority.

2.3 Notwithstanding paragraph 2.1 of this Part D of Schedule 7.1, upon the earlier of the termination of this Agreement or upon the expiry of the Term of this Agreement, the Supplier shall transfer all moneys held in the Innovation and Improvement Trust Account to the Authority by electronic transfer to a bank account notified to the Supplier by the Authority within 10 Working Days of the termination of this Agreement or the expiry of the Term of this Agreement.

2.4 For the avoidance of doubt, the Supplier shall not be entitled to set-off any amount owed to it by the Authority or any other Central Government Body with any moneys held in the Innovation and Improvement Trust Account.

ANNEX 1: CHARGES

Item 1 PLP Phase 1 Set Up Price:

Bidder Guidance

Bidders must provide pricing for ALL mandatory fields (highlighted in ORANGE). You are requested to fully read the Bidder instructions within the 'How to Bid' Attachment 2 prior to submitting your bid. Failure to comply with this may result in a bid submission being deemed as non-compliant. All prices are to exclude VAT.

The pricing you submit must not be caveated. Zero or negative bids will not be allowed.

Pricing submitted must be FIRM and VALID for acceptance for 120 days from the date of your bid submission.

PLP Phase 1 - Set Up Costs

Prices submitted must include ALL costs, overheads and profit, associated with delivery of the Services required (as set out in Annex 1 of Contract Schedule 2.1 - The Services)

Prices must be in Pounds Sterling £

Prices must be exclusive of VAT

The total price must not exceed £200,000 excluding VAT

Where the total price exceeds £200,000 excluding VAT the tender will be rejected and disqualified from the procurement

	Price (exc VAT)
Final design of core programme (based on primary format) including revision of competency framework, learning outcomes, curriculum, participant journey, participant assessment, chartership alignment and implementation planning	REDACTED
Design and planning of delivery of content and teaching methods, such as classroom, experiential, e-learning, etc.	REDACTED
Development of programme evaluation framework, benefits and impact assessment and continuous improvement and innovation plan	REDACTED
Development and set up of the programme support services (including nomination and applications, confirmations, bookings, tracking, feedback etc)	REDACTED
Development, set up and testing of online platform to deliver all core functionalities	REDACTED
Revision of design for alternative format	REDACTED
Programme Accreditation - preparation and implementation	REDACTED
1.1 Total Price	REDACTED

Item 2 Phase 2 Delivery Prices:

Bidder Guidance

Bidders must provide pricing for ALL mandatory fields (highlighted in ORANGE). You are requested to fully read the Bidder instructions within the 'How to Bid' Attachment 2 prior to submitting your bid. Failure to comply with this may result in a bid submission being deemed as non-compliant. All prices are to exclude VAT.

The pricing you submit must not be caveated. Zero or negative bids will not be allowed.

Pricing submitted must be FIRM and VALID for acceptance for 120 days from the date of your bid submission.

PLP Phase 2 - Delivery Costs

Delivery Costs of the Primary (residential) Format

Prices must be in Pounds Sterling £

Prices must be exclusive of VAT

Prices submitted must include **ALL** costs, overheads and profit, associated with delivery of the Services required (as set out in Annex 1 of Contract Schedule 2.1 - The Services)

The price submitted in each cell must be the price per participant, in the relevant size of cohort. It is anticipated that the larger cohorts will have lower participant fees as they offer opportunities of economies of scale as the number of participants increases.

The spreadsheet will automatically calculate the figures for cost per participant, VAT and total course fee.

The Innovation and Improvement Allowance standard fee has been set in this spreadsheet and should not be changed. It is an estimated figure that may be subject to change by the Authority after contract award.

The total course fee per participant must not exceed £10,000 including VAT per head in any bracket on the scale

Where total course fee per participant exceeds £10,000 including VAT per head in any bracket on the scale the tender will be rejected and disqualified from the procurement

Service elements	Participant Numbers per Cohort				
	26 - 30	31 - 35	36 - 40	41 - 45	46 - 50
Support and administrative services	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Online platform including regular maintenance and running costs	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Programme materials	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Coaching	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Participant assessments - preprogramme, during and at close of programme	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Learning facilities inc venue(s), onsite support and equipment	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Participant costs including residential accommodation and all programme food, refreshments and hospitality	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Core programme delivery including all preparation, delivery of content, faculty and speakers (inc their time, travel, accommodation and expenses)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Closing event including venue, speakers, equipment, materials, food and refreshments	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Programme feedback and monitoring systems and reporting including modules, activities, satisfaction surveys, benefits and impacts assessment	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Contract management including general weekly, quarterly and annual meetings and all reporting	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Profit per participant	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Innovation and improvement allowance - standard fee (estimated figure)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED

	Item 2.1 Total Price	Item 2.2 Total Price	Item 2.3 Total Price	Item 2.4 Total Price	Item 2.5 Total Price
Cost per Participant exc VAT (cost to the supplier, per participant)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
VAT 20% (based on cost per participant)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Total Course Fee per Participant (cost per participant plus 20% VAT)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Weighting	10	20	20	25	25
<i>The minimum number of participants required in a cohort to breakeven (this in the number of participants required in a cohort bracket to breakeven) This is for information only and will not be evaluated)</i>	23	27	31	36	41

Item 3 PLP Phase 2 Alternative Delivery Prices

Bidder Guidance

Bidders must provide pricing for ALL mandatory fields (highlighted in ORANGE). You are requested to fully read the Bidder instructions within the 'How to Bid' Attachment 2 prior to submitting your bid. Failure to comply with this may result in a bid submission being deemed as non-compliant. All prices are to exclude VAT.

The pricing you submit must not be caveated. Zero or negative bids will not be allowed.

Pricing submitted must be FIRM and VALID for acceptance for 120 days from the date of your bid submission.

PLP Phase 2 - Delivery Costs

Delivery Costs of the Alternative (non - residential) Format

Prices must be in Pounds Sterling £

Prices must be exclusive of VAT

Prices submitted must include **ALL** costs, overheads and profit, associated with delivery of the Services required (as set out in Annex 1 of Contract Schedule 2.1 - The Services)

The price submitted in each cell must be the price per participant, in the relevant size of cohort. It is anticipated that the larger cohorts will have lower participant fees as they offer opportunities of economies of scale as the number of participants increases.

The spreadsheet will automatically calculate the figures for cost per participant, VAT and total course fee.

The Innovation and Improvement Allowance standard fee has been set in this spreadsheet and should not be changed. It is an estimated figure that may be subject to change by the Authority after contract award.

The total participant fee must not exceed £10,000 including VAT per head in any bracket on the scale

Where total course fee per participant exceeds £10,000 including VAT per head in any bracket on the scale the tender will be rejected and disqualified from the procurement

	Participant Numbers per Cohort				
Service elements	26 - 30	31 - 35	36 - 40	41 - 45	46 - 50
Support and administrative services	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Online platform including regular maintenance and running costs	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Programme materials	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Coaching	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Participant assessments - preprogramme, during and at close of programme	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Learning facilities inc venue(s), onsite support and equipment	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Participant costs including all programme food, refreshments and hospitality	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Core programme delivery including all preparation, delivery of content, faculty and speakers (inc their time, travel, accommodation and expenses)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Closing event including venue, speakers, equipment, materials, food and refreshments	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Programme feedback and monitoring systems and reporting including modules, activities, satisfaction surveys, benefits and impacts assessment	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Contract management including general weekly, quarterly and annual meetings and all reporting	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Profit per participant	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Innovation and improvement allowance - standard fee (estimated figure)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
	Item 3.1 Total Price	Item 3.2 Total Price	Item 3.3 Total Price	Item 3.4 Total Price	Item 3.5 Total Price

Cost per Participant exc VAT (cost to the supplier, per participant)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
VAT 20% (based on cost per participant)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Total Course Fee per Participant (cost per participant plus 20% VAT)	REDACTED	REDACTED	REDACTED	REDACTED	REDACTED
Weighting	15	25	25	20	15
<i>The minimum number of participants required in a cohort to breakeven (this in the number of participants required in a cohort bracket to breakeven) This is for information only and will not be evaluated)</i>	23	28	32	36	40

Item 4 PLP Additional Services Price:

Bidder Guidance		
<p>Bidders must provide pricing for ALL mandatory fields (highlighted in ORANGE). You are requested to fully read the Bidder instructions within the 'How to Bid' Attachment 2 prior to submitting your bid. Failure to comply with this may result in a bid submission being deemed as non-compliant. All prices are to exclude VAT.</p> <p>The pricing you submit must not be caveated. Zero or negative bids will not be allowed.</p> <p>Pricing submitted must be FIRM and VALID for acceptance for 120 days from the date of your bid submission.</p>		
PLP Additional Services		
<p>Prices must be in Pounds Sterling £ and exclusive of VAT. Additional services shall be charged on a time and materials basis and agreed with the Authority in advance (and in writing) of any work being undertaken by the supplier. The day rates submitted in this pricing matrix shall be the maximum rates that the supplier shall be allowed to charge throughout the term of the contract. The day rates shall be based on an 8 hour day (exclusive of breaks and travel)</p>		
Role and Characteristics	Rate	Price
Administrative - any administrative or other role supporting the programme delivery or individuals/roles detailed in this section	Day	REDACTED
Academic Director - Expert in their field and substantial proven experience in the planning, design, implementation and delivery of major learning and development projects and client facing experience.	Day	REDACTED

Senior Academic Subject Expert - Substantial experience in their field and experience in the planning, design, implementation and delivery of wide ranging learning and development projects with client facing experience.	Day	REDACTED
Academic Subject Expert - Notable experience in their field and experience in the planning, design, implementation and delivery of learning and development projects with client facing experience.	Day	REDACTED
Senior Adult Learning Expert - Substantial experience in their field and in the planning, design, implementation and delivery of executive level learning and development requirements. Evidence of wide range of high quality learning and development projects and client facing experience.	Day	REDACTED
Adult Learning Expert - Notable experience in their field and experience in the planning, design, implementation and delivery of executive level learning and development requirements. Evidence of wide range of high quality learning and development projects and client facing experience.	Day	REDACTED
IT specialist - Substantial proven experience in delivering bespoke IT solutions. Evidence of wide range of high quality learning and development projects and client facing experience.	Day	REDACTED
Project Practitioner - Proven industry recognised experience in their field in which they are nationally or internationally recognised as an expert. Significant experience of leading or directing major, complex projects or programmes	Day	REDACTED
Facilitator - proven experience in facilitation services and working in corporate adult learning environments with senior leadership development experience	Day	REDACTED
Item 4.1 Total Price		REDACTED

SCHEDULE 7.2

PAYMENTS ON TERMINATION

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

- “Applicable Supplier Personnel”** any Supplier Personnel who:
- (i) at the Termination Date:
 - a) are employees of the Supplier;
 - b) are Dedicated Supplier Personnel;
 - c) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and
 - (ii) are dismissed or given notice of dismissal by the Supplier within:
 - d) 40 Working Days of the Termination Date; or
 - e) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and
 - (iii) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and
 - (iv) the Supplier can demonstrate to the satisfaction of the Authority:
 - a) are surplus to the Supplier’s requirements after the Termination Date notwithstanding its obligation to provide services to its other customers; b) are genuinely being dismissed for reasons of redundancy; and
 - c) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;
- “Breakage Costs Payment”** an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance

“Compensation Payment”	with Paragraph 3;
“Contract Breakage Costs”	the payment calculated in accordance with Paragraph 6; the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Agreement;
“Dedicated Supplier Personnel”	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Profit Already Paid”	the Supplier Profit paid or payable to the Supplier under this Agreement for the period from the Effective Date up to (and including) the Termination Date;
“Redundancy Costs”	the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration: (a) any statutory redundancy payment; and (b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
“Request for Estimate”	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under

Clause 33.1(a) (*Termination by the Authority*) to terminate this Agreement for convenience on a specified Termination Date;

“Shortfall Period” has the meaning given in Paragraph 6.2;

“Termination Estimate” has the meaning given in Paragraph 11.2;

“Third Party Contract” a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in Schedule 4.4 (*Third Party Contracts*);

“Total Costs Incurred” the Costs incurred by the Supplier up to the Termination Date in the performance of this Agreement and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;

“Unrecovered Costs” the Costs incurred by the Supplier in the performance of this Agreement (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model;

“Unrecovered Payment” an amount equal to the lower of:

- (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and
- (b) the amount specified in Paragraph 4; and

“Unrecovered Profit” (Total Costs Incurred x Anticipated Contract Life Profit Margin) - Profit Already Paid + Milestone Retentions remaining unpaid at the Termination Date.

2. TERMINATION PAYMENT

The Termination Payment payable pursuant to Clause 34.3(a) (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

3. BREAKAGE COSTS PAYMENT

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Agreement which:

- (a) would not have been incurred had this Agreement continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;
- (b) are unavoidable, proven, reasonable, and not capable of recovery;
- (c) are incurred under arrangements or agreements that are directly associated with this Agreement;
- (d) are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and
- (e) relate directly to the termination of the Services.

Limitation on Breakage Costs Payment

3.2 The Breakage Costs Payment shall not exceed the lower of:

- (a) the relevant limit set out in Annex 1; and
- (b) 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

Redundancy Costs

3.3 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

3.4 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Agreement, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

Contract Breakage Costs

3.5 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:

- (a) are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with Schedule 8.5 (*Exit Management*); and
- (b) the Supplier can demonstrate:
 - (i) are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and
 - (ii) have been entered into by it in the ordinary course of business.

- 3.6 The Supplier shall seek to negotiate termination of any Third Party Contracts or Subcontracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.
- 3.7 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:
- (a) the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Agreement; and/or
 - (b) Assets not yet installed at the Termination Date.

4. UNRECOVERED PAYMENT

The Unrecovered Payment shall not exceed the lowest of:

- (a) the relevant limit set out in Annex 1;
- (b) 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and
- (c) the Charges that but for the termination of this Agreement would have been payable by the Authority after the Termination Date in accordance with Schedule 7.1 (*Charges and Invoicing*) as forecast in the Financial Model.

5. MITIGATION OF CONTRACT BREAKAGE COSTS, REDUNDANCY COSTS AND UNRECOVERED COSTS

5.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

- (a) the appropriation of Assets, employees and resources for other purposes;
- (b) at the Authority's request, assigning any Third Party Contracts and Subcontracts to the Authority or a third party acting on behalf of the Authority; and
- (c) in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

5.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in Schedule 8.3 (*Dispute Resolution Procedure*).

6. COMPENSATION PAYMENT

6.1 The Compensation Payment payable pursuant to Clause 34.3(b) (*Payments by the Authority*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.

6.2 For the purposes of Paragraph 6.1, the “Shortfall Period” means:

(a) where the Authority terminates this Agreement pursuant to Clause 33.1(a) (*Termination by the Authority*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1(a) of Part D of Schedule 7.1 (*Charges and Invoicing*)) falls short of 365 days; or

(b) where the Supplier terminates this Agreement pursuant to Clause 33.3(a) (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the nonpayment by the Authority to (and including) the Termination Date falls short of 365 days, but in each case subject to the limit set out in Paragraph 6.3.

6.3 The Compensation Payment shall be no greater than the lower of:

(a) the relevant limit set out in Annex 1; and

(b) 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

7. FULL AND FINAL SETTLEMENT

Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 33.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

8. INVOICING FOR THE PAYMENTS ON TERMINATION

All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in Schedule 7.1 (*Charges and Invoicing*).

9. SET OFF

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

10. NO DOUBLE RECOVERY

10.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to Schedule 8.5 (*Exit Management*) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

10.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Agreement so that there is no double counting in calculating the relevant payment.

10.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

11. ESTIMATE OF TERMINATION PAYMENT AND COMPENSATION PAYMENT

11.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.

11.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:

- (a) be based on the relevant amounts set out in the Financial Model;
- (b) include:
 - (i) details of the mechanism by which the Termination Payment is calculated;
 - (ii) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - (iii) such information as the Authority may reasonably require; and
- (c) state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.

11.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Agreement.

11.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

ANNEX 1: MAXIMUM PAYMENTS ON TERMINATION

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Authority shall be liable to pay to the Supplier pursuant to this Agreement:

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year	£1,000,000	£500,000	£500,000
Anytime in the second Contract Year	£1,000,000	£500,000	£500,000
Anytime in Contract Years 3 to 5	£1,000,000	£500,000	£500,000

SCHEDULE 7.3

FINANCIAL DISTRESS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

- ”Applicable Financial Indicators”** means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule;
- “Board”** means the Supplier’s board of directors;
- “Credit Rating Level”** a credit rating level as specified in Annex 1 of this Schedule;
- “Credit Rating Threshold”** the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 3 of this Schedule;
- “FDE Group”** means the Supplier and Key Sub-contractors;
- “Financial Indicators”** in respect of the Supplier and Key Subcontractors, means each of the financial indicators set out at paragraph 5.1 of this Schedule; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
- “Financial Target Thresholds”** Financial Indicators set out at paragraph 5.1 of this Schedule;
- “Rating Agencies”** the rating agencies listed in Annex 1 of this Schedule.

2. WARRANTIES AND DUTY TO NOTIFY

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that as at the Effective Date:

- (a) the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 3 of this Schedule; and
- (b) the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.

2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any

Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).

2.3 The Supplier shall:

- (a) regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
- (b) monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year within 120 days after the Accounting Reference Date; and
- (c) promptly notify (or shall procure that its auditors promptly notify) the Authority in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event).

2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the provisions of Paragraphs 3.1(a), and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:

- (a) any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
- (b) a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 2 of this Schedule ceases to hold a Credit Rating for that entity.

2.5 Each report submitted by the Supplier pursuant to paragraph 2.3(b) shall:

- (a) be a single report with separate sections for each of the FDE Group entities;
- (b) contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
- (c) include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;
- (d) be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable; and
- (e) include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

3. FINANCIAL DISTRESS EVENTS

3.1 The following shall be Financial Distress Events:

- (a) the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
- (b) an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- (c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- (d) an FDE Group entity committing a material breach of covenant to its lenders;
- (e) a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- (f) any of the following:
 - (i) commencement of any litigation against an FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (ii) non-payment by an FDE Group entity of any financial indebtedness;
 - (iii) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;
 - (iv) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or
 - (v) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Agreement; and
- (g) any one of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

4. CONSEQUENCES OF FINANCIAL DISTRESS EVENTS

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.6.

4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1(e), the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:

- (a) rectify such late or non-payment; or
- (b) demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.

4.3 The Supplier shall (and shall procure that any relevant Key Sub-contractor shall):

- (a) at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Agreement; and
- (b) where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3(a) that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Agreement:
 - (i) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and
 - (ii) to the extent that it is legally permitted to do so and subject to Paragraph 4.8, provide such information relating to the Supplier or Key Sub-contractors as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is approved by the Authority or referred to the Dispute Resolution Procedure under Paragraph 4.5.

4.5 If the Authority considers that the draft Financial Distress Remediation Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not ensure the continued performance of the Supplier's obligations in accordance with the Agreement, then it may either agree a further time period for the development and agreement of the Financial Distress Remediation Plan or

escalate any issues with the draft Financial Distress Remediation Plan using the Dispute Resolution Procedure.

4.6 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:

- (a) on a regular basis (which shall not be less than fortnightly):
 - (i) review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Agreement; and
 - (ii) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;
- (b) where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.6(a), submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
- (c) comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

4.7 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.6.

4.8 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at paragraph 4.3(b)(ii) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:

- (a) obtaining in advance written authority from Key Sub-contractors authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
- (b) agreeing in advance with the Authority or Key Sub-contractors a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
- (c) putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and

- (d) disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymization and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

5. FINANCIAL INDICATORS

5.1 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:

- (a) A financial threshold score of 60 or above with Dun & Bradstreet

6. TERMINATION RIGHTS

The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (*Termination by the Authority*) if:

- (a) the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3(c);
- (b) the Parties fail to agree a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.3 to 4.5; and/or
- (c) the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.6(c).

7. PRIMACY OF CREDIT RATINGS

7.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1(b) to 3.1(g), the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 3 of this Schedule, then:

- (a) the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.6; and
- (b) the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3(b)(ii).

ANNEX 1: RATING AGENCIES AND THEIR STANDARD RATING SYSTEM

- Standard and Poor

- Credit Rating Level 1 = AAA
 - Credit Rating Level 2 = AA+ ○
 - Credit Rating Level 3 = AA ○
 - Credit Rating Level 4 = AA- ○
 - Credit Rating Level 5 = A+ ○
 - Credit Rating Level 6 = A ○
 - Credit Rating Level 7 = A- ○
 - Credit Rating Level 8 = BBB+ ○
 - Credit Rating Level 9 = BBB ○
 - Credit Rating Level 10 = BBB-
- **Moody's**
 - Credit Rating Level 1 = Aaa ○
 - Credit Rating Level 2 = Aa1 ○
 - Credit Rating Level 3 = Aa2 ○
 - Credit Rating Level 4 = Aa3 ○
 - Credit Rating Level 5 = A1 ○
 - Credit Rating Level 6 = A2 ○
 - Credit Rating Level 7 = A3 ○
 - Credit Rating Level 8 = Baa1 ○
 - Credit Rating Level 9 = Baa2 ○
 - Credit Rating Level 10 = Baa3

ANNEX 2: CREDIT RATINGS AND CREDIT RATING THRESHOLDS

Entity	Credit Rating (long term)	Credit Rating Threshold
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Supplier	REDACTED	Standard and Poor - AA - Moody's Aa3
Key Sub-contractors	REDACTED	Standard and Poor - AA - Moody's Aa3

SCHEDULE 7.4

FINANCIAL REPORTS AND AUDIT RIGHTS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

- | | |
|--------------------------------------|--|
| “Annual Contract Report” | the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B; |
| “Audit Agents” | <ul style="list-style-type: none"> (a) the Authority’s internal and external auditors; (b) the Authority’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above; |
| “Contract Amendment Report” | the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B; |
| “Final Reconciliation Report” | the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B; |

“Financial Model”	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
“Financial Reports”	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A;
“Material Change”	<p>a Change which:</p> <p>(a) materially changes the profile of the Charges; or (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:</p> <p>(i) 5% or more; or</p> <p>(ii) £1m or more;</p>
“Onerous Contract”	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
“Onerous Contract Report”	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;
“Open Book Data”	<p>complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:</p> <p>(a) the Supplier’s Costs broken down against each Service, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;</p> <p>(b) operating expenditure relating to the provision of the Services including an analysis showing:</p> <p>(i) the unit costs and quantity of consumables and bought-in services;</p>

- (ii) sources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
- (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier's Profit Margin; and
- (iv) Reimbursable Expenses;
- (c) overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) 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;
- (f) an explanation of the type and value of risk and contingencies associated with the provision of the Services, including the amount of money attributed to each risk and/or contingency; and
- (g) the actual Costs profile for each Service Period.

PART A: FINANCIAL TRANSPARENCY OBJECTIVES AND OPEN BOOK DATA

1. FINANCIAL TRANSPARENCY OBJECTIVES

The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

Understanding the Charges

- (a) for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, overhead recoveries (where relevant) and time spent by Supplier Personnel in providing the Services;
- (b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in Schedule 7.1 (*Charges and Invoicing*));

Agreeing the impact of Change

- (d) for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;

- (e) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

Continuous improvement

- (f) for the Parties to challenge each other with ideas for efficiency and improvements; and
- (g) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the “Financial Transparency Objectives”).

2. OPEN BOOK DATA

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority’s need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

- (a) maintain and retain the Open Book Data; and
- (b) disclose and allow the Authority or the Audit Agents access to the Open Book Data.

3. ONEROUS CONTRACTS

3.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:

- (a) An initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
- (b) An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier’s designation of the Agreement as an Onerous Contract;
- (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
- (d) details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.

3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall

cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.

- 3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers Team where the Supplier is a Relevant Supplier; representatives from any Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B: FINANCIAL REPORTS

1. PROVISION OF THE FINANCIAL REPORTS

- 1.1 The Supplier shall provide
- (a) the Contract Inception Report on or before the Effective Date; and
 - (b) during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

- 1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
- 1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 1.4 Each Financial Report shall:
 - (a) be completed by the Supplier using reasonable skill and care;
 - (b) incorporate and use the same defined terms as are used in this Agreement;
 - (c) quote all monetary values in pounds sterling;
 - (d) quote all Costs as exclusive of any VAT; and
 - (e) quote all Costs and Charges based on current prices.
- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
 - (a) being accurate and not misleading;
 - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
 - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
 - (d) compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
 - (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
 - (b) ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs forecast by the Supplier;
 - (c) the Final Reconciliation Report is a true and fair reflection of the Costs; and
 - (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.

1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.

1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:

- (a) the Costs incurred (or those forecast to be incurred) by the Supplier; or
- (b) the forecast Charges for the remainder of the Term,

the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.

2. FINANCIAL MODEL

2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

- (a) the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
- (b) the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
- (c) the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1(a) notify the Supplier that:
 - (i) the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or
 - (ii) the Authority has approved the relevant Financial Report.

2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1(c), that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Agreement, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with Schedule 8.3 (*Dispute Resolution Procedure*).

3. Discussion of Final Reconciliation Report

3.1 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

4. Key Sub-contractors

4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Subcontractors.

4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

- (a) be responsible for auditing the financial models/reports of its Key Subcontractors and for any associated costs and expenses incurred or forecast to be incurred; and
- (b) on written request by the Authority, provide the Authority or procure that the Authority is provided with:
 - (i) full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
 - (ii) further explanation of, and supporting information in relation to, any audit reports provided.

PART C: AUDIT RIGHTS

1. AUDIT RIGHTS

1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Agreement, including for the following purposes:

- (a) to verify the integrity and content of any Financial Report;
- (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
- (c) to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
- (d) to verify the Certificate of Costs and/or the Open Book Data;

- (e) to verify the Supplier's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
- (f) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (g) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Subcontractors or their ability to perform the Services;
- (h) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (i) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- (j) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (k) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (l) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (m) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (n) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
- (o) to review the accuracy and completeness of the Registers;
- (p) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (q) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (r) to review the Supplier's compliance with the Standards;
- (s) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or

- (t) to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Agreement shall prevent or restrict the rights of the Controller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

2. CONDUCT OF AUDITS

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Subcontractors) in relation to each audit, including:
 - (a) all information requested by the Authority within the permitted scope of the audit;
 - (b) reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - (c) access to the Supplier System; and
 - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

3. USE OF SUPPLIER'S INTERNAL AUDIT TEAM

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
- (a) the resultant audit reports; and
 - (b) all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

4. RESPONSE TO AUDITS

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit, the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
 - (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

SCHEDULE 8.1

GOVERNANCE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Board Member” the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;

“Board” The Programme Board;

“Project Managers” the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 1; and

“Programme Board” the body described in Paragraph 4; **Board”**

2. MANAGEMENT OF THE SERVICES

2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Agreement through whom the Services shall be managed at a day-to-day.

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

3. PROGRAMME BOARD

Establishment and structure of the Programme Board

3.1 The Programme Board shall be established by the Authority for the purposes of this Agreement on which both the Supplier and the Authority shall be represented.

3.2 In relation to the Programme Board, the:

- (a) Authority Board Members;
- (b) Supplier Board Members;
- (c) frequency that the Programme Board shall meet (unless otherwise agreed between the Parties);
- (d) location of the Board's meetings; and
- (e) planned start date by which the Board shall be established, shall be as set out in Annex 1.

3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by

the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:

- (a) a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
- (b) that he/she is debriefed by such delegate after the Board Meeting.

3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:

- (a) scheduling Board meetings;
- (b) setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
- (c) chairing the Board meetings;
- (d) monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
- (e) ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
- (f) facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.

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

3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

4. ROLE OF THE PROGRAMME BOARD

4.1 The Programme Board shall:

- (a) receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
- (b) provide senior level guidance, leadership and strategy for the overall delivery of the Services;
- (c) consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services); and
- (d) develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same;
- (e) be the point of escalation from the Change Management Board;
- (f) ensure compliance with the Standards;
- (g) grant dispensations for variations from such compliance where appropriate;
- (h) assure the coherence and consistency of the systems architecture for the Supplier Solution;
- (i) monitor developments in new technology and reporting on their potential benefit to the Services;
- (j) provide advice, guidance and information on technical issues; and
- (k) assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority;
- (l) ensure that this Agreement is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
- (m) review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
- (n) analyse and record the impact of all Changes, specifically whether the proposed Change:
 - (i) has an impact on other areas or aspects of this Agreement and/or other documentation relating to the Services;
 - (ii) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;
 - (iii) will raise any risks or issues relating to the proposed Change; and

- (iv) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;
- (o) approve or reject (close) all proposed Changes;
- (p) identify the risks the regular risk reports;
- (q) subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
- (r) ratify or refuse requests to close risks on the Risk Register; and
- (s) identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

5. CONTRACT MANAGEMENT MECHANISMS

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

5.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:

- (a) the identification and management of risks; (b) the identification and management of issues; and
- (c) monitoring and controlling project plans.

5.3 The Risk Register shall be updated by the Supplier and submitted for review by the Programme Board.

6. ANNUAL REVIEW

6.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.

6.2 The meetings shall be attended by the Programme Director of the Supplier and the Director of the Project Delivery Function, Profession and Standards of the Authority and any other persons considered by the Authority necessary for the review.

ANNEX 1: REPRESENTATION AND STRUCTURE OF BOARDS

Programme Board

Authority members of Programme Board	[[□]] [Chairperson]
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Supplier members of Programme Board	REDACTED
Start date for Programme Board meetings	December 2020
Frequency of Programme Board meetings	Monthly until May 2021 then quarterly if agreed by all parties
Location of Programme Board meetings	REDACTED

SCHEDULE 8.2

CHANGE CONTROL PROCEDURE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Authority Change Manager” the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;

“Change Request” a written request for a Contract Change which shall be substantially in the form of Annex 1;

“Change Communication” any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;

“Fast-track Change” any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;

“Impact Assessment” an assessment of a Change Request in accordance with Paragraph 5;

“Impact Assessment Estimate” has the meaning given in Paragraph 4.3;

“Receiving Party” the Party which receives a proposed Contract Change; and

“Supplier Change Manager” the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

2. GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

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

2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change as follows:

- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
- (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance

with Paragraph 5 before the Contract Change can be either approved or implemented;

- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
- (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
- (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
- (f) a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.

2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.

2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:

- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
- (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement. 2.6 The Supplier shall:

- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.

3. COSTS

3.1 Subject to Paragraph 3.3:

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

(b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:

- (i) such costs are below £5,000;
- (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
- (iii) such costs exceed those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Schedule 7.1 (*Charges and Invoicing*). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

4. CHANGE REQUEST

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.

4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within 10 working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within 10 working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.

4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is received by the Authority to fully understand:

- (a) The nature of the request for clarification; and

- (b) The reasonable justification for the request;

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

5. IMPACT ASSESSMENT

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

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

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the European Economic Area, the preparation of the Impact Assessment shall also be subject to Clause 23 (*Protection of Personal Data*).

- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then reissue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1(d) and (e) shall:
- (a) be based on the Financial Model;
 - (b) facilitate the Financial Transparency Objectives;
 - (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
 - (d) include full disclosure of any assumptions underlying such Impact Assessment;
 - (e) include evidence of the cost of any assets required for the Change; and
 - (f) include details of any new Sub-contracts necessary to accomplish the Change.

6. AUTHORITY'S RIGHT OF APPROVAL

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- (a) approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - (c) in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph

5.4, on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it

shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.

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

7. SUPPLIER'S RIGHT OF APPROVAL

Following an Impact Assessment, if:

(a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

(i) materially and adversely affect the risks to the health and safety of any person; and/or

(ii) require the Services to be performed in a way that infringes any Law; and/or

(b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

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

8. FAST-TRACK CHANGES

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

8.2 If:

- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and
- (b) both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £50,000 and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

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

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

9. OPERATIONAL CHANGE PROCEDURE

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

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

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

9.3 The RFOC shall include the following details:

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

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

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

10. COMMUNICATIONS

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

ANNEX 1: CHANGE REQUEST FORM

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

ANNEX 2: CHANGE AUTHORISATION NOTE

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

SCHEDULE 8.3

DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“CEDR”		the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”		has the meaning given in Paragraph 7.2;
“Expert”		in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”		determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”		has the meaning given in Paragraph 4.2;
“Mediator”		the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”		a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”		has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”		has the meaning given in Paragraph 9.6;
“Related Third Party”	(a)	a party to: another contract with the Authority or the Supplier which is relevant to this Agreement; or
	(b)	a Sub-contract; and
“Supplier Request”		a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2. DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and
- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

- (a) shall set out:
 - (i) the material particulars of the Dispute;
 - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
 - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a MultiParty Dispute, in which case Paragraph 2.3 shall apply.

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

- (a) if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and
- (b) if it is served by the Supplier it shall be treated as a Supplier Request, and in each case the provisions of Paragraph 9 shall apply.

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

- (a) first by commercial negotiation (as prescribed in Paragraph 4);
- (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
- (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

3. EXPEDITED DISPUTE TIMETABLE

3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.

3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:

- (a) in Paragraph 4.2(c), 10 Working Days;
- (b) in Paragraph 5.2, 10 Working Days;
- (c) in Paragraph 6.2, 5 Working Days; and
- (d) in Paragraph 7.2, 10 Working Days.

3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

4. COMMERCIAL NEGOTIATION

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

4.2 If:

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

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

5. MEDIATION

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

6. EXPERT DETERMINATION

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:

- (a) if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
- (b) if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- (c) if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2(a) or (b), on the instructions of the president (or equivalent) of:
 - (i) an appropriate body agreed between the Parties; or
 - (ii) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- (b) the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- (c) the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- (d) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- (e) the process shall be conducted in private and shall be confidential; and
- (f) the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. ARBITRATION

7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.

7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter**

Notice”) on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

7.3 If the Authority serves a Counter Notice, then:

- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
- (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.

7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:

- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5(e), (f) and (g));
- (b) the arbitration shall be administered by the LCIA;
- (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (e) the chair of the arbitral tribunal shall be British;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the seat of the arbitration shall be London.

8. URGENT RELIEF

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

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

9. MULTI-PARTY DISPUTES

9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").

9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a "**Multi-Party Procedure Initiation Notice**".

9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:

- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
- (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.

9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the "**MultiParty Dispute Resolution Board**") comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

- (a) the Authority;
- (b) the Supplier;

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

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

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

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
- (b) the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
- (c) in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the MultiParty Dispute.

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

- (a) either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
- (b) either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
- (c) subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

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

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such

discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Supplier.

SCHEDULE 8.4

REPORTS AND RECORDS PROVISION

1. REPORTS

The Authority may require any or all of the following reports:

- (a) delay reports;
- (b) reports relating to Testing and tests carried out under Schedule 2.4 (*Security Management*) and Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*);
- (c) reports which the Supplier is required to supply as part of the Management Information;
- (d) annual reports on the Insurances;
- (e) security reports; and
- (f) Force Majeure Event reports.

2. RECORDS

2.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together "**Records**"):

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

2.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.

2.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.

2.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.

2.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Agreement.

2.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:

- (a) as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
- (b) as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

3. Virtual Library

3.1 The Supplier shall, no later than eight (8) weeks prior to the Operational Services Commencement Date and without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Agreement available in accordance with the requirements outlined in this Schedule.

3.2 The Supplier shall ensure that the Virtual Library is:

- (a) capable of holding and allowing access to the information described in Annex 2 of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
- (b) structured so that each document uploaded has a unique identifier which is automatically assigned;
- (c) readily accessible by the Authority at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time,
- (d) structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);

- (e) structured and maintained in accordance with the security requirements as set out in this Agreement including those set out in Schedule 2.4 (Security Management);
 - (f) created and based on open standards in Schedule 2.3 (Standards); and
 - (g) backed up on a secure off-site system.
- 3.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Clause 17.1 (Project Specific IPR) of this Agreement.
- 3.4 The Supplier shall upload complete and accurate information specified in Annex 2 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case by the date at which the Virtual Library is made available in accordance with Paragraph 3.1) onto Virtual Library in the format specified.
- 3.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address at: plp@ipa.gov.uk
- 3.6 Except for notices under Clause 44.4 or items covered under Clause 44.6, where the Supplier is under an obligation to provide information to the Authority in a provision under this Agreement, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this Paragraph 3 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 3.7 Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 2 shall not take precedence over any other obligation to provide information in this Agreement and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 3.8 The Supplier shall provide each specified person (as set out in column 6 of the table at Annex 2) access to view and download the specified information in the Virtual Library in Annex 3 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 2 to this Schedule.
- 3.9 Where Access Permission is not listed (in column 6 of the table at Annex 2) as being subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 2) from the Initial Upload Date.
- 3.10 Where Access Permission is specified as being granted to the Authority's Third Party Auditor (prior to the Authority being granted access) it shall:
 - (a) be entitled to access, view and download information specified in Annex 2 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the

confidential information is required under paragraph 3.10(b) of this Schedule);
and

- (b) report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 3.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 2. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 3.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Agreement at the date of upload.
- 3.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within 14 days unless already due to be updated beforehand due to an Update Requirement specified in Annex 2.
- 3.14 In the event of a conflict between any requirement in this Agreement (excluding Annex 2) for the Supplier to provide information to the Authority and the requirements set out in Annex 2 of this Schedule, the requirement elsewhere in this Agreement shall prevail.
- 3.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
- 3.16 No later than one (1) Month prior to the Operational Services Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.
- 3.17 On request by the Authority the Supplier shall provide the Authority's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 3.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

ANNEX 1: Records to be kept by the Supplier

The records to be kept by the Supplier are:

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

18. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Agreement.

ANNEX 3: RECORDS TO UPLOAD TO VIRTUAL LIBRARY

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl.5.5 (e), (f) 17.1(a), 17.2(a)(ii)	Documentation	As appropriate and agreed by the Authority	Within seven days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Authority
Cl 14.3	Key Personnel	Sch 9.2	Effective Date	On replacement of Key Personnel	Authority
Cl 8.1	Services Improvement Plan	Cl 8.1	Within 20 working days of Effective Date	Every 12 months	Authority
Sch 2.2,Part B Para 2.3	Performance Monitoring Report and the Balanced Scorecard Report	Sch 2.2, Part B	Service Commencement	Within 10 Working Days of the end of each Service Period	Authority
Sch 2.4, Para 4	Core Information Management System Diagram	Sch 2.4, Annex 2	Operational Services Commencement Date	Any update, annually and after any of the events in para 6.13	Authority

Sch 2.4, Para 6	Risk Management Documentation	Sch 2.4, Annex 3	Operational Services Commencement Date	Any update, annually and after any of the events in Schedule 2.4, para 6.13 of	Authority
Sch 2.5, Para 4	Evidence of Insurances	Sch 2.5	Effective Date	Within 15 days after policy renewal or replacement	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl 22	Commercially Sensitive Information	Sch 4.2	Effective Date	Upon Agreement by the Authority to vary the information	Authority and Auditor
Cl 15.7	Notified Key Subcontractors	Sch 4.3	Effective Date	On replacement of key subcontractor	Authority
Cl 15.5	Third Party Contracts	Sch 4.4	Effective Date	On appointment of subcontract	Authority
Cl 15.6	Notified Key Sub-Contractors	Sch 4.3	Effective Date	With each approved appointment or variation	Authority
Cl 15.23	Supply chain Transparency Information Reports	Sch 8.4, Annex 4	thirty days prior to the of the end of each financial year	Every 12 months	Authority
Cl 16,17	Software	Sch 5	Operational Services Commencement Date	Upon Agreement by the Authority to vary the information	Authority
Cl 6.4	Detailed Implementation Plan	Sch 6.1	Within 20 working days of Effective Date	Every 3 months from Effective Date	Authority

Sch 6.2, Para 4	Test Strategy	As appropriate and agreed by the Authority	Within 20 working days of Effective Date	Upon update to the test strategy	Authority
Sch 6.2, Para 5	Test Plan	As appropriate and agreed by the Authority	20 prior working days of relevant test	Upon update to the test plan	Authority
Sch 6.2, Para 8	Test Specification	As appropriate and agreed by the Authority	10 prior working days of relevant test	Upon update to the test specification	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 6.2, Para 8	Test Report	As appropriate and agreed by the Authority	2 working days prior to the date on which the test is planned to end for the Draft Test Report 5 days for the Final Test Report following the relevant test completion	Reissue with each retest	Authority
Sch 7.1, Part E Para 1.1	Template Invoice	As appropriate and agreed by the Authority	Within 10 working days of the Effective Date	Upon Agreement by the Authority to vary the template	Authority
Sch 7.1, Annex 2	Risk Register	Sch 7.1, Annex 2	Effective Date	Upon Agreement by the Authority to vary the by the Risk Management Board	Authority

Sch 7.4 Para 2.3(b)	Financial Indicator Reports	Sch 7.4 para 2.5	As specified in para 2.3(b) of Sch 7.4	As specified in para 2.3(b) of Sch 7.4	Authority
Sch 7.4 Para 4.3(b)	Financial Distress Remediation Plan	As appropriate and agreed by the Authority	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)	Authority
Sch 7.5, Part B, para 1.2	Contract Amendment Report	Sch 7.5, Part B, para 1.2	Within 1 month of a material change being agreed		Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 7.5, Part B, para 1.2	Quarterly Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of each Quarter		Authority
Sch 7.5, Part B, para 1.2	Annual Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of the Contract Year to which that report relates		Authority
Sch 7.5 Part B, para 1.2	Financial Reconciliation Report	Sch 7.5, Part B, para 1.2	Within 6 months after the end of the Term		Authority
Sch 8.1, Para 3.3	Representation and Structure of boards	Sch 8.1 Annex 1	Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority		Authority

Sch 8.1, Para 3.5(e)	Minutes of governance meetings (all boards)	As appropriate and agreed by the Authority	Within 7 days of receipt from chairperson		Authority
Sch 8.2 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 working days of date of receiving change request.		Authority
Sch 8.2 Para 5	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Authority to update under Schedule 8.1 Para 5.7	Authority

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.2, Para 2.6	Update full copy of the Agreement and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Authority
Sch 8.2, Para 4	Change Request	Sch 8.2, Annex 1	Within 10 working days of Authority issuing the Change Request		Authority
Sch 8.3, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 working days from an unresolved dispute arising	Any variation	Authority
Sch 8.3, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Authority
Sch 8.4, Para 1	Reports and Records Provisions	Sch 8.4, Annex 1	Within 3 months of the Effective Date	Frequency specified in Sch 8.4, Annex 1	Authority

Sch 8.5, Para 2.1 (a)	Register of All Assets, Subcontracts and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 8.5, Para 2.1 (b)	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 8.5, Para 3.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 working days of Authority's written request	Authority and its potential Replacement Suppliers

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.5, Para 4.1	Exit Plan	Sch 8.5, Para 4.3	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by the Authority following a Financial Distress Event Within 20 days after service of Termination Notice or 6 months prior to expiry of the Agreement.	Authority
Sch 8.5, Para 5.7 (b)	Authority Data (handback)	Sch 8.4, Para 3 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-	Authority

Sch 8.5, Annex 1, Para 1, Para 1.3 & Para 1.4	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Authority	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Authority	
Sch 8.6 Service Continuity	Service Continuity Plan	Sch 8.6, Para 2.2	Within 20 Working days from the Effective Date	Sch 8.6, Para 7.1	Authority
Sch 8.6, Para 6.2	Service Continuity Plan Review Report	Sch 8.6, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.		

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.6	Corporate Resolution Planning Information	Sch 8.6, Para 11.3	Schedule 8.6 Part 2 Para 11.2	Sch 8.6, Para 11.8	Authority
Sch 9.1, Part E, Para 1.1	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Authority	Sch 9.1, Para 1.1 A-D	At such intervals as are reasonably requested by the Authority	Authority

Sch 9.1, Part E, Para 1.2	Supplier's Final Supplier Personnel List	As appropriate and agreed by the Authority	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees	Authority and, at the discretion of the Authority, the Replacement Supplier and/or any Replacement Subcontractor
Sch 9.1, Part E, Para 1(f)	Information relating to the manner in which the services are organised	As appropriate and agreed by the Authority	Effective Date		Authority
Sch 9.1, Part E, Para 1.7	Payroll and benefits information	As appropriate and agreed by the Authority	Within 5 Working Days following the Service Transfer Date	-	Authority, any Replacement Supplier and/or Replacement Sub-contractor
Sch 9.1, Annex	List of Notified Subcontractors	As appropriate and agreed by the Authority	Effective Date	Upon any change	Authority
Sch 9.2	Key Personnel	Sch 9.2	Effective Date	As amended from time to time	Authority
Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 11, Annex Para 2.1	Reports on Data Subject Access Requests	As appropriate and agreed by the Authority	As agreed with Authority	As agreed with Authority	Authority and Supplier

ANNEX 4: SUPPLY CHAIN TRANSPARENCY INFORMATION TEMPLATE

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

SCHEDULE 8.5

EXIT MANAGEMENT

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Application Programming Interface” or “API”	means a piece of software that facilitates access to the Supplier’s application(s) to provide access to business functionality and/or Authority Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at: https://www.gov.uk/guidance/gds-apidata-standards
“Emergency Exit”	any termination of this Agreement which is a: (a) termination of the whole or part of this Agreement in accordance with Clause 33 (Termination Rights), except where the period of notice given under that Clause is greater than or equal to 6 months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (Termination Rights); or (c) wrongful termination or repudiation of this Agreement by either Party;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties’ respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Agreement;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection

with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;

“Ordinary Exit”

any termination of the whole or part of this Agreement which occurs:

pursuant to Clause 33 (Termination Rights) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or

as a result of the expiry of the Initial Term or any Extension Period;

“Registers” the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);

“Transferable Assets” those of the Exclusive Assets which are capable of legal transfer to the Authority;

“Transferable Contracts” the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

“Transferring Contracts” has the meaning given in Paragraph 6.2(c). 2.

OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

- (a) create and maintain a register of all:
 - (i) Assets, detailing their:
 - (A) make, model and asset number;
 - (B) ownership and status as either Exclusive Assets or Non-Exclusive Assets;
 - (C) Net Book Value;
 - (D) condition and physical location; and
 - (E) use (including technical specifications); and

- (ii) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;
 - (b) create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;
 - (c) agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and
 - (d) at all times keep the Registers up to date, in particular in the event that Assets, Sub-contracts or other relevant agreements are added to or removed from the Services.
- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Agreement.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Subcontractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Agreement and all matters connected with this Schedule and each Party's compliance with it.

3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
- (a) details of the Service(s);
 - (b) a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - (c) an inventory of Authority Data in the Supplier's possession or control;
 - (d) details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;

- (e) a list of on-going and/or threatened disputes in relation to the provision of the Services;
- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Agreement; and
- (g) such other material and information as the Authority shall reasonably require, (together, the “Exit Information”).

3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

3.3 The Supplier shall:

- (a) notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.

3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.

3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:

- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

4. EXIT PLAN

4.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on Partial Termination, expiry or termination of this Agreement;
- (b) complies with the requirements set out in Paragraph 4.2; and

- (c) is otherwise reasonably satisfactory to the Authority.
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
- (a) how the Exit Information is obtained;
 - (b) separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its subcontractors to provide the Services;
 - (c) a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Agreement;
 - (d) the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - (e) the management structure to be employed during the Termination Assistance Period;
 - (f) a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - (g) how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
 - (h) the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
 - (i) a timetable and critical issues for providing the Termination Services;
 - (j) any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - (k) how the Termination Services would be provided (if required) during the Termination Assistance Period;

- (l) procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to Schedule 9.1 (*Staff Transfer*); and
 - (m) how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 4.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 4.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

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

5. TERMINATION SERVICES

Notification of Requirements for Termination Services

- 5.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of Partial Termination, termination or expiry of this Agreement or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

- (a) the date from which Termination Services are required;
- (b) the nature of the Termination Services required; and
- (c) the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the date that the Supplier ceases to provide the terminated Services.

5.2 The Authority shall have:

- (a) an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend for more than 6 months after the date the Supplier ceases to provide the terminated Services or, if applicable, beyond the end of the Termination Assistance Period and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and
- (b) the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

5.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:

- (a) continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 5.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Agreement and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 5.5; and
- (e) at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.

5.4 Without prejudice to the Supplier's obligations under Paragraph 5.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 5.3(b) without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

- 5.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 5.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.

- 5.7 At the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:

- (a) cease to use the Authority Data;
- (b) provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- (d) return to the Authority such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Agreement;
 - (ii) all materials created by the Supplier under this Agreement in which the IPRs are owned by the Authority;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - (iv) any items that have been on-charged to the Authority, such as consumables;
- (e) vacate any Authority Premises unless access is required to continue to deliver the Services;
- (f) provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Agreement to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and

- (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 5.7(f)(ii).

5.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

5.9 Except where this Agreement provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.

6. ASSETS, SUB-CONTRACTS AND SOFTWARE

6.1 Following notice of termination or Partial Termination of this Agreement and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:

- (a) terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
- (b) (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
- (c) terminate, enter into or vary any licence for software in connection with the Services.

6.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 5.3(e), the Authority shall provide written notice to the Supplier setting out:

- (a) which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
 - (i) which, if any, of:
 - the Exclusive Assets that are not Transferable Assets; and
 - the Non-Exclusive Assets,

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

- (b) which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "Transferring Contracts"),

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

6.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- (a) a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
- (b) the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Agreement, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.

6.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.

6.5 Where the Supplier is notified in accordance with Paragraph 6.2(b) that the Authority and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

- (a) procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
- (b) procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.

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

6.7 The Authority shall:

- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - (b) once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 6.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 6.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 6.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (Intellectual Property Rights) and/or Clause 17 (Transfer and Licences Granted by the Supplier).

7. SUPPLIER PERSONNEL

- 7.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, Schedule 9.1 (*Staff Transfer*) shall apply.
- 7.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 7.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 7.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 7.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

8. CHARGES

- 8.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 8.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 5.2:
- (a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and
 - (b) where less than 6 months' notice is provided, no more than 1.2 times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 8.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 8.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

9. APPORTIONMENTS

- 9.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- (a) the amounts shall be annualised and divided by 365 to reach a daily rate;
 - (b) the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
 - (c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 9.2 Each Party shall pay (and the Authority shall procure that any Replacement Supplier shall

pay) any monies due under Paragraph 9.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

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

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

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

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

1.2 The Supplier shall:

- (a) provide a documented plan relating to the training matters referred to in Paragraph 1.1(k) for agreement by the Authority at the time of termination or expiry of this Agreement;
- (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1(o), providing skills and expertise of a suitable standard; and
- (c) fully co-operate in the execution of the Authority Database migration plan agreed pursuant to Paragraph 1.1(w), providing skills and expertise of a reasonably acceptable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the

procedures and operations used to provide the Services, the change management process and other procedures to the operations personnel of the Authority and/or the Replacement Supplier.

- 1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1(y) shall include:
- (a) copies of up-to-date procedures and operations manuals;
 - (b) product information;
 - (c) agreements with third party suppliers of goods and services which are to be transferred to the Authority and/or the Replacement Supplier;
 - (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
 - (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
 - (f) details of physical and logical security processes and tools which will be available to the Authority; and
 - (g) any relevant interface information.
- 1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Authority access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 1.5 shall:
 - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Authority deems reasonable; and
 - (b) the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

SCHEDULE 8.6

SERVICE CONTINUITY PLAN AND CORPORATE RESOLUTION PLANNING

PART 1: SERVICE CONTINUITY PLAN

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan” has the meaning given in Paragraph 2.2(a)(ii);

“Business Continuity Services” has the meaning given in Paragraph 4.2(b);

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

(a) Government Department; or (b)

Non-Ministerial Department.

“Disaster” the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of 10 Working Days or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;

“Disaster has the meaning given in Paragraph 2.2(a)(iii); Recovery Plan”

“Disaster the services embodied in the processes and procedures Recovery for restoring the Services following the occurrence of Services” a Disaster;

“Disaster the system identified by the Supplier in the Supplier Recovery Solution which shall be used for the purpose of System” delivering the Disaster Recovery Services;

“Insolvency Continuity Plan” has the meaning given in Paragraph 2.2(a)(iv).

“Related Service Provider” any person who provides services to the Authority in relation to this Agreement from time to time;

“Review has the meaning given in Paragraphs 7.2(a) to 7.2(c); Report”

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

2. SERVICE CONTINUITY PLAN

2.1 Within 20 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority's written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:

- (a) ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including, but not limited to, disruption caused by coronavirus (COVID-19) or caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
- (b) the recovery of the Services in the event of a Disaster.

2.2 The Service Continuity Plan shall:

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

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

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

2.4 If the Authority rejects the draft Service Continuity Plan:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised

draft Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

3. SERVICE CONTINUITY PLAN: PART A - GENERAL PRINCIPLES AND REQUIREMENTS

3.1 Part A of the Service Continuity Plan shall:

- (a) set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- (b) provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- (c) contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- (d) detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority from time to time;
- (e) contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- (f) contain a risk analysis, including:
 - (i) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - (ii) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - (iii) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - (iv) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and

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

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

- (a) the Services are provided in accordance with this Agreement at all times during and after the invocation of the Service Continuity Plan;
- (b) the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
- (c) it complies with the relevant provisions of ISO/IEC 27002 and all other industry standards from time to time in force; and
- (d) there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.

3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.

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

4. SERVICE CONTINUITY PLAN: PART B - BUSINESS CONTINUITY

PRINCIPLES AND CONTENTS

4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:

- (a) the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and
- (b) the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.

4.2 The Business Continuity Plan shall:

- (a) address the various possible levels of failures of or disruptions to the Services;
- (b) set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
- (c) specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
- (d) clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

5. SERVICE CONTINUITY PLAN: PART C - DISASTER RECOVERY

PRINCIPLES AND CONTENTS

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

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

5.3 The Disaster Recovery Plan shall include the following:

- (a) the technical design and build specification of the Disaster Recovery System;
- (b) details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster

Recovery Services and any testing of the same including but not limited to the following:

- (i) data centre and disaster recovery site audits;
 - (ii) backup methodology and details of the Supplier's approach to data back-up and data verification;
 - (iii) identification of all potential disaster scenarios;
 - (iv) risk analysis;
 - (v) documentation of processes and procedures;
 - (vi) hardware configuration details;
 - (vii) network planning including details of all relevant data networks and communication links;
 - (viii) invocation rules;
 - (ix) Service recovery procedures; and
 - (x) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;
- (c) any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
 - (d) details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - (e) access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - (f) testing and management arrangements.

6. SERVICE CONTINUITY PLAN: PART D - INSOLVENCY CONTINUITY PLAN

PRINCIPLES AND CONTENTS

6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.

6.2 The Insolvency Continuity Plan shall include the following:

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

7. REVIEW AND AMENDMENT OF THE SERVICE CONTINUITY PLAN

7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):

- (a) on a regular basis and as a minimum once every 6 months;
- (b) within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
- (c) within 14 days of a Financial Distress Event;
- (d) within 30 days of a Corporate Change Event; and
- (e) where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1(a) to 7.1(d)) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.

7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which

have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a “**Review Report**”) setting out:

- (a) the findings of the review;
- (b) any changes in the risk profile associated with the Services; and
- (c) the Supplier's proposals (the “**Supplier's Proposals**”) for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

7.3 Following receipt of the Review Report and the Supplier’s Proposals, the Authority shall:

- (a) review and comment on the Review Report and the Supplier’s Proposals as soon as reasonably practicable; and
- (b) notify the Supplier in writing that it approves or rejects the Review Report and the Supplier’s Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.

7.4 If the Authority rejects the Review Report and/or the Supplier’s Proposals:

- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall then revise the Review Report and/or the Supplier’s Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier’s Proposals to the Authority for the Authority’s approval within 20 Working Days of the date of the Authority’s notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier’s Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority’s approval of the Supplier’s Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier’s Proposals. Any such change shall be

at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

8. TESTING OF THE SERVICE CONTINUITY PLAN

8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.

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

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

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

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

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

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

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

8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

9. INVOCATION OF THE SERVICE CONTINUITY PLAN

9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.

9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:

- (a) where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
- (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

PART 2: CORPORATE RESOLUTION PLANNING

10. Service Status and Supplier Status

10.1 This Agreement is not a Critical Service Contract.

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

11. Provision of Corporate Resolution Planning Information

11.1 Paragraphs 11 to 13 of this Part 2 shall apply if this Agreement has been specified as a Critical Service Contract under Paragraph 10.1 of this Part 2 or the Supplier is or becomes a Public Sector Dependent Supplier.

11.2 Subject to Paragraphs 11.6, 11.10 and 11.11 of this Part 2:

- (a) where this Agreement is a Critical Service Contract, the Supplier shall provide the Relevant Authority with the CRP Information within 60 days of the Effective Date; and

- (b) except where it has already been provided in accordance with Paragraph 11.2(a) of this Part 2, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority with the CRP Information within 60 days of the date of the Relevant Authority's request.

11.3 The Supplier shall ensure that the CRP Information: (a)

is full, comprehensive, accurate and up to date;

(b) is split into two parts:

(i) Group Structure Information and Resolution Commentary;

(ii) UK Public Service / CNI Contract Information

and is structured and presented in accordance with the requirements and explanatory notes set out at Annex I of the latest published version of the Resolution Planning Guidance published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-outsourcing-playbook> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

(c) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority to understand and consider the information for approval;

(d) provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and

(e) complies with the requirements set out at Appendix I (Group Structure Information and Resolution Commentary) and Appendix II (UK Public Sector / CNI Contract Information) respectively.

11.4 Following receipt by the Relevant Authority of the CRP Information pursuant to Paragraphs 11.2, 11.8 and 11.9 of this Part 2, the Supplier and the Relevant Authority shall discuss in good faith the contents of the CRP Information and:

(a) where the Authority is the Relevant Authority, the Authority shall; and

(b) where the Cabinet Office Markets and Suppliers Team is the Relevant Authority, the Authority shall use reasonable endeavours to procure that the Cabinet Office Markets and Suppliers Team shall,

no later than 60 days after the date on which the CRP Information was delivered by the Supplier either provide an Assurance to the Supplier that it approves the CRP Information or that it rejects it.

11.5 If the Relevant Authority rejects the CRP Information:

- (a) the Authority shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
 - (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's comments, and shall re-submit the CRP Information to the Relevant Authority for approval within 30 days of the date of the Relevant Authority's rejection. The provisions of paragraph 11.3 to 11.5 of this Part 2 shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 11.6 Where the Supplier has already provided CRP Information to a Department(or, in the case of a Strategic Supplier, to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that Department (or, in the case of a Strategic Supplier, from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid, the Supplier shall not be required to provide the CRP Information or updated CRP Information under Paragraphs 11.2 and 11.8(a) to 11.8(c) of this Part 2 if it provides a copy of the Valid Assurance to the Authority on or before the date on which the CRP Information would otherwise have been required.
- 11.7 An Assurance shall be deemed Valid for the purposes of Paragraph 11.6 of this Part 2 if:
 - (a) in respect of the Supplier's obligations under Paragraph 11.2:
 - (i) the CRP Information on which the Assurance was based was provided to the Department providing the Assurance (or, in the case of Strategic Suppliers, to the Cabinet Office Markets and Suppliers Team) within the 12 months prior to the deadline by which the CRP Information would otherwise have been required under Paragraph 11.2; and
 - (ii) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Agreement had then been in force) have occurred since the date on which the CRP Information was provided; and
 - (b) in respect of the Supplier's obligations under Paragraphs 11.8(a) to 11.8(c), the CRP Information on which the Assurance was based was provided to the Department providing the Assurance (or, in the case of Strategic Suppliers, to the Cabinet Office Markets and Suppliers Team) after the date of the event triggering the obligation to provide the CRP Information under Paragraphs 11.8(a) to 11.8(c).
- 11.8 Subject to Paragraph 11.6, if this Agreement is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 11.8(c) of this Part 2 its initial CRP Information) to the Relevant Authority:

- (a) within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 11.11 of this Part 2) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress)
- (b) within 30 days of a Corporate Change Event unless not required pursuant to Paragraph 11.10;
- (c) within 30 days of the date that:
 - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 11.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 11.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - (i) updated CRP Information has been provided under any of Paragraphs 11.8(a) 11.8(b) or 11.8(c) since the most recent Accounting Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 11.8(d); or
 - (ii) unless not required pursuant to Paragraph 11.10

11.9 Where the Supplier is a Public Sector Dependent Supplier and this Agreement is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 11.8(a) to (d) of this Part 2, the Supplier shall provide at the request of the Relevant Authority and within the applicable timescales for each event as

set out in Paragraph 11.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority.

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

- (i) Aa3 or better from Moody's;
- (ii) AA- or better from Standard and Poors;
- (iii) AA- or better from Fitch;

the Supplier will not be required to provide the CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of Schedule 7.4 (Financial Distress)) or (ii) the Supplier and its Parent Undertakings cease to fulfil

the criteria set out in this Paragraph 11.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with paragraph 11.8.

11.11 Subject to Paragraph 13, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Authority to the extent required under Paragraph 11.8. **12. Termination Rights**

12.1 The Authority shall be entitled to terminate this Agreement under Clause 33.1(b) (Termination by the Authority) if the Supplier is required to provide CRP Information under Paragraph 11 of this Part 2 and either:

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

13. Confidentiality and usage of CRP Information

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

13.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under paragraph 13.1 of this Part 2 and Clause 21.

13.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Authority pursuant to Paragraph 11 of this Part 2 subject, where necessary, to the Relevant Authority entering into an appropriate confidentiality agreement in the form required by the third party.

13.4 Where the Supplier is unable to procure consent pursuant to Paragraph 13.3 of this Part 2, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

- a) redacting only those parts of the information which are subject to such obligations of confidentiality

- b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - i) summarising the information;
 - ii) grouping the information;
 - iii) anonymising the information;
 - and iv) presenting the information in general terms

13.5 The Supplier shall provide the Relevant Authority with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

APPENDIX I

Group Structure Information and Resolution Commentary

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

APPENDIX II

UK Public Sector / CNI contract Information

1. The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - 1.1.1 are with any UK public sector bodies including: central Government departments and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in paragraph 1.1.1 of this Appendix II and where the member of the Supplier Group is acting as a key subcontractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI;
 - 1.2 provide the Relevant Authority with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key subcontracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link;

SCHEDULE 8.7

CONDUCT OF CLAIMS

1. INDEMNITIES

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

- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

2. SENSITIVE CLAIMS

2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "Sensitive Claim"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.

2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

3. RECOVERY OF SUMS

3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:

- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
- (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

4. MITIGATION

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

SCHEDULE 9.1

STAFF TRANSFER

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Former Supplier”	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including: <ul style="list-style-type: none"> (i) any amendments to that document immediately prior to the Relevant Transfer Date; (ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Authority;
“Notified Subcontractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Replacement Subcontractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	<i>the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;</i>

“Staffing Information”

in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement, gender and place of work;
- (b) details of whether they are employed, self employed contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and

any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

**“Statutory Schemes”
“Supplier's Final Supplier Personnel List”**

means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;

a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

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

2. INTERPRETATION

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

PART A: TRANSFERRING AUTHORITY EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Authority Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Notified Sub-contractor and each such Transferring Authority Employee.

1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority Employees in respect of the period arising up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date) and any necessary apportionments

in respect of any periodic payments shall be made between: (i) the Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

2. AUTHORITY INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

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

be liable by virtue of the Employment Regulations and/or the Acquired Rights Directive; and

- (g) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:

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

2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified

by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

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

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;

(b) such offer has been made but not accepted; or (c) the

situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

(a) shall not apply to:

(i) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under applicable Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

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

- (a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Authority Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant 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 Authority Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Authority Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other

statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Authority's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under paragraph 2.8 above.

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority Employees, from (and including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Authority and the Supplier.

4. INFORMATION

The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Subcontractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

5.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Authority Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Change Control Procedure.

6. PENSIONS

6.1 The Supplier shall, or shall procure that each of its Sub-contractors shall, comply with:

- (a) 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
- (b) Part D of the Pensions Annex to this Staff Transfer Schedule.

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES

1 RELEVANT TRANSFERS

1.1 The Authority and the Supplier agree that:

- (a) the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and
- (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or Notified Sub-contractor and each such Transferring Former Supplier Employee.

1.2 The Authority shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. FORMER SUPPLIER INDEMNITIES

2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:

- (a) any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;
- (b) the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;

- (c) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Sub-contractor to comply with regulation 13(4) of the Employment Regulations.

2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

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

2.3 If any person who is not identified by the Authority as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Former Supplier Employee, that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

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

2.4 If an offer referred to in Paragraph 2.3(b) is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.

2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or (c) the

situation has not otherwise been resolved,

the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.7 The indemnity in Paragraph 2.6:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership,

pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

(b) shall apply only where the notification referred to in Paragraph 2.3(a) is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the Effective Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall procure that the Notified Sub-contractor shall, comply with such obligations as may be imposed upon it under the Law.

3. SUPPLIER INDEMNITIES AND OBLIGATIONS

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

(a) any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

(b) the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

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

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

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

- (d) any proposal by the Supplier or a Sub-contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a 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;
- (e) any statement communicated to or action undertaken by the Supplier or a Sub-contractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority and/or the Former Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Former Supplier to the Supplier or a 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;
- (g) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;
- (h) any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13 of the Employment Regulations; and
- (i) a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above

3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.3 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. INFORMATION

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

5. PRINCIPLES OF GOOD EMPLOYMENT PRACTICE

5.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

- (a) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007;
- (b) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999;
- (c) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or
- (d) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the Change Control Procedure.

6. PROCUREMENT OBLIGATIONS

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

7. PENSIONS

7.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:

- (a) 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
- (b) Part D the Pensions Annex to this Staff Transfer Schedule.

8. REDUNDANCY COSTS

8.1 In this Paragraph 8, the following terms shall have the meanings assigned to them below:

- (a) "Eligible Redundant Employee" means a Transferring Former Supplier Employee who is compulsorily dismissed by the Supplier by reason of redundancy (as such term is defined in section 139 of the Employment Rights Act 1996) as a result of an economic technical organisational reason entailing changes to the workforce and the Supplier has followed a fair dismissal procedure and complied with all contractual and legislative requirements;
- (b) "Redundancy Costs" means, in respect of each Eligible Redundant Employee:
 - (i) statutory redundancy pay entitlement (calculated in accordance with Part XI of the Employment Rights Act 1996); and
 - (ii) contractual redundancy pay entitlement (which transferred to the Supplier under the Employment Regulations, including any entitlement to early retirement benefits which have transferred to the Supplier under Regulation 10(2) of the Employment Regulations) to the extent it exceeds the statutory redundancy pay entitlement; and
 - (iii) contractual payment in lieu of notice entitlement (which transferred to the Supplier under the Employment Regulations) where it is not reasonably practicable for that employee to continue in employment during their period of notice.

8.2 Subject to the provisions of this Paragraph 8, the Authority shall pay to the Supplier any Redundancy Costs incurred by the Supplier in relation to each Eligible Redundant Employee, within thirty (30) days after issuance of a written demand by the Supplier for such amount subject to the Supplier having provided sufficient information to the

Authority to verify to the reasonable satisfaction of the Authority compliance with this Paragraph 8.

- 8.3 The obligation to pay any Redundancy Costs set out in Paragraph 8.2 above shall not apply in relation to the Eligible Redundant Employee(s) made redundant:
- (a) where the relevant Eligible Redundant Employee is identified more than 30 calendar days after the date of the Relevant Transfer; or
 - (b) to the extent that any Redundancy Costs are attributable to any increases made by the Supplier to any Eligible Redundant Employee's contractual entitlements to the Redundancy Costs; or
 - (c) in respect of any Eligible Redundant Employee who was in-scope to transfer to the Supplier pursuant to the Employment Regulations but who objected to such transfer pursuant to Regulation 4(7) of the Employment Regulations; or
 - (d) where the relevant Eligible Redundant Employee's effective date of termination of employment is not within the six month period immediately following the Relevant Transfer.
- 8.4 The Supplier shall use reasonable endeavours to:
- (a) redeploy any prospective Eligible Redundant Employees within the Supplier; and
 - (b) mitigate the Redundancy Costs.
- 8.5 The Supplier shall provide:
- (a) such documents or information as the Authority may reasonably require to verify the Redundancy Costs claimed by the Supplier; and
 - (b) information and relevant supporting documents to explain the process followed by the Supplier in compliance with its obligations under Paragraph 8.4 above, in each case prior to any payment under Paragraph 8.2 above.
- 8.6 If any Eligible Redundant Employee is made compulsorily redundant by the Supplier but is subsequently re-employed by the Supplier or any Affiliate within 1 year of the date such Eligible Redundant Employee's employment by the Supplier terminates, the Supplier shall repay the Authority any payment made by the Authority to the Supplier pursuant to this Paragraph 8 within 30 days of such re-employment commencing.
- 8.7 The Authority's aggregate liability for any Redundancy Costs payable in accordance with Paragraph 8.2 above shall be limited to £200,000 (Two Hundred Thousand) and the Authority shall have no liability for any Redundancy Costs incurred by the Supplier in relation to any Eligible Redundant Employee in excess of such amount.

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1 PROCEDURE IN THE EVENT OF TRANSFER

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

2 INDEMNITIES

- 2.1. Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:

- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- (c) If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- (d) Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

2.2. The indemnities in Paragraph 2.1:

- (a) shall not apply to:
 - (i) any claim for:
 - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
 - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
 - (ii) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and

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

3 PROCUREMENT OBLIGATIONS

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

PART D: 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;

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

"Broadly Comparable" (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and/or

(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,

and "Broad Comparability" shall be construed accordingly;

"CSPS" the schemes as defined in Annex D1 to this Part D;

"Direction Letter" has the meaning in Annex D2 to this Part D;

"Fair Deal Employees" any of:

(i) Transferring Authority Employees;

(ii) Transferring Former Supplier Employees; and/or

(iii) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a SubContractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.3 (d) of Parts A or B or paragraph 1.2 (d) of Part C;

(iv) where the Former Supplier becomes the

Supplier employees;

who at the Commencement 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 Authority;

"Fair Deal Schemes"	the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	a Fund Actuary as defined in Annex D3 to this Part D;
"LGPS"	the schemes as defined in Annex D3 to this Part D; and
"NHSPS"	the schemes as defined in Annex D2 to this Part D.

1.3 PARTICIPATION

- (a) In respect of all or any Fair Deal Employees each of Annex D1: CSPA, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.
- (b) The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter, 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.
- (c) The Supplier undertakes:
 - (i) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
 - (ii) to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

1.4 PROVISION OF INFORMATION

- (a) The Supplier undertakes to the Authority:
 - (i) to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
 - (ii) 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 Authority (such consent not to be unreasonably withheld or delayed).

1.5 INDEMNITIES

- (a) The Supplier undertakes to the Authority to indemnify and keep indemnified NHS Pensions, the Authority and/or any Replacement Supplier and/or any Replacement Sub-Contractor on demand from and against all and any Losses whatsoever:
- (i) arising out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement; and/ or
 - (ii) which relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- (b) The Supplier hereby indemnifies NHS Pensions, the Authority and/or any Replacement Supplier and/or Replacement Sub-Contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
- (i) relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; and/or
 - (ii) arise out of the failure of the Supplier and/or any relevant Sub-Contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract.
- (c) The indemnities in this Part D and its Annexes:
- (i) shall survive termination of this Contract; and
 - (ii) shall not be affected by the caps on liability contained in Clause 25 (Limitation of Liability).

1.6 DISPUTES

- (a) The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Authority and/or the Supplier, or between their respective actuaries, 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 Authority and/or the Supplier be referred to an independent Actuary:
- (i) who will act as an expert and not as an arbitrator;
 - (ii) whose decision will be final and binding on the Authority and/or the Supplier; and

- (iii) whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.

1.7 THIRD PARTY RIGHTS

- (a) The Parties agree Clause 43 (Third Party Rights) 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 him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- (b) Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-Contractor in his or her own right under section 1(1) of the CRTPA.

1.8 BREACH

- (a) The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Contract for material Default in the event that the Supplier:
 - (i) commits an irremediable breach of any provision or obligation it has under this Part D; or
 - (ii) commits a breach 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 Authority giving particulars of the breach and requiring the Supplier to remedy it.

1.9 TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS

- (a) 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) the Supplier shall or shall procure that any relevant Sub-Contractor shall:
 - (i) consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
 - (ii) 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.

1.10 PENSION ISSUES ON EXPIRY OR TERMINATION

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract. 1.11 **BROADLY COMPARABLE PENSION SCHEMES**

- (a) If either:
- (i) the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; or
 - (ii) the Authority agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-Contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its SubContractors will) ensure that, with effect from the Relevant Transfer Date or, if later, cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

- (b) Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of paragraph 10.1, the Supplier shall (and shall procure that any of its Sub-Contractors shall):
- (a) supply to the Authority details of its (or its Sub-Contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than twenty eight (28) days before the Relevant Transfer Date;
 - (b) fully fund any such Broadly Comparable pension scheme on a past service reserve basis which is aligned to the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department and is subject to the underpin for the period ending on the Service Transfer Date;
 - (c) instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Authority may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection following a Service Transfer;

- (d) provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;
- (e) allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-Contractor, the Shortfall shall be paid by the Supplier; and
- (f) indemnify the Authority and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under paragraph (e) above.

Annex D1: CSPA

1. DEFINITIONS

In this Annex D1: CSPA to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

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

1.12 FUTURE SERVICE BENEFITS

- (a) The Supplier shall procure that the Fair Deal Employees, shall be either admitted into, or offered continued membership of, the relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.
- (b) The Supplier undertakes that should it cease to participate in the CSPA for whatever reason at a time when it has CSPA Eligible Employees, that it will, at no extra cost to the Authority, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPA Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPA on the date the CSPA Eligible Employees ceased to participate in the CSPA.

Annex D2: NHSPS

1. DEFINITIONS

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

"Direction Letter"	an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-Contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-Contractor in the NHSPS in respect of the NHSPS Eligible Employees;
"NHSPS Eligible 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 Authority, 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 Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier), and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter 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 Authority, 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 a pension scheme registered under Chapter 2 of **Benefits Scheme"**
Part 4 of the Finance Act 2004.

1.13 MEMBERSHIP OF THE NHSPS

- 1.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-Contractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible 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, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 1.2 The Supplier must supply to the Authority by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 1.3 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible 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.
- 1.4 The Supplier will (and will procure that its Sub-Contractors (if any) will) comply with the terms of the Direction Letter, 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 in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 1.5 Where any employee omitted from the Direction Letter supplied in accordance with paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-Contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 1.6 The Supplier will (and will procure that its Sub-Contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-Contractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

1.14 FUTURE SERVICE BENEFITS IN THE NHSPS

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

1.15 NHS PREMATURE RETIREMENT RIGHTS

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-Contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to

the benefits they would have received had they remained employees of the Authority, an NHS Body or other employer which participates automatically in the NHSPS.

1.16 BREACH AND CANCELLATION OF ANY DIRECTION LETTER(S) AND RIGHT OF SETOFF

1.7 The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-Contractor) breaches the terms of its Direction Letter. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its SubContractor) breaches the terms of its Direction Letter.

1.8 If the Authority is entitled to terminate the Contract or the Supplier (or its SubContractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Authority 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 Authority. The provisions of paragraph 1.11 (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 Sub-Contractors.

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

1.17 COMPENSATION

1.10 If the Supplier (or its Sub-Contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:

- (a) membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or
- (b) access to a Broadly Comparable pension scheme,

the Authority 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 Sub-Contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Sub-Contractor meets) the costs of the Authority determining whether the level of compensation offered is reasonable in the circumstances.

1.11 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract.

1.18 SUPPLIER INDEMNITIES

1.12 The Supplier must indemnify and keep indemnified the Authority and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Eligible Employee

that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

1.13 The Supplier must indemnify and keep indemnified the Authority, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its SubContractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

1.19 SUB-CONTRACTORS

1.14 If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-Contractor in identical terms as those imposed on the Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:

- (a) if the Supplier has secured a Direction Letter, the Sub-Contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-Contractor as a condition of being awarded the SubContract and the Supplier shall be responsible for ensuring that the Authority receives a complete copy of each such Sub-Contractor direction letter as soon as reasonably practicable; or
- (b) if, in accordance with paragraph 5.2 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the SubContractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Authority) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of paragraph 10.2 of Part D above (Broadly Comparable Scheme) shall apply.

1.15 The Supplier shall procure that each Sub-Contractor provides indemnities to the Authority, NHS Pensions and/or any Replacement Supplier and/or Replacement SubContractor that are identical to the indemnities set out in paragraph 1.18 of this Annex B. Where a Sub-Contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

Annex D3: LGPS

1 DEFINITIONS

(f) In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule J1: Definitions:

"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 the actuary to a Fund appointed by the Administering Actuary" Authority of that Fund;

"Fund" [insert name], a pension fund within the LGPS;

"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 an admission agreement within the meaning in Schedule Admission 1 of the Local Government Pension Scheme Regulations Agreement" 2013;

"LGPS an admission body (within the meaning of Part 3 of Admission Schedule 2 of the Local Government Pension Scheme Body" 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 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 TO BECOME AN LGPS ADMISSION BODY

2.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.

2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.

2.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

2.4 The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

3 RIGHT OF SET-OFF

The Authority shall have a right to set off against any payments due to the Supplier under the Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-Contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

4 SUPPLIER CEASES TO BE AN LGPS ADMISSION BODY

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

5 DISCRETIONARY BENEFITS

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

2. PART E: EMPLOYMENT EXIT PROVISIONS

1 PRE-SERVICE TRANSFER OBLIGATIONS

- (a) The Supplier agrees that within 20 Working Days of the earliest of:
- (i) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - (ii) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
 - (iii) the date which is 12 months before the end of the Term; and
 - (iv) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

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

- (b) At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
 - (i) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- (c) The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- (d) The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- (e) From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
 - (i) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
 - (ii) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
 - (iii) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
 - (iv) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
 - (v) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or

- (vi) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

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

- (f) During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
 - (i) the numbers of employees engaged in providing the Services;
 - (ii) the percentage of time spent by each employee engaged in providing the Services;
 - (iii) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) of this Schedule 9 (Staff Transfer)(as appropriate); and
 - (iv) a description of the nature of the work undertaken by each employee by location.
- (g) The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:
 - (a) the most recent month's copy pay slip data;
 - (b) details of cumulative pay for tax and pension purposes;
 - (c) details of cumulative tax paid;
 - (d) tax code;

- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2.3 EMPLOYMENT REGULATIONS EXIT PROVISIONS

- (a) The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.
- (b) The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- (c) Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
 - (i) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;

- (ii) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before 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 Sub-contractor is contractually bound to honour;
- (iii) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
- (iv) 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 on and before the Service Transfer Date; and
 - (B) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel list, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;
- (v) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (vi) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel list for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (vii) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the

Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

- (d) The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
 - (i) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
 - (ii) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- (e) If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
 - (i) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - (ii) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- (f) If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- (g) If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:
 - (i) no such offer of employment has been made;
 - (ii) such offer has been made but not accepted; or

(iii) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Subcontractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

(h) Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs (e) to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

(i) The indemnity in Paragraph 2.8:

(i) shall not apply to:

(A) any claim for:

(A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

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

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

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

(ii) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Subcontractor to the Supplier within 6 months of the Service Transfer Date .

(j) If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

(k) The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service

Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

- (i) the Supplier and/or any Sub-contractor; and
 - (ii) the Replacement Supplier and/or the Replacement Sub-contractor.
- (l) The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- (m) Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- (i) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee ;
 - (ii) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor 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 Personnel List; and/or
 - (B) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
 - (iii) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to

comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

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

appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

(n) The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX: LIST OF NOTIFIED SUB-CONTRACTORS

Name	Registration number	Role of Subcontractor
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED
REDACTED	REDACTED	REDACTED

SCHEDULE 9.2

KEY PERSONNEL

KEY ROLE	Name of KEY Personnel	Responsibilities/ Authorities	MINIMUM PERIOD in Key Role
Programme Director	REDACTED	Overall responsibility	
Executive Development Director	REDACTED	Deputising for Director and the programme content and delivery	
Partner	REDACTED	Managing coaching delivery and specific content	
Director	REDACTED	Managing coaching delivery, on line diagnostic software and specific content delivery	
Managing Consultant	REDACTED	Managing coaching delivery and specific content delivery	
Manager	REDACTED	Managing the administration team	
Finance Director	REDACTED	Finance & Legal signatory	

SCHEDULE 10

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) *[Insert the name of the Guarantor]* [a company incorporated in England and Wales with number [] whose registered office is at *[insert details of the Guarantor's registered office here]*] [a company incorporated under the laws of *[insert country]*, registered in *[insert country]* with number *[insert number]* at *[insert place of registration]*, whose principal office is at *[insert office details]* (“**Guarantor**”); in favour of
- (2) *[Insert the name of the public sector Party to the Guaranteed Agreement]* whose

principal office is at [] (“Beneficiary”)

WHEREAS:

- [(A) It is a condition of the Beneficiary entering into the Guaranteed Agreement that the Guarantor executes and delivers this Deed of Guarantee to the Beneficiary.]
- (B) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (C) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows: **2.4 Definitions and Interpretation**

In this Deed of Guarantee:

- (a) unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- (b) the words and phrases below shall have the following meanings:
 - (a) “**Guaranteed Agreement**” means the [*insert details of main contract*] made between the Beneficiary and the Supplier on [*insert date*]; and
 - (b) “**Guaranteed Obligations**” means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement.
- (c) references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- (d) unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- (e) references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- (f) the words “other” and “otherwise” are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;

- (g) unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- (h) unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- (i) unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- (j) references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- (k) references to liability are to include any liability whether actual, contingent, present or future.

2.5 Guarantee and indemnity

- (a) The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- (b) The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- (c) If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - (i) fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
 - (ii) as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other

provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

- (d) As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

2.6 Obligation to enter into a new contract

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

2.7 Demands and Notices

- (a) Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
 - (i) [Address of the Guarantor in England and Wales]
 - (ii) [Facsimile Number]
 - (iii) For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- (b) Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
 - (i) if delivered by hand, at the time of delivery; or

- (ii) if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
 - (iii) if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- (c) In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- (d) Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

2.8 Beneficiary's protections

- (a) The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- (b) This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
 - (i) it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - (ii) it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - (iii) if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

- (iv) the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- (c) The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- (d) The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- (e) The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- (f) Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- (g) Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities

that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

2.9 Guarantor intent

Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

2.10 Rights of subrogation

The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- (a) of subrogation and indemnity;
- (b) to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- (c) to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights up to such amount as the Beneficiary determines in its sole discretion represents the amount of the Guarantor's liabilities under this Deed of Guarantee (the "**Guarantee Estimate Amount**") on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor may retain for its own account or otherwise deal with any such amounts recovered in excess of the Guarantee Estimate Amount as the Guarantor may determine in its sole discretion. The Guarantor hereby confirms that it has not taken any security from the Supplier (other than crossindemnities or other security taken in the ordinary course of its financial arrangements with its Affiliates) and agrees not to do take any further security until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

2.11 Deferral of rights

- (a) Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
 - (i) claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement; or
 - (ii) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement.
- (b) Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not following the occurrence of a Financial Distress Event or Supplier Termination Event:
 - (i) exercise any rights it may have to be indemnified by the Supplier;
 - (ii) demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

- (iii) claim any set-off or counterclaim against the Supplier.
- (c) If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

2.12 Representations and warranties

The Guarantor hereby represents and warrants to the Beneficiary that:

- (a) the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
- (b) the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- (c) the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:
 - (i) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (ii) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (iii) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- (d) all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- (e) this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

2.13 Payments and set-off

- (a) All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding,

howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

- (b) The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- (c) The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

2.14 Guarantor's acknowledgement

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

2.15 Assignment

- (a) The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- (b) The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

2.16 Severance

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

2.17 Third party rights

A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

2.18 Governing Law

- (a) This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- (b) The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- (c) Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- (d) The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- (e) [Provision dealing with the appointment of English process agent by a non English incorporated Guarantor] [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by ()

[Insert name of the Guarantor] acting by *[Insert/print names]*

Director

Director/Secretary

SCHEDULE 11

PROCESSING PERSONAL DATA

2.19 Processing Personal Data

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Authority at its absolute discretion.

- 1.1 The contact details of the Authority'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 Schedule.

Description	Details
Identity of Controller for Personal Data	The Parties acknowledge that in accordance with Clause 23.2 to 23.15 and for the purposes of the Data Protection Legislation, the Authority and the Supplier are Joint Controllers of the Personal Data.
Duration of the processing	The processing is required in order to ensure that the processor can effectively deliver the Services under the Agreement.
Nature and purposes of the processing	<p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaption or alternation, 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).</p> <p>The purposes of the processing are for the registration, participation, completion of participants on the PLP and subsequent alumni activities; for the undertaking of official duties by non-participants in the delivery of the Services; for the appraisal of the benefit of the programme to participants and their departments; for internal civil service monitoring of the project delivery profession workforce.</p>
Type of Personal Data	Name, grade, department, date of birth, email, telephone, gender, work experience and qualifications, government profession status, officials and faculty feedback/comments, photos and videos, assessment scores and pass or fail information, talent comments, academic assignments and

	scores, 360 feedback reports, personal development plans and CVs.
Categories of Data Subject	Civil Servants, Public Servants or other government approved officials nominated and enrolled on the PLP or undertaking official duties for the programme.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	All data will be returned to the data controller and then destroyed by the processor after all obligations have been met and completed under the Agreement.

Annex: Joint Controller Agreement

1. Joint Controller Status and Allocation of Responsibilities

1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 1 (Joint Controller Agreement) in replacement of Clause 23.2-23-15 (Where one Party is Controller and the other Party is Processor) and 23.17-23.27 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.

1.2 The Parties agree that the Supplier:

- (a) is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
- (b) shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
- (c) is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
- (d) is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
- (e) shall make available to Data Subjects the essence of this Joint Controller Agreement (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the Supplier's privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).

1.3 Notwithstanding the terms of paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Data Controller.

2. Undertakings of both Parties

2.1 The Supplier and the Authority each undertake that they shall:

- (a) report to the other Party every 12 months on:
 - (i) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (ii) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

- (iii) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (iv) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (v) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

that it has received in relation to the subject matter of the Agreement during that period;

- (b) notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs 2.1(a)(i) to (v); and
- (c) provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs 2.1(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
- (d) not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, save where such disclosure or transfer is specifically authorised under this Agreement or is required by Law). For the avoidance of doubt to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex.
- (e) request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
- (f) ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data
- (g) take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - (i) are aware of and comply with their duties under this Annex 1 (Joint Controller Agreement) and those in respect of Confidential Information
 - (ii) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (h) ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
 - (i) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures.
- (i) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- (i) ensure that it notifies the other Party as soon as it becomes aware of a Data Loss Event.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its' obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations

3. Data Protection Breach

3.1 Without prejudice to Paragraph 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the other Party and its advisors with:

- (i) sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;
- (ii) all reasonable assistance, including:
 - (a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (b) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
 - (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as if it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal

Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- (i) the nature of the Personal Data Breach;
- (ii) the nature of Personal Data affected;
- (iii) the categories and number of Data Subjects concerned;
- (iv) the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- (v) measures taken or proposed to be taken to address the Personal Data Breach;
- and (vi) describe the likely consequences of the Personal Data Breach.

4. Audit

4.1 The Supplier shall permit:

- (a) the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 1 and the Data Protection Legislation.
- (b) the Authority, or a third-party auditor acting under the Authority's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article 30 GDPR by the Supplier so far as relevant to the Agreement, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

4.2 The Authority may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Paragraph 4.1 in lieu of conducting such an audit, assessment or inspection.

5. Impact Assessments

5.1 The Parties shall:

- (a) provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
- (b) maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Agreement, in accordance with the terms of Article 30 GDPR.

6. ICO Guidance

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. Liabilities for Data Protection Breach

7.1 If financial penalties are imposed by the Information Commissioner on either the Authority or the Supplier for a Personal Data Breach ("Financial Penalties") then the following shall occur:

- a) If in the view of the Information Commissioner, the Authority is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Authority and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
- b) If in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident.
- c) If no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant data incident and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Schedule 8.3 (*Dispute Resolution Procedure*).

7.2 If either the Authority or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("**Court**") by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.

7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the "**Claim Losses**"):

- a) if the Authority is responsible for the relevant breach, then the Authority shall be responsible for the Claim Losses;
- b) if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses: and
- c) if responsibility is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in Paragraphs 7.2-7.3 shall preclude the Authority and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the breach and the legal and financial obligations of the Authority.

8. Termination

If the Supplier is in material Default under any of its obligations under this Annex 1 (*Joint Control Agreement*), the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Supplier in accordance with Clause 33 (*Termination Rights*).

9. Sub-Processing

9.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:

- (i) carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Agreement, and provide evidence of such due diligence to the other Party where reasonably requested; and
- (ii) ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. Data Retention

The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by a Party for statutory compliance purposes or as otherwise required by this Agreement), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.