

**Dated 03/04/2019**

1. **THE MINISTER FOR THE CABINET OFFICE**

**and**

1. **[Redacted]**

**AGREEMENT**

# DIVERSITY OUTREACH SERVICES

**THIS AGREEMENT** is made on 03/04/2019

**BETWEEN:**

# (1) THE MINISTER FOR THE CABINET OFFICE whose principal office is at

70 Whitehall

London

SW1A 2AS

United Kingdom

(the “**Authority**”);and

**(2) [Redacted]** a company registered in the United Kingdom under company number **[Redacted]**  whose registered office is **[Redacted]**  (the **“Supplier”**)

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

# INTRODUCTION

1. The Authority placed a contract notice 2018/S 209-477727 on 30/10/2018 in the Official Journal of the European Union seeking expressions of interest from potential providers for the provision of Diversity Outreach Services.
2. The Authority has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this agreement.
3. This Contract will be undertaken as per the Tender response embedded in Schedule 9 Section 9.1 of this Contract.

**IT IS AGREED** as follows:

# SECTION A - PRELIMINARIES

## 1 DEFINITIONS AND INTERPRETATION

In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out below.

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| **Acquired Rights Directive:** | means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time. |

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| **Authority Assets:** | any materials, plant or equipment owned or held by the Authority and provided by the Authority to the Supplier for use in providing the Services. |
| **BPSS** | the HMG Baseline Personnel Security Standard staff vetting procedures, issued by the Cabinet Office Security policy division and corporate development group. |
| **Bribery Act** | the Bribery Act 2010 together with any guidance or codes of practice issued by the relevant government department concerning the legislation. |
| **Charges** | the charges which shall become due and payable by the Authority to the Supplier in respect of the Services in accordance with the provisions of this agreement, as such charges are set out in Schedule 2. |
| **Commencement**  **Date**: | 01/06/2019 |
| **Commercially**  **Sensitive**  **Information** | the information listed in Schedule 7 comprising the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss. |
| **Confidential Information:** | means all confidential information (however recorded or preserved) disclosed by a Party or its Representatives to the other Party and that Party's Representatives in connection with this agreement, including but not limited to:   1. any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, suppliers or plans of the disclosing Party; and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party; 2. any information developed by the Parties in the course of carrying out this agreement; 3. Personal Data; 4. any Commercially Sensitive Information. |
| **Conviction** | means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006. |
| **Contract Year** | a period of 12 months, commencing on the Commencement Date. |

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| **Contract Value** | The contract value for the two year contract period is £180,000.00 (£90,000.00 per year) |
| **Crown:** | means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government and particular bodies and government agencies. |
| **Data Protection Legislation**: | (i) the GDPR and any applicable national implementing Laws as amended from time to time; (ii) the DPA 2018; (iii) all applicable Law about the processing of personal data and privacy. |
| **Data Protection**  **Impact**  **Assessment** | an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data. |
| **Data Loss Event**: | any event that results or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data breach. |
| **Data Subject**  **Access Request** | a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data. |
| **Dispute**  **Resolution**  **Procedure** | the procedure set out in clause 26. |
| **DPA 2018** | the Data Protection Act 2018 |
| **EIRs** | the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| **Employee**  **Liabilities:** | means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:  (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation;   1. compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; 2. compensation for less favourable treatment of part-time workers or fixed term employees; 3. outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Authority or the Replacement Supplier to a Transferring Supplier Employer which would have been payable by the Supplier or the Sub- |

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|  | Contractor if such payment should have been made prior to the Service Transfer Date;   1. claims whether in tort, contract or statute or otherwise; 2. any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation; |
| **Employment Regulations:** | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations implementing the Acquired Rights Directive |
| **Exit**  **Management**  **Plan** | the plan set out in Schedule 5. |
| **Extension period:** | shall have the meaning given to it inclause 2.2**.** |
| **FOIA** | the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| **Force Majeure**: | any circumstance not within a Party's reasonable control including, without limitation:  acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom;any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;collapse of buildings, fire, explosion or accident; and  any labour or trade dispute, strikes, industrial action or lockouts (excluding any labour or trade dispute, strike, industrial action or lockout confined to the Supplier's workforce or the workforce of any Subcontractor of the Supplier) |
| **GDPR** | theGeneral Data Protection Regulation (*Regulation (EU) 2016/679*) |
| **Good Industry**  **Practice** | standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector. |
| **Information** | has the meaning given under section 84 of FOIA. |
| **Initial Term** | the period commencing on the Commencement Date and ending on the second anniversary of the Commencement Date. |
| **Insolvency Event** | where: |

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|  | the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 **OR** (being a partnership) has any partner to whom any of the foregoing apply;  the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of that other Party; a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company, limited liability partnership or partnership) [other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party]; an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier (being a company);  the holder of a qualifying floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier; the Supplier (being an individual) is the subject of a bankruptcy petition or order; a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days; any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in (a) to (h) (inclusive); or the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation. |

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| **Intellectual**  **Property Rights**: | patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world. |
| **Key**  **Performance Indicators or**  **KPIs**: | the key performance indicators set out in Schedule 3. |
| **KPI Target:** | the acceptable performance level for a KPI as set out in Schedule 3 in relation to each KPI. |
| **Key Personnel**: | those personnel identified in Schedule 4 for the roles attributed to such personnel, as modified pursuant to clause 8. |
| **Law** | any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply |
| **Management**  **Information**: | the management information to be prepared and presented by the Supplier as per the specification |
| **Party/Parties** | The Representatives of the Authority and the Representatives of the Supplier undertaking the project. |
| **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 measures adopted by it. |
| **Prohibited Act** | the following constitute Prohibited Acts:  to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to: (i) induce the person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity; to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement; |

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|  | committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) defrauding, attempting to defraud or conspiring to defraud the Authority; any activity, practice or conduct which would constitute one of the offences listed under (a) to (c), if such activity, practice or conduct had been carried out in the UK. |
| **Relevant Conviction** | means a Conviction that is relevant to the nature of the Services to be provided or a conviction designated as such specified elsewhere in this agreement. |
| **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. |
| **Remediation Notice**: | a notice served by the Authority in accordance with clause 22.1(a). |
| **Replacement Services**: | any services that are identical or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the termination or expiry of this agreement, whether those services are provided by the Authority internally or by any Replacement Supplier. |
| **Replacement Supplier**: | any third Party supplier of Replacement Services appointed by the Authority from time to time. |
| **Representatives**  **:** | means, in relation to a Party, its employees, officers, representatives and advisors**.** |
| **Request for**  **Information** | a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs |
| **Security Plan:** | As detailed in Schedule 10. |
| **Services:** | the services to be delivered by or on behalf of the Supplier under this agreement, as more particularly described in Schedule 1. |
| **Service Levels** | the service levels to which the Services are to be provided as set out in Schedule 3. |
| **Service Transfer Date** | the date of a Service Transfer. |
| **Specification:** | the description of the Services to be provided under the agreement as detailed at Schedule 1; |
| **Staff Vetting Procedures** | means vetting procedures that accord with Good Industry Practice, or where requested by the Authority, the Authority’s procedures for the vetting of personnel as provided to the Supplier from time to time. |
| **Supplier** | the Organisation as shown in two (2) of the Recitals. |
| **Supplier's Personnel** | all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time. |
| **Supplier's Tender**: | the tender submitted by the Supplier and other associated documentation set out in Schedule 9. |
| **Sub-Contract** | any contract between the Supplier and a third Party pursuant to which the Supplier agrees to source the provision of any of the Services from that third Party |
| **Sub-Contractor** | the contractors or suppliers that enter into a Sub-Contract with the Supplier |
| **Sub-processor:** | any third Party appointed to process Personal Data on behalf of the Supplier related to this agreement. |
| **Term**: | the period of the Initial Term as may be varied by:   1. any Extension Period; or 2. the earlier termination of this agreement in accordance with its terms. |
| **Termination Date** | the date of expiry or termination of this agreement. |
| **Transferring Supplier**  **Employees:** | means those employees of the Supplier and/or the Supplier’s SubContractors to whom the Employment Regulations will apply on the Service Transfer Date. |
| **UK Data**  **Protection**  **Legislation** | all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation (*(EU) 2016/679*), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended. |
| **Working** **Day** | Monday to Friday, excluding any public holidays in England and Wales. |

1.1 In this Agreement, unless the context otherwise requires:

1. the singular includes the plural and vice versa;
2. reference to a gender includes the other gender and the neuter;
3. references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or central government body;
4. a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
5. the words “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
6. references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
7. the headings are for ease of reference only and shall not affect the

interpretation or construction of this Agreement; and

1. references to this agreement are references to this agreement as amended from time to time.
   1. Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this agreement with a reference to the replacement hyperlink.
   2. If there is any conflict between the clauses and the schedules and/or any annexes to the schedules, the conflict shall be resolved in accordance with the following order of precedence:
2. the clauses;
3. Schedule 1 (*Specification*);
4. any other Schedules and their Annexes (other than Schedule 9 (*Supplier Tender*) and its Annexes); and
5. Schedule 9 (*Supplier’s Tender*) and its Annexes (if any).
   1. The Schedules and their Annexes form part of this agreement; and
   2. In entering into this agreement the Authority is acting as part of the Crown.

### 2 Term

2.1 This agreement shall take effect on the Commencement Date and shall continue for the Term unless it is extended in accordance with clause 2.2 or terminated in accordance with the terms and conditions of the agreement.

2.2 The Authority may extend this agreement for a period of up to 12 months by giving not less than 30 Working Days’ notice in writing prior to expiry of the Term (“**Extension Period**”). The terms and conditions of this agreement shall apply throughout any such Extension Period.

### 3 Non Exclusivity

3.1 The Supplier acknowledges that nothing in this agreement is intended or shall be construed as creating any exclusive arrangement with the Authority. This agreement shall not restrict the Authority from acquiring similar, equal or like goods and/or services from other entities or sources.

3.2 The Supplier further acknowledges that no guarantee is given by the Authority in respect of the levels or aggregate value of the Services which the Authority shall require the Supplier to provide during the Term. Any levels or aggregate values of Services referred to in the contract document and schedules are indicative only and shall not be binding on the Authority.

### 4 Due diligence and Supplier's warranty

4.1 The Supplier acknowledges and confirms that:

1. the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this agreement;
2. it has made and shall make its own enquiries to satisfy itself as to the accuracy and adequacy of any information supplied or made available to it by or on behalf of the Authority pursuant to clause 4.1(a);
3. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Commencement Date) of all relevant details relating to the performance of its obligations under this agreement; and
4. it has entered into this agreement in reliance on its own due diligence.
   1. Save as provided in this agreement, no representations, warranties or conditions are given or assumed by the Authority in respect of any information which is provided to the Supplier by the Authority and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
   2. The Supplier:
5. warrants and represents that all information and statements made by the Supplier as a part of the procurement process, including without limitation the Supplier's Tender or response to any pre-qualification questionnaire (if applicable), remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the agreement; and
6. shall promptly notify the Authority in writing if it becomes aware during the performance of this agreement of any inaccuracies in any information provided to it by the Authority during such due diligence which materially and adversely affects its ability to perform the Services or meet any Service Levels and/or KPI Target.
   1. The Supplier shall not be entitled to recover any additional costs from the Authority which arise from, or be relieved from any of its obligations as a result of, any matters or inaccuracies notified to the Authority by the Supplier in accordance with clause 4.3(b).
   2. Nothing in this clause 4 shall limit or exclude the liability of the Authority for fraud or fraudulent misrepresentation.

### 5 Supply of services

5.1 The Supplier shall provide the Services to the Authority with effect from the Commencement Date and for the duration of this agreement in accordance with the provisions of this agreement, including without limitation Schedule 1 and Schedule 3.

5.2 In supplying the Services, the Supplier shall:

1. co-operate with the Authority in all matters relating to the Services and comply with all the Authority’s instructions;
2. perform the Services with all reasonable care, skill and diligence in accordance with Good Industry Practice in the Supplier’s industry, profession or trade;
3. use staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the agreement;
4. ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
5. comply with all applicable Laws; and
6. provide all equipment, tools and other items as are required to provide the Services.

### 6 Service Levels and Key Performance Indicators

6.1 The Supplier shall at all times during the Term ensure that it meets the Service Levels, complies with the KPIs and achieves the KPI Targets set out in Schedule 3 (*Service Levels and Key Performance Indicators*).

6.2 The Supplier shall provide the Authority with a monthly report detailing its performance in respect of each of the Service Levels.

6.3 The Supplier shall provide the Authority with a monthly report detailing its performance in respect of each KPI which shall at a minimum, clearly detail whether each KPI in

that month has been met or exceeded and the level of performance achieved by the Supplier.

6.4 Where the Supplier fails to meet a KPI Target, the Supplier shall notify the Authority promptly and take all remedial action that is reasonable to rectify or to prevent a KPI failure from taking place or recurring.

6.5 The Parties may from time to time agree to amend or add to the KPIs in Schedule 3 by following the variation procedure in clause 31.

### 7 Authority's Premises and Assets

7.1 The Authority shall, subject to clauses 10 and 32.1 provide the Supplier (and its SubContractors) with access to such parts of the Authority Premises as the Supplier reasonably requires for the purposes only of providing the Services. The Supplier's right of access will terminate upon termination of this agreement, subject to clause 10.3

7.2 Subject to the requirements of clause 28 and the Exit Management Plan, in the event of the expiry or termination of the agreement, the Authority shall on reasonable notice provide the Supplier with such access as the Supplier reasonably requires to the Authority's Premises to remove any of the Supplier's equipment. All such equipment shall be promptly removed by the Supplier.

7.3 The Supplier shall ensure that:

1. where using the Authority's Premises and any Authority Assets they are kept properly secure and it will comply and cooperate with the Authority's security requirements from time to time regarding the security of the same;
2. only those of the Supplier's Personnel that are duly authorised to enter upon the Authority's Premises for the purposes of providing the Services, do so;
3. any Authority Assets used by the Supplier are maintained (or restored at the end of the Term) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from Authority Premises unless expressly permitted under this agreement or by the Authority's authorised Representative; and
4. any Authority Assets are used with all reasonable care and skill and in accordance with any manufacturer guidelines or instructions.
   1. The Authority shall maintain and repair the Authority Assets, however, where such maintenance or repair arises directly from the act, omission, default or negligence of the Supplier or its representatives (fair wear and tear excluded) the costs incurred by the Authority in maintaining and repairing the same shall be recoverable from the Supplier as a debt.
   2. The Supplier shall notify the Authority immediately on becoming aware of any damage caused by the Supplier, its agents, employees or Sub-Contractors to any property of the Authority, to any of the Authority's Premises or to any property of any other recipient of the Services in the course of providing the Services.
   3. The Supplier shall indemnify the Authority against all and any damage to the Authority Premises and the Authority Assets caused by the same.

### 8 Charges and Payment

8.1 In consideration of the provision of the Services by the Supplier in accordance with this agreement, the Authority shall pay the Charges to the Supplier.

8.2 The Charges:

1. shall remain fixed during the Term; and
2. is the entire price payable by the Authority to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Supplier's Personnel.
   1. The Supplier shall invoice the Authority for payment of the Charges at the end of each calendar month **OR** at the time the Charges are expressed to be payable in accordance with the agreement. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice including the relevant purchase order number and a breakdown of the Services supplied in the invoice period. Payments will be staged and linked to the delivery of Key Aspects of the Services. These aspects are to be agreed at implementation stage.
   2. Where the Supplier submits an invoice to the Authority in accordance with clause 8.3, the Authority will consider and verify that invoice in a timely fashion **OR** within 7 days.
   3. The Authority shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Authority has determined that the invoice is valid and undisputed.
   4. Where the Authority fails to comply with clause 8.4, and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of clause 8.5 after a reasonable time has passed **OR** 7 days after the date on which it is received by the Authority.
   5. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that SubContract:
3. provisions having the same effect as clause 8.4 to clause 8.6 of this agreement; and
4. a provision requiring the counterparty to that Sub-Contract to include in any SubContract which it awards provisions having the same effect as clause 8.4 to clause 8.6 of this agreement.

In this clause 8.7, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Authority in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this agreement.

* 1. Where any Party disputes any sum to be paid by it then a payment equal to the sum not in dispute shall be paid and the dispute as to the sum that remains unpaid shall be determined in accordance with clause 27. Provided that the sum has been disputed in good faith, interest due on any sums in dispute shall not accrue until the earlier of 30days after resolution of the dispute between the Parties.
  2. If payment of an undisputed amount is not made by the Authority by the due date, then the Authority shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998. The Supplier shall not suspend the supply of the Services if any payment is overdue unless it is entitled to terminate this agreement under clause 23.4 for failure to pay undisputed charges.
  3. The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice. The Supplier shall indemnify the Authority against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on the Authority at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this agreement.
  4. The Supplier shall maintain complete and accurate records of, and supporting documentation for, all amounts which may be chargeable to the Authority pursuant to this agreement. Such records shall be retained for inspection by the Authority for 6 years from the end of the Contract Year to which the records relate.
  5. The Authority may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this agreement or any other agreement pursuant to which the Supplier or any associated company of the Supplier provides goods or services to the Authority.
  6. If the Authority wishes to set off any amount owed by the Supplier to the Authority against any amount due to the Supplier pursuant to clause 8.12 it shall give notice to the Supplier within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.
  7. The Supplier shall make any payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Supplier.

### 9 Key Personnel

9.1 The Supplier shall appoint the persons named as such in Schedule 4 as the individuals who shall be responsible for the matters allocated to such Key Personnel. The Key Personnel shall be those people who are identified as being key to the success of the implementation and/or operation of the Services and who shall be retained on the implementation and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Key Personnel. The Key Personnel shall have the authority to act on behalf of the Supplier on the matters for which they are expressed to be responsible.

9.2 The Supplier shall not remove or replace any of the Key Personnel unless:

1. requested to do so by the Authority;
2. the person is on long-term sick leave;
3. the element of the Services in respect of which the individual was engaged has been completed to the Authority's satisfaction;
4. the person resigns from their employment with the Supplier; or
5. the Supplier obtains the prior written consent of the Authority.
   1. The Supplier shall inform the Authority of the identity and background of any replacements for any of the Key Personnel as soon as a suitable replacement has been identified. The Authority shall be entitled to interview any such person and may object to any such proposed appointment within 10 Working Days of being informed of or meeting any such replacement if, in its reasonable opinion, it considers the proposed replacement to be unsuitable for any reason.
   2. The Supplier shall ensure that the role of each of its Key Personnel is not vacant (in terms of a permanent representative) for more than 10 Working Days. Any replacement shall be as, or more, qualified and experienced as the previous incumbent and fully competent to carry out the tasks assigned to the Key Personnel whom they have replaced. A temporary replacement shall be identified with immediate effect from the Supplier or the Authority becoming aware of the role becoming vacant.
   3. The Authority may require the Supplier to remove, or procure the removal of, any of its Key Personnel whom it considers, in its reasonable opinion, to be unsatisfactory for any reason which has a material impact on such person's responsibilities.
   4. If the Supplier replaces the Key Personnel as a consequence of this clause 9, the cost of effecting such replacement shall be borne by the Supplier.

### 10 Supplier Personnel

10.1 At all times, the Supplier shall ensure that:

1. each of the Supplier's Personnel is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;
2. all Supplier Personnel are vetted in accordance with the Staff Vetting Procedures;
3. there is an adequate number of Supplier's Personnel to provide the Services properly;
4. only those people who are authorised by the Supplier are involved in providing the Services; and
5. all of the Supplier's Personnel comply with all of the Authority's policies including those that apply to persons who are allowed access to the applicable Authority's Premises.
   1. The Authority may refuse to grant access to, and remove, any of the Supplier's Personnel who do not comply with any such policies, or if they otherwise present a security threat.
   2. The Supplier shall replace any of the Supplier's Personnel who the Authority reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's Personnel for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
   3. The Supplier shall maintain up-to-date personnel records on the Supplier's Personnel engaged in the provision of the Services and shall provide information to the Authority as the Authority reasonably requests on the Supplier's Personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with the Data Protection Legislation.
   4. The Supplier shall comply with the BPSS in respect of all Supplier Personnel. The Supplier confirms that all Supplier Personnel have been vetted and recruited in accordance with the BPSS.
   5. The Supplier warrants and represents that the checks specified in the BPSS have been carried out in respect of each person assigned to access the Authority’s Premises, property or information and that the results of those checks are satisfactory.
   6. The Supplier shall maintain full and accurate records of BPSS checks such that the Authority (or its authorised agents) may verify that the Authority has carried out such checks in accordance with the BPSS.
   7. Subject to legal requirements in respect of confidentiality, the Supplier shall grant to the Authority (or its authorised agents) the right of reasonable access to all records of BPSS checks and shall provide reasonable assistance at all times for the purpose of carrying out an audit of the Supplier’s compliance with the BPSS.
   8. The Authority may require the Supplier to ensure that any Supplier Personnel has undertaken a Disclosure and Barring Service (DBS) check. The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or is found by the Supplier to have a Relevant Conviction (whether as a result of a police check or through the DBS check or otherwise) is employed or engaged in the provision of any part of the Services.

### 11 Staff Transfer

11.1 The Parties agree that:

1. where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 8 (*Staff Transfer*) shall apply and Parts A and B of Schedule 8 (*Staff Transfer*) shall not apply; and
2. Part D of Schedule 8 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

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

### 12 Intellectual property

12.1 All Intellectual Property Rights in any materials provided by the Authority to the Supplier for the purposes of this agreement shall remain the property of the Authority.

12.2 The Authority hereby grants to the Supplier, a royalty-free, non-exclusive and nontransferable licence to use the materials referred to in clause 12.1 as required until termination or expiry of the agreement for the sole purpose of enabling the Supplier to perform its obligations under the agreement.

12.3 In the absence of prior written agreement by the Authority to the contrary, all Intellectual Property Rights created by the Supplier or Supplier's Personnel:

1. in the course of performing the Services; or
2. exclusively for the purpose of performing the Services,

shall vest in the Authority on creation. If and to the extent that any Intellectual Property Rights vests in the Authority by operation of law, the Supplier hereby assigns to the Authority by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual property Rights, all its Intellectual Property Rights in such materials (with full title guarantee and free from all third Party rights).

12.4 The Supplier hereby grants to the Authority, a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use:

1. any Intellectual Property Rights vested in or licensed to the Supplier on the date of the agreement; and
2. any Intellectual Property Rights created during the Term but which are neither created or developed pursuant to the agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such Intellectual Property Rights which the Authority reasonably requires in order to exercise its rights and take the benefit of the agreement including the Services provided.

12.5 The Supplier shall indemnify the Authority against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the availability of the Services, except to the extent that they have been caused by or contributed to by the Authority's acts or omissions.

### 13 Indemnities

13.1 The Supplier shall indemnify and keep indemnified the Authority against all liabilities, costs, expenses, damages and losses incurred by the Authority arising out of or in connection with:

1. the Supplier's breach or negligent performance or non-performance of this agreement;
2. any claim made against the Authority arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by the Supplier or Supplier Personnel;

### 14 Limitation of liability

14.1 Subject to clauses 14.4 and 14.5:

1. the aggregate liability of the Supplier in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the agreement, the supply or failure to supply of the Services, misrepresentation (whether tortuous or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equal to 100% of the Charges paid or payable to the Supplier; and
2. except in case of claims arising under clause 12.5, in no event shall the Supplier be liable to the Authority for any:
   * 1. loss of profits;
     2. loss of business;
     3. loss of revenue;
     4. loss of or damage to goodwill;
     5. loss of savings (whether anticipated or otherwise); and/or (vi) any indirect, special or consequential loss or damage.
   1. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss or damage arising out of or in connection with this agreement, including any losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this agreement.
   2. Subject to clause 14.4, the Authority's aggregate liability to the Supplier for all claims, losses or damages, whether arising from tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement (other than a failure to pay any of the Charges that are properly due and payable and for which the Authority shall remain fully liable), shall be limited in any Contract Year to 100% of the contract value.
   3. Notwithstanding any other provision of this agreement neither Party limits or excludes

its liability for:

1. fraud or fraudulent misrepresentation;
2. death or personal injury caused by its negligence (or the negligence of its personnel, agents or subcontractors);
3. breach of any obligation as to title implied by statute; or
4. any other liability for which may not be limited under any applicable law.

14.5 The Supplier’s liability under the indemnity in clause 12.5 shall be unlimited.

### 15 Insurance

15.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing as a minimum the following levels of cover:

1. public liability insurance with a limit of indemnity of not less than £5 million pounds in relation to any one claim or series of claims;
2. employer's liability insurance with a limit of indemnity of not less than £5 million pounds or in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
3. professional indemnity insurance with a limit of indemnity of not less than £1 million pounds in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;

Together (the **Required Insurances**). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

* 1. The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
  2. If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
  3. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the agreement.
  4. The Supplier shall hold and maintain the Required Insurances for a minimum of six years following the expiration or earlier termination of the agreement.

### 16 Reporting, meetings and monitoring

16.1 The Supplier shall attend meetings including quarterly review meetings with the Authority as detailed in the specification and shall ensure that its representatives are suitably qualified to attend such meetings and shall provide the Management Information in the form and at the intervals specified by the Authority as detailed at the specification.

16.2 The Authority may monitor the performance of the Services by the Supplier.

16.3 The Supplier shall co-operate, and shall procure that its Sub-Contractors co-operate, with the Authority in carrying out the monitoring referred to in clause 16.2 at no additional charge to the Authority.

### 17 Freedom of information

17.1 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

1. provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
2. transfer to the Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
3. provide the Authority with a copy of all Information belonging to the Authority requested in the Request For Information which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
4. not respond directly to a Request For Information unless authorised in writing to do so by the Authority.
   1. The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
   2. Notwithstanding any other term of this agreement, the Supplier consents to the publication of this agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.
   3. The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Supplier shall assist and co-operate with the Authority to enable the Authority to publish this agreement.

### 18 Protection of Personal Data and Security of Data

18.1 Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer, Joint Controller take the meanings given in the GDPR.

18.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the factual activity carried out by them in relation to their respective obligations under this agreement dictates the classification of each Party. Each Party acknowledges that where it is a Controller, it shall be responsible for its own compliance with all its obligations under the Data Protection Legislation.

18.3 The Parties acknowledge that they are Joint Controllers and the obligations of each Party as a Joint Controller is set out in Schedule 6.

18.4 When handling Authority data (whether or not Personal Data), the Supplier shall ensure that the security of the data is maintained in line with the security requirements of the Authority as notified to the Supplier from time to time.

### 19 Confidentiality

19.1 Subject to clause 19.2, each Party shall keep the other Party's Confidential Information confidential and shall not:

1. use such Confidential Information except for the purpose of performing its rights and obligations under or in connection with this agreement; or
2. disclose such Confidential Information in whole or in part to any third Party, except as expressly permitted by this clause 19.

19.2 The obligation to maintain confidentiality of Confidential Information does not apply to any Confidential information:

1. which the other Party confirms in writing is not required to be treated as Confidential Information;
2. which is obtained from a third Party who is lawfully authorised to disclose such information without any obligation of confidentiality;
3. which a Party is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the FOIA or the EIRs;
4. which is in or enters the public domain other than through any disclosure prohibited by this agreement;
5. which a Party can demonstrate was lawfully in its possession prior to receipt from the other Party; or
6. which is disclosed by the Authority on a confidential basis to any central government or regulatory body.

19.3 A Party may disclose the other Party's Confidential information to those of its representatives who need to know such Confidential Information for the purposes of performing or advising on the Party's obligations under this agreement, provided that:

1. it informs such representatives of the confidential nature of the Confidential Information before disclosure; and
2. it procures that its representatives shall, in relation to any Confidential Information disclosed to them, comply with the obligations set out in this clause as if they were a Party to this agreement,
3. and at all times, it is liable for the failure of any representatives to comply with the obligations set out in this clause 19.3*.*

19.4 Nothing in this agreement shall prevent the Authority from disclosing the Supplier’s Confidential Information (including the Management Information):

1. to any Crown body. All Crown bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown bodies on the basis that the information is confidential and is not to be disclosed to a third Party which is not part of any Crown body;
2. to any consultant, contractor or other person engaged by the Authority;
3. for the purpose of the examination and certification of the Authority's accounts;
4. to Parliament and Parliamentary Committees or if required by any

Parliamentary reporting requirement;

1. to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
2. on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement.
   1. The Authority shall use reasonable endeavours to ensure that any government department, employee, third Party or Sub-Contractor to whom the Supplier’s Confidential Information is disclosed pursuant to clause 19.4 is made aware of the Authority’s obligations of confidentiality.
   2. The provisions of this clause 19 shall survive for a period of six years from the Termination Date.

### 20 Transparency

20.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this agreement (including, but not limited to, any documents subsequently developed to monitor delivery and performance of the agreement) are not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the agreement is exempt from disclosure in accordance with the provisions of the FOIA.

20.2 Notwithstanding any other term of this agreement, the Supplier hereby gives his consent for the Authority to publish the agreement (and any documents subsequently produced by either Party as part of management of the agreement, including, but not limited to, performance against KPIs and plans to rectify the same etc.) in their entirety, including from time to time agreed changes to the agreement, to the general public.

20.3 The Authority may consult with the Supplier to inform its decision regarding any redactions that may be required to keep information which is exempt from disclosure under the FOIA from being disclosed but the Authority shall have the final decision in its absolute discretion. The Supplier shall assist and cooperate with the Authority to enable the Authority to publish this agreement.

### 21 Audit

21.1 The Supplier shall keep and maintain until 6 years after the end of the Term, full and accurate records of the agreement including the Services supplied under it, all payments made by the Authority and all expenditure reimbursed by the Authority.

21.2 The Supplier shall on request, afford the Authority or the Authority’s representatives such access to those records as may be requested by the Authority in connection with the agreement.

### 22 Assignment and Sub-Contracting

22.1 The Supplier shall not without the written consent of the Authority, assign, sub-contract, novate or in any way dispose of the benefit and/or the burden of the agreement or any part of the agreement. The Authority may in granting such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its SubContractors as though such acts and omissions were its own.

22.2 Where the Authority has consented to the placing of sub-contracts, the Supplier shall, at the request of the Authority, send copies of each sub-contract to the Authority as soon as reasonably practicable.

22.3 The Authority may assign, novate or otherwise dispose of its rights and obligations under the agreement to:

1. anybody established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
2. any private sector body which substantially performs the functions of the Authority,

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

* 1. A change in the legal status of the Authority shall not (subject to clause 22.5) affect the validity of this agreement and this agreement shall be binding on any successor body to the Authority.
  2. If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this agreement to a private sector body in accordance with clause 22.2.2 (the “**Transferee**” in the rest of this clause), the right of termination of the Authority in clause 22.1(b) (*Termination on Insolvency*) shall be available to the Supplier in the event of insolvency of the Transferee as if the references to Supplier in the definition of Insolvency Event were references to the Transferee.

### 23 Termination for breach

23.1 The Authority may terminate this agreement in whole or part with immediate effect by the service of written notice on the Supplier in the following circumstances:

1. if the Supplier is in breach of any material obligation under this agreement provided that if the breach is capable of remedy, the Authority may only terminate this agreement under this clause 23.1, if the Supplier has failed to remedy such breach within 28 days of receipt of notice from the Authority (a **Remediation Notice**) to do so;
2. if there is an Insolvency Event.
3. if there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.
4. the Authority reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply.
   1. The Authority may terminate this agreement in accordance with the provisions of clause 25 and clause 26.
   2. If this agreement is terminated by the Authority pursuant to this clause 23, such termination shall be at no loss or cost to the Authority and the Supplier hereby indemnifies the Authority (except in relation to termination under clause 25 (force majeure)) against any such losses or costs which the Authority may suffer as a result of any such termination.
   3. The Supplier may by issuing written notice to the Authority terminate this agreement in the event that the Authority fails to pay an undisputed sum due to the Supplier under this agreement which in aggregate exceeds circa £450,000, and if such amount remains outstanding 40 Working Days after the receipt by the Authority of the notice, then this agreement shall terminate on the date specified in the written notice save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under this agreement including clause 8.12. In the event that the Authority remedies the payment default, the Supplier's notice to terminate this agreement shall be deemed to have been withdrawn.

### 24 Termination on notice

Without affecting any other right or remedy available to it, the Authority may terminate this agreement at any time by giving one months' written notice to the Supplier.

### 25 Force majeure

25.1 Provided it has complied with the remaining provisions of this clause 25, if a Party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations.

25.2 The corresponding obligations of the other Party will be suspended to the same extent as those of the Affected Party.

25.3 The Affected Party shall:

1. as soon as reasonably practicable after the start of the Force Majeure Event but not later than Ten days from its start, notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event.
   1. An Affected Party cannot claim relief if the Force Majeure Event is attributable to the Affected Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event. The Supplier cannot claim relief if the Force Majeure Event is one which, in accordance with Good Industry Practice, the Supplier should have foreseen and provided for the cause in question.
   2. The Affected Party shall notify the other Party in writing as soon as practicable after the Force Majeure Event ceases or no longer causes the affected Party to be unable to comply with its obligations under this agreement. Following such notification, this agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the Parties.
   3. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than three weeks, the

Party not affected by the Force Majeure Event may terminate this agreement by giving four weeks' notice to the Affected Party.

### 26 Prevention of fraud and corruption

26.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the agreement or for showing or refraining from showing favour or disfavour to any person in relation to the agreement.

26.2 The Supplier shall and shall ensure that all Supplier Personnel comply with the Bribery Act.

26.3 If the Supplier or the Supplier Personnel engages in conduct prohibited by clause 25.1 or commits any offence under the Bribery Act, in relation to this agreement or any other contract with the Crown, the Authority may terminate this agreement with immediate effect for material breach and recover from the Supplier:

1. any losses and costs that are reasonably incurred by the Authority and directly associated with termination or otherwise under this clause 26.1; and
2. the amount or value of any gift, consideration or commission incurred by the Authority as a result of the Supplier’s breach of this clause 26.

### 27 Dispute resolution

27.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

27.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 27.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

27.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

### 28 Consequences of termination or expiry

28.1 On the expiry of the Term or if this agreement is terminated in whole or in part for any reason, the provisions of the Exit Management Plan and Schedule 5 shall come into effect and the Supplier shall co-operate fully with the Authority to ensure an orderly migration of the Services to the Authority or, at the Authority's request, a Replacement Supplier.

28.2 On termination or expiry of this agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by the Authority before such completion) the Supplier shall procure that all data and other material belonging to the Authority (and all media of any nature containing information and data belonging to the Authority or relating to the Services), shall be delivered to the Authority forthwith and the Supplier [authorised Representative or Chief Executive Officer] shall certify full compliance with this clause.

28.3 clause 28 (Consequences of termination), shall remain in full force and effect. Any provision of this agreement that expressly or by implication is intended to come into or continue force on or after termination or expiry, including clause 13 (Indemnities), clause 14 (Limitation of Liability), clause 15 (Insurance), clause 17 (Freedom of Information), clause 18 (Data Protection), clause 19 (Confidentiality), clause 21 (Audit), clause 22 (Termination for Breach) and this

28.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the Termination Date.

### 29 Non-solicitation

In order to protect each other's legitimate business interest, neither Party shall (except with the prior written consent of the other) during the term of this agreement [and for a period of one year thereafter] solicit or attempt to solicit or entice away any senior staff of the other Party who have been engaged or employed in the provision of the Services or the management of this agreement or any significant part thereof either as principal, agent, employee, independent contractor or in any other form of employment or engagement other than by means of an open national advertising campaign and not specifically targeted at such staff of the other Party.

### 30 Waiver

No failure or delay by a Party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

### 31 Variation

31.1 Subject to the provisions of this clause 31, the Authority may request a variation to this agreement provided that such variation does not amount to a material change of this agreement within the meaning of the Public Contracts Regulations 2015 and the Law. Such a change once implemented is hereinafter called a **‘Variation**’.

31.2 The Authority may request a Variation by written notice to the Supplier giving sufficient information to enable the Supplier assess the extent of the Variation and any additional costs that may be incurred. The Authority shall specify a time limit within which the Supplier shall respond to the nature of the Variation. If the Supplier accepts the Variation, it shall confirm the same in writing.

31.3 Where the Supplier is unable to agree the Variation or where the Parties are unable to agree a change to the Charges, the Authority may:

1. allow the Supplier to fulfil its obligations under the agreement without the Variation;
2. terminate the agreement with immediate effect except where the Supplier has delivered all or part of the Services or where the Supplier can show evidence of substantial work being carried out to provide the Services under this agreement, and in such case, the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution Procedure detailed at clause 27.

31.4 If the Parties agree the Variation, the Supplier shall implement such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in this agreement.

### 32 Compliance

32.1 The Supplier shall perform its obligations under this agreement in accordance with all applicable Law including health and safety; and the Authority’s health and safety policy (as provided to the Supplier from time to time) whilst at the Authority Premises.

32.2 Each Party shall notify the other as soon as possible of any health and safety incidents or material health and safety hazards at the Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this agreement.

32.3 While on the Authority Premises, the Supplier shall comply with any health and safety measures implemented by the Authority in respect of Supplier Personnel and other persons working there and any instructions from the Authority on any necessary associated safety measures.

32.4 The Supplier shall perform its obligations under this agreement in accordance with all applicable equality Law and any other requirements and instructions which the

Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law.

32.5 The Supplier shall provide the Services in accordance with the Authority’s environmental policy as provided to the Supplier from time to time.

32.6 The Supplier shall comply with, and ensure that the Supplier Personnel comply with, the provisions of:

1. the Official Secrets Act 1911 to 1989; and
2. section 182 of the Finance Act 1989.

### 33 Change in Law

33.1 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with this agreement nor be entitled to an increase in the Charges as the result of:

1. a General Change in Law; or
2. a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

33.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to at clause 33.1(b)), the Supplier shall:

1. notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
   1. whether any Variation is required to the Services, the Charges of this agreement; and
   2. whether any relief from compliance with the Supplier’s obligations is required; and
2. provide the Authority with evidence:
   1. that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its SubContractors;
   2. as to how the Specific Change in Law has affected the cost of providing the Services; and
   3. demonstrating that any expenditure that has been avoided, has been taken into account in amending the Charges.

### 34 Rights and remedies

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

### 35 Severability

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

35.2 If any provision or part-provision of this agreement is deemed deleted under clause 35.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

### 36 Partnership or agency

36.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

36.2 Each Party confirms it is acting on its own behalf and not for the benefit of any other person.

### 37 Third Party rights

37.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

### 38 Publicity

The Supplier shall not:

1. make any press announcements or publicise this agreement or its contents in any way; or
2. use the Authority's name or logo in any promotion or marketing or announcement of orders,

except as required by law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.

### 39 Notices

39.1 Any notice given to a Party under or in connection with this agreement shall be in writing marked for the attention of the Party's authorised Representative and shall be:

1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
2. sent by fax to its main fax number or sent by email to: naima.anwar@[cabinetoffice.gov.uk](http://cabinetoffice.gov.uk/)

39.2 Any notice shall be deemed to have been received:

1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
3. if sent by fax or email, at the time of transmission, or if this time falls outside working hours in the place of receipt, when working hours resume. In this clause 38.2(c), working hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

39.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### 40 Entire agreement

40.1 This agreement and the documents referred to in it constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

40.2 Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation (or negligent misstatement) based on any statement in this agreement.

### 41 Counterparts

41.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.

### 42 Governing law and Jurisdiction

42.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

42.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

SIGNED for and on behalf of

The Minister for Cabinet Office by:

…………………………..

Authorised signatory

…………………………..

Name (in block capitals)

SIGNED for and on behalf of **[Redacted]** by:

[REDACTED]

Schedule 1 **Specification**

# Services and Key Performance Indicators

## 1. General

1.1. The purpose of this is to lay down the characteristics of the Services that the Supplier will be required to make available to all Customers under this Contract together with any specific Standards applicable to the Services.

1.2. The Fast Stream and Early Talent (FSET) team is an expert service established as part of the creation of Civil Service HR to provide early talent recruitment and management across the Civil Service.

1.3. FSET’s Diversity and Inclusion (D&I) vision is to be the most inclusive graduate and early talent programme. This is to be achieved through continuing outreach and positive action internship activities to encourage applications from under-represented groups which currently include those from lower socio-economic backgrounds (Lower SEB), Black, Asian and Minority Ethnic (BAME) backgrounds and those with disabilities.

1.4. The overall aim is to recruit diverse candidates to the FSET graduate, apprenticeship and internship programmes which includes the Fast Stream graduate programme, Fast Track Apprenticeship programme, summer and Early Diversity Internship programmes. To aid in achieving this aim; the Contracting Authority will engage with Suppliers who are specialist in this area and have a network of eligible candidates that they can support through the application process. The Suppliers will also help deliver bespoke coaching and training to staff and prospective candidates. The Fast Stream graduate and diversity internship campaigns are typically run during September - November and the apprenticeship campaign from February - April.

1.5. External suppliers are required to promote our programmes to hard to reach diverse groups who are currently under-represented in the Civil Service.

1.6. The major groups the Authority requires assistance with are:

**1.6.1.** Attraction and Recruitment of Ethnic minority/ Lower Socioeconomic background candidates (Lower SEB)

**1.6.2.** Coaching of diverse candidates

### 2. Lots

2.1. Contract is made up of two (2) Lots as follows:

**2.1.1. Lot 1- Attraction and Recruitment of Ethnic minority/Lower SEB candidates**

2.1.1.1. Identify, attract and recruit eligible Ethnic Minorities and Lower SEB candidates to the Civil Service Fast Stream Graduate Programme, Fast Track Apprenticeship and internship programmes.

2.1.1.2. Additional Services – The Contracting Authority may require one or all of the Suppliers to take on additional Services relating to this lot. This may include but not be limited to the following elements:

2.1.1.2.1. **Ethnicity** - Targeting specific sub groups within the ethnic minority categories for example black Caribbean/black African candidates. The Contracting Authority will do this by making a request for change to the Contract and will give the Supplier(s) the opportunity to quote against the additional Service requirements. The Contracting Authority will then review and if necessary agree or otherwise the pricing and the proposals provided within the quote(s). The Contracting Authority reserves the right to go out to all Suppliers within the lot or just one.

2.1.1.2.2. **Lower SEB** - Target candidates who have been to state schools or those who are based outside of London.

#### 2.1.2. Lot 3 - Summer Diversity Internship Programme (SDIP) Coaching of diverse participants

2.1.2.1. Provide bespoke face-to-face coaching and skills development of approximately three hundred (300) interns. Tailored feedback should be documented and provided to each intern on a 1-2-1 basis.

2.1.2.2. Additional Services – The Contracting Authority may require one or all of the Suppliers to take on additional Services relating to this lot. This may include but not be limited to the following elements:

2.1.2.2.1. Example – Specific coaching on a particular element of the Graduate Fast Stream and/or Fast Track Apprenticeship process and/or direct appointment scheme candidates (Fast Stream near misses).

1. **Targeted face to face engagement:** 
   1. For Lot 1, Suppliers will be required to complete targeted face to face engagement to gain access to potential candidates from the diverse groups. Face to face engagement may be but not limited to:
      1. Insight events - Deliver and host insight events for diverse candidates. Also hold insight days for career advisers, teachers and other key influences to provide them with in-depth knowledge on our Fast Stream & Early Talent (FSET) programmes, so they can confidently relay the information back to candidates.
      2. Network events - Facilitate our target audience to network with Fast Streamers, Fast Trackers who are currently on the programme and other role models within the Civil Service.
      3. Diverse brand ambassadors - Coordinate outreach activities with Civil Service campus ambassadors to promote the FSET programmes to target groups.
      4. Workshops - Deliver workshops to promote the FSET programmes to our target groups
      5. Maintain contact with candidates, monitoring and providing development support as they progress through the selection process of the various FSET programmes.

1. **Digital:** 
   1. For Lot 1, Suppliers will be required to promote FSET programmes to target groups across digital platforms. This may include but is not limited to:
      1. Targeted emails - To be aimed at those, currently under-represented in the FSET programmes. Emails may include details of the FSET programmes, information on the selection process as well as hints and tips.
      2. Diverse case studies - Share blogs, role model profiles and case studies
      3. Website - Promote FSET programmes on their website to our target groups
      4. Webinars - Host webinars to demystify FSET programmes, share information on the selection process as well as hints and tips.
      5. Social Media - Make full use of social media platforms to access diverse candidate & key influencers. This will involve partners dispelling myths across their various social media platforms including Twitter, Linkedin, Facebook & Whatsapp
      6. Video Content - Produce videos of positive role models to target our priority groups which can be promoted on social media and digital platforms.
      7. Maintain contact with candidates, monitoring and providing development support as they progress through the selection process of the various FSET programmes.

1. **Skills development and coaching support (Lot 3 only):** 
   1. Under Lot 3, Suppliers will be required to set up and run positive action support sessions where diverse applicant groups with leadership potential would have access to skills development and coaching. The development sessions should be focused on the groups most under-represented on the FSET’s programmes and on the areas causing the greatest negative impact throughout the selection process.
      1. Maintain contact with candidates, monitoring and providing development support as they progress through the selection process of the various FSET programmes.
   2. Diversity proofing and critical friend challenge. This could include:
      1. Provide constructive challenge to our selection process to support the conversion of candidates from diverse backgrounds.
      2. Diversity proofing assessment materials to ensure they are fully inclusive.
      3. Share industry best practice on how best to convert those from diverse backgrounds.

### 6. Reporting

6.1. Suppliers will be required to collaborate with the Contracting Authority to develop measurements and suitable points in the process to track and record progress of candidates through the selection process.

**6.1.1.** Management Information (MI)

6.1.1.1. The Supplier must provide the Contracting Authority with reports on all activities carried out on a monthly basis during campaign periods and at the end of the Contracted Period (2022). These could be but not limited to the following:

6.1.1.1.1. Completion and collation of candidate satisfaction surveys and preparation of comprehensive feedback reports after each networking/insight event and coaching/skills-gap session using the Contracting Authorities candidate survey templates.

6.1.1.1.2. Design and develop appropriate methodologies to measure the effectiveness of events organised/delivered and present the results of their analysis to the Contracting Authority.

6.1.1.1.3. Social media campaigns undertaken and capture number of hits/enquiries generated by each campaign.

6.1.1.1.4. Creation of separate candidate database to record the number of applications received for Fast Track; Fast Stream and Internship programmes candidates across each the specified under-represented groups.

#### 6.1.1.1.5. Planning For Lot 1 only

· Operational timeline to be shared in July 2019

· Campaign Strategy with operational plan to be shared by July 2019

· Communications plan to be shared July 2019

· Introductory meeting with Fast Stream Campus teams in August 2019

6.1.1.1.6. **Awareness and Influencing** (face to face engagement and digital)

· Market all relevant Fast Stream and Early Talent opportunities via the supplier website – July/August 2019

· Targeted digital e-promotions sent to relevant audiences: schools, colleges and Universities – during campaign

· Social media promotions (Facebook and twitter etc.), minimum of 6 posts/tweets per month

· Insight event promoting the relevant opportunities – during campaign

· Run a minimum of 4 webinars to promote FSET programmes to networks

· Deliver workshops promoting the FSET programmes and upskilling prospective candidates across schools/colleges and universities – pre, during and post campaign.

· Connect the Civil Service Fast Stream with university societies from under-represented groups

### 7. Commercial Contract management and Contract Manager/Contract Management Team

7.1. The Supplier will be required to attend Contract management meetings with the Contracting Authority for the purpose of discussing:

**7.1.1.** Progress of the project against target

**7.1.2.** Review and plan forthcoming recruitment campaigns

7.2. The Supplier must provide a Representative/Contract Manager/Contract Management team (Contract Manager) to liaise with the Contracting Authority for activities associated with the provision of the requirement.

7.3. Initially the Supplier’s representative will be required to meet with the Diversity Outreach team on a monthly basis. There will also be a requirement to meet on an ad hoc basis.

7.4. The primary Contract management activity from both Parties will be to monitor, maintain and improve the service performance. The Supplier and the Contracting Authority will agree detailed Service Levels upon award of the Contract.

1. **Quarterly Reviews** 
   1. Quarterly review meetings will be held, on a date to be agreed between the Parties.
   2. The review meetings will be attended by the Client’s Lead Commercial and Lead Contract Managers and any appropriate Contract Management Team representatives from both Parties or other such persons notified by the Client considered to be necessary for the review.
   3. In respect of the period under review, the Client will take into account any matters it considers necessary, including:
      1. Overall performance against key performance indicators;
      2. Volume trends/general trend analysis;
      3. Compliance and satisfaction levels;
      4. Sustainability strategy and performance;
      5. Business continuity issues and updates;
      6. Proposals for improvements;
      7. Financial stability;
      8. Review of Risk Assessments; and
      9. Review of any Security issues and Security Plan
   4. The Quarterly Reviews will be minuted. The minutes will be circulated to all attendees of the meeting. The minutes of each quarter’s meeting will be agreed between the Contractor and Contracting Authority within 14 days of initial circulation.

### 9. Implementation Plan

9.1. The Supplier should provide an implementation plan which includes risks and mitigation for delivering their activity to the target audience in September 2019.

9.2. Supplier will also be required to provide an organogram for those managing this Contract.

9.3. The Suppliers Implementation Plan including a process map and or a project plan as detailed in the response to the question AQB2 will form part of the resulting contract at Schedule 9 Tender.

### 10. Research

10.1. The Supplier is required to conduct research on the target audience in relation to their specific lot, to help inform their campaign strategy. This research could include perceptions of the Civil Service and FSET programmes and potentially barriers facing our target audience.

### 11. Security

11.1. The Supplier shall comply, and be able to demonstrate compliance with:

**11.1.1.** The Contracting Authority Security policies and standards; and

**11.1.2.** The Data Security Plan submitted when completing the Award Criteria Security Questionnaire as part of the tender response.

**11.1.3.** The Contracting Authority Security policies and standards are outlined in Her

Majesty’s Government – Security Policy Framework

(http://www.cabinetoffice.gov.uk/resource-library/security-policy-framework)

**11.1.4.** The Supplier will need to demonstrate within their proposals their ability to meet the data handling security requirements as detailed in Schedule 10 and to identify the risks in processes that will need addressing in a formally agreed Security Plan.

### 12. Data Security

12.1. The Supplier must ensure that data collected on individuals must be stored securely in the UK in line with General Data Protection Regulations (GDPR) and Security Policy Frameworks. (http://www.cabinetoffice.gov.uk/resource-library/security-policyframework)

12.2. The Supplier must ensure that data collected on individuals must be securely destroyed after 24 months in line with GDPR and Security Policy Frameworks.

### 13. Minimum Security Measures

13.1. The Supplier must provide the following minimum mandatory security measures:

**13.1.1.** Compliance with the Baseline Personnel Security Standard, see paragraphs 14 below that cover pre-employment checks and Supplier’s declaration;

**13.1.2.** Appropriate risk mitigation actions as may be appropriate for effective Contract management activities. Includes the identification of soft copy information as well as hard copy information;

**13.1.3.** Ensure the minimum number of Supplier personnel handle the Client’s data and the identification of roles and responsibilities of staff handling the Client’s data is recorded;

**13.1.4.** Development of appropriate incident management processes and systems that will be used to deal effectively with any incident of data loss;

**13.1.5.** Ensure that all Suppliers’ staff involved in handling departmental data within the Contract understands their obligations to data security including their legal and contractual responsibilities.

### 14. Personnel

14.1. The appointed Supplier will ensure that every member of staff, including temporary staff and Sub-Contractors and their staff can confirm:

**14.1.1.** Name, date of birth and address;

**14.1.2.** National Insurance number or other unique personal identifying number where appropriate;

**14.1.3.** Full details of previous employers (name, address and dates), for a minimum of the past 3 years;

**14.1.4.** Confirmation of any necessary qualifications/licences;

**14.1.5.** Educational details and references where someone is new to the workforce when these are considered necessary;

**14.1.6.** Confirmation of permission to work in the UK, if appropriate;

**14.1.7.** A Criminal Record Declaration Form;

**14.1.8.** The appointed Supplier must hold validated references for their staff, including documentary evidence;

**14.1.9.** To establish the bona fide status of the staff;

**14.1.10.** Their permission to work within the UK prior to the commencement of working with Cabinet Office.

14.2. The appointed Supplier must ensure that their personnel comply with the Contracting Authority policies in respect of;

**14.2.1.** Security;

**14.2.2.** Health and Safety; and

**14.2.3.** Diversity

14.3. It is a requirement that, at the appointed Supplier’s own cost, all staff, including SubContractors and their staff, working on this Contract must be fully trained in respect of the Contracting Authority or:

**14.3.1.** Security;

**14.3.2.** Health and Safety; and

**14.3.3.** Diversity

14.4. The Contracting Authority employs a diverse workforce and the Supplier must ensure that personnel engaging with the Client’s staff act in a non-discriminatory manner.

14.5. The Contracting Authority requires that employees who fail to satisfy vetting procedures, or who refuse to be vetted, be removed from all tasks involved with this Contract. The Contracting Authority will not give reasons for this requirement and the appointed Supplier must comply with such a direction.

Schedule 2 **Charges and payment**

[REDACTED]

Schedule 3 **Service Levels and Key Performance Indicators**

**ANNEX 1: Key Performance Indicators and Subsidiary Performance Indicators**

# PART I: Key Performance Indicators and Subsidiary Performance Indicators Tables

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



Schedule 4 **Contract management**

[REDACTED]

# Schedule 5 Exit Management

## 1 Exit Management Plan

1.1 The Supplier must, within three (3) Months after the Commencement Date, deliver to the Authority the Exit Management Plan which sets out the Supplier's proposed methodology for achieving orderly transition of the provision of the Services from the Supplier to the Authority and/or the Replacement Supplier on the expiry or termination of this agreement.

1.2 The Supplier must ensure that an initial reasonable assessment referred to at 1.3 is conducted.

1.3 The Supplier must ensure that an initial assessment is undertaken of any Intellectual Property Rights issues that may exist that will impact on the migration of the Services to the Authority or a Replacement Supplier, then these must be summarised and included in the Exit Management Plan.

1.4 Within thirty (30) Working Days after submission of the draft Exit Management Plan (or any revised plan) to the Authority, the Parties will use their reasonable endeavours to agree its content and if they are unable to reach agreement then the dispute will be referred to the Dispute Resolution Procedure.

1.5 The Supplier must review and update the Exit Management Plan within one (1) month of each anniversary of the Commencement Date.

## 2 Assistance on Expiry or Termination

2.1 The Supplier must include in their Exit Management Plan details of how this agreement will be maintained for the Authority during any exit phase as a result of the agreement expiring or being terminated.

2.2 In the event that this agreement expires or is terminated, the Supplier must, where so requested by the Authority, provide assistance to the Authority to migrate the provision of the Services to the Authority or a Replacement Supplier.

Schedule 6 **Data processing**

# JOINT CONTROLLER AGREEMENT

1.1 With respect to Personal Data which has been identified, in this Schedule 6 as under joint control of the Parties, the Parties envisage that they shall jointly determine the purpose and means of processing and each be a Controller in respect of that Personal

Data. Accordingly, the Parties each undertake to comply with the Data Protection Legislation in respect of their Processing of such Personal Data as Joint Controllers.

1.2 The Supplier shall be the exclusive point of contact for those Data Subjects who the Supplier is engaging with as potential candidates for the fulfillment of this Contract. and shall:

1. direct Data Subjects to the Supplier’s 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;
2. be responsible for the Parties’ compliance with all duties to provide information under Articles 13 and 14 of the GDPR; and
3. shall make available to Data Subjects the essence of this paragraph 1 (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact. 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 The Joint Controllers each undertake that they shall:

1. report to the other Party every three months on:
   1. the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third Parties on their behalf);
   2. the volume of requests from Data Subjects (or third Parties on their behalf) to rectify, block or erase any Personal Data;
   3. any other requests, complaints or communications from Data Subjects (or third Parties on their behalf) relating to the other Party’s

obligations under Data Protection Legislation;

* 1. any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
  2. 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;
  3. information that it has received in relation to the Personal Data under joint control during that period;

1. notify each other immediately if it receives any request, complaint or communication made as referred to in paragraphs 1.3(a)(i) to to (v); and
2. provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in paragraphs 1.3(a)(iii) to (v) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation.
3. obtain the consent of Data Subjects for carrying out and documenting legitimate interest assessments, in accordance with the GDPR, for all Processing;
4. not disclose or transfer the Personal Data to any third Party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third Party, (save where such disclosure or transfer is specifically authorised under this agreement or is required by Law). For the avoidance of doubt, the basis on which any Personal Data may be transferred shall be subject to equivalent obligations which are no less onerous than those set out in this Schedule.
5. request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information.
6. ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data.
7. take all reasonable steps to ensure the reliability and integrity of any of its personnel who have access to the Personal Data and ensure that its personnel:
8. are aware of and comply with their ’s duties under this Schedule and those in respect of Confidential Information;
   1. are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third Party where that Party would not be permitted to do so;
   2. have undergone adequate training in the use, care, protection and handling of Personal Data as required by the applicable Data Protection Legislation;
9. ensure that it has in place Protective Measures as appropriate to protect against a Data Loss Event having taken account of the:
   * 1. nature of the data to be protected;
     2. harm that might result from a Data Loss Event; (iii) state of technological development; and (iv) cost of implementing any measures.
10. 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.

* 1. 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 Schedule 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.

* 1. 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:

* 1. 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;
  2. co-operation with the other Party including taking such reasonable steps as are directed by the other Party to assist in the investigation, mitigation and remediation of a Personal Data Breach;
  3. co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach;
  4. 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 1.6.

1.6 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 upon becoming aware of the Personal Data Breach details relating to the Personal Data Breach, in particular:

* + 1. the nature of the Personal Data Breach;
    2. the nature of Personal Data affected;
    3. the categories and number of Data Subjects concerned;
    4. 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) a description of the likely consequences of the Personal Data Breach.

1.7 The Parties shall:

1. provide all reasonable assistance to each other in preparing any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
2. maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this agreement, such records shall include the following information:
   * 1. the categories and purposes of Processing carried out in respect of the Personal Data;

* + 1. where applicable, complete information about transfers of Personal

Data outside the EU, and the safeguards implemented in respect of such transfers necessary to comply with Law;

* + 1. a general description of the Protective Measures which the Supplier has implemented to safeguard the Personal Data in accordance with this paragraph and in compliance with Law.

1.8 If financial penalties are imposed by the Information Commissioner on either Joint Controller for a Personal Data Breach ("**Financial Penalties**") then the following shall occur:

* + 1. If 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 Authority’s reasonable cost, full cooperation and access to conduct a thorough audit of such data incident;
    2. If 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 the Financial Penalties. The Authority will provide to the Supplier and its auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such data incident.
    3. If responsibility for the financial penalty is unclear, then the Joint Controllers 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 Dispute Resolution.

* 1. If any of the Joint Controllers is the defendant in a legal claim brought 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 a court of competent jurisdiction or the Information Commissioner 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 or the Information Commissioner, as the case may be.
  2. In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach **(the “Claim Losses”):**

1. the Party responsible for the relevant breach shall be responsible for the Claim Losses; and

1. if responsibility is unclear, then the Parties shall be responsible for the Claim Losses equally.

1.11 In respect of any Processing of Personal Data under joint control by a sub-contractor or agents of a Party, each Party shall:

* + 1. carry out adequate due diligence on such third Party or the sub-contractor to ensure that it is capable of providing the level of protection for the Personal Data as is required by paragraph 1.3(e), and provide evidence of such due diligence to the other Party where reasonably requested by the other Party or the Information Commissioner; and
    2. ensure that a suitable agreement is in place with the third Party or the Subcontractor including as may be required under applicable Data Protection Legislation.

1.12 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 appropriate 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 or desirable to ensure its compliance with Data Protection Legislation and its privacy policy.

Schedule 7 **Commercially Sensitive Information**

Not applicable.

Schedule 8 **Staff Transfer**

# 1. DEFINITIONS

2. In this Schedule 8, the following definitions shall apply:

|  |  |
| --- | --- |
| **“Admission Agreement”** | An admission agreement in the form available on the Civil  Service Pensions website immediately prior to the Relevant Transfer Date to be entered into by the Supplier where it agrees to participate in the Schemes in respect of the Services; |
| **“Eligible Employee”** | any Fair Deal Employee who at the relevant time is an  eligible employee as defined in the Admission Agreement; |
| **“Fair Deal Employees”** | those Transferring Authority Employees who are on the Relevant Transfer Date entitled to the protection of New Fair Deal (and, in the event that Part B of this Schedule 8 applies, any Transferring Former Supplier Employees who originally transferred pursuant to a Relevant Transfer under the Employment Regulations (or the predecessor legislation to the Employment Regulations), from employment with a public sector employer and who were once eligible to participate in the Schemes and who at the Relevant Transfer Date become entitled to the protection of New Fair Deal); |
| **“Former Supplier”** | a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any subcontractor of any such sub-contractor); |
| **“New Fair Deal”** | the revised Fair Deal position set out in the HM Treasury guidance: *“Fair Deal for staff pensions: staff transfer from central government”* issued in October 2013including any amendments to that document immediately prior to the Relevant Transfer Date; |
| **“Notified Sub-Contractor”** | a Sub-Contractor identified in the Annex to this Schedule 8 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 subcontractor); |
| **“Relevant Transfer”** | a transfer of employment to which the Employment Regulations applies; |
| **“Relevant Transfer Date”** n relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;  **“Schemes”** he Principal Civil Service Pension Scheme available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under | |

section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Scheme and (ii) Death Benefits Scheme; the Civil Service Additional

Voluntary Contribution Scheme; the Designated Stakeholder Pension Scheme and “alpha” introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014;

|  |  |
| --- | --- |
| **“Service Transfer”** | any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-Contractor to a Replacement Supplier or a Replacement Sub-  Contractor; |
| **“Service Transfer Date”** | he date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires; |
| **“Staffing Information”** | in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Authority may reasonably request (subject to all applicable provisions of the DPA), but including in an anonymised format: |

1. their ages, dates of commencement of employment or engagement, gender and place of work;
2. details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise;
3. the identity of the employer or relevant contracting Party;
4. their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
5. their wages, salaries, bonuses and profit sharing arrangements as applicable;
6. 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;
7. any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
8. details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
9. 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
10. any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;

|  |  |
| --- | --- |
| **“Supplier's Final Supplier Personnel List”** | 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.

# 3. INTERPRETATION

Where a provision in this Schedule 8 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**

**NOT USED**

**PART B**

**TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES**

**NOT USED**

**PART C**

**NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES**

# 4. PROCEDURE IN THE EVENT OF TRANSFER

4.1 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.

4.2 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:

4.2.1 the Supplier shall, and shall procure that the relevant Sub-Contractor shall, within five (5) Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and

4.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third Party may offer) employment to such person within fifteen (15) Working Days of the notification by the Supplier or the Sub-Contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

4.3 If an offer referred to in Paragraph 1.2.2 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.

4.4 If by the end of the fifteen (15) Working Day period specified in Paragraph 1.2.2:

4.4.1 no such offer of employment has been made;

4.4.2 such offer has been made but not accepted; or

4.4.3 the situation has not otherwise been resolved,

5. the Supplier and/or the Sub-Contractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.

# 6. INDEMNITIES

6.1 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:

6.1.1 indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 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

6.1.2 subject to paragraph 3, 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.

6.2 If any such person as is described in Paragraph 1.2 is neither re-employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-Contractor within the fifteen (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.

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

6.4 The indemnities in Paragraph 2.1:

6.4.1 shall not apply to:

(a) any claim for:

1. 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
2. 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

(b) 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

6.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-Contractor to the Authority and, if applicable, Former Supplier within 6 months of the Commencement Date.

# 7. PROCUREMENT OBLIGATIONS

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

**PART D**

**EMPLOYMENT EXIT PROVISIONS**

# 9. PRE-SERVICE TRANSFER OBLIGATIONS

9.1 The Supplier agrees that within twenty (20) Working Days of the earliest of:

9.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;

9.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;

9.1.3 the date which is twelve (12) months before the end of the Term; and

9.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any six (6) month period),

1. it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
   1. At least thirty (30) 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:
      1. the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
      2. the Staffing Information in relation to the Supplier’s Final Supplier Personnel List (insofar as such information has not previously been provided).
   2. 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.
   3. 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.
   4. From the date of the earliest event referred to in Paragraph 1.1, 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):
      1. 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;
      2. make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including any payments connected with the termination of employment);
      3. increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
      4. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
      5. increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
      6. 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,
2. and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate employment given by the Supplier or relevant Sub-Contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.
   1. During the Term, the Supplier shall provide, and shall procure that each SubContractor 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:
      1. the numbers of employees engaged in providing the Services;
      2. the percentage of time spent by each employee engaged in providing the Services;
      3. the extent to which each employee qualifies for membership of any of the Schemes or any broadly comparable scheme set up pursuant to the provisions of paragraph 2.2 of the Annex (Pensions) to Part A of this Schedule 8 or paragraph 2.3 of the Annex (Pensions) to Part B of this Schedule 8 (as appropriate); and
      4. a description of the nature of the work undertaken by each employee by location.
   2. 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 five (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:

* + 1. the most recent month's copy pay slip data;
    2. details of cumulative pay for tax and pension purposes;
    3. details of cumulative tax paid;
    4. tax code;
    5. details of any voluntary deductions from pay; and
    6. bank/building society account details for payroll purposes.

# 12. EMPLOYMENT REGULATIONS EXIT PROVISIONS

12.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by 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 SubContractor (as the case may be) and each such Transferring Supplier Employee.

12.2 The Supplier shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (but not 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.

12.3 Subject to Paragraph 2.4, where a Relevant Transfer occurs, 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:

12.3.1 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;

12.3.2 the breach or non-observance by the Supplier or any Sub-Contractor occurring on or before the Service Transfer Date of:

1. any collective agreement applicable to the Transferring Supplier Employees; and/or
2. 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;

12.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;

12.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

1. 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
2. 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;

12.3.5 a failure of the Supplier or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier

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

12.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-Contractor other than a Transferring Supplier Employee 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 SubContractor may be liable by virtue of this Contract and/or the Employment Regulations and/or the Acquired Rights Directive; and

12.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

12.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:

12.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-Contractor to occur in the period on or after the Service Transfer Date); or

12.4.2 arising from the Replacement Supplier’s failure, and/or Replacement SubContractor’s failure, to comply with its obligations under the Employment Regulations.

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

12.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-Contractor shall, within (five) 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and

12.5.2 the Supplier may offer (or may procure that a Sub-Contractor may offer) employment to such person within fifteen (15) Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

12.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-Contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.

12.7 If after the fifteen (15) Working Day period specified in Paragraph 2.5.2 has elapsed:

12.7.1 no such offer of employment has been made;

12.7.2 such offer has been made but not accepted; or

12.7.3 the situation has not otherwise been resolved

1. the Replacement Supplier and/or Replacement Sub-Contractor, as appropriate that it may within five (5) Working Days give notice to terminate the employment or alleged employment of such person.
   1. Subject to the Replacement Supplier and/or Replacement Sub-Contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.
   2. The indemnity in Paragraph 2.8:

13.2.1 shall not apply to:

(a) any claim for:

1. 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
2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

14. in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor; or

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

14.1.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-Contractor to the Supplier within six (6) months of the Service Transfer Date.

14.2 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 and the Replacement Supplier and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.

14.3 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:

14.3.1 the Supplier and/or any Sub-Contractor; and

14.3.2 the Replacement Supplier and/or the Replacement Sub-Contractor.

14.4 The Supplier shall, and shall procure that each Sub-Contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement SubContractor, 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.

14.5 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:

14.5.1 any act or omission of the Replacement Supplier and/or Replacement SubContractor 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;

14.5.2 the breach or non-observance by the Replacement Supplier and/or Replacement Sub-Contractor on or after the Service Transfer Date of:

1. any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List; and/or
2. any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier’s Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-Contractor is contractually bound to honour;

14.5.3 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;

14.5.4 any proposal by the Replacement Supplier and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees 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;

14.5.5 any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-Contractor to, or in respect of, any Transferring Supplier Employee 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;

14.5.6 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

1. 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

1. 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;

14.5.7 a failure of the Replacement Supplier or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring

Supplier Employees identified in the Supplier’s Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

14.5.8 any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier’s Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

14.6 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 SubContractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-Contractor (as applicable) to comply with its obligations under the Employment Regulations.

**Schedule 9 Tender**

[REDACTED]

# Schedule 10 Security

[REDACTED]