**HEALTH AND SAFETY EXECUTIVE**

**and**

**capita business services limited**

**SERVICES CONCESSION AGREEMENT**

**FOR**

**OPERATION OF GAS SAFE REGISTER**

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Parties

This Agreement is made on

Between:

**HEALTH AND SAFETY EXECUTIVE**, an executive non-departmental public body with Crown status, established under the Health and Safety at Work etc Act 1974 and having its head office at Redgrave Court, Merton Road, Bootle L20 7HS (**“HSE”**),

and

**CAPITA BUSINESS SERVICES LIMITED**, a company registered in England & Wales with Registered Number 02299747 and having its registered office at First Floor, 2 Kingdom Street, Paddington, London, England, W2 6BD (**“Provider”**)

together the **“Parties”** and individually a **“Party”**.

Recitals

Whereas:

(A) In November 2018, HSE appointed a provider in connection with the operation of the gas installers registration scheme concessions, which have been operated under a certificate of approval granted by HSE under regulation 3 of the Gas Safety (Installation and Use) Regulations 1998 and a certificate of approval granted by Health and Safety Executive Northern Ireland (HSENI) under the Gas Safety (Installation and Use) Regulations (Northern Ireland) 2004.

(B) On 1 February 2024, HSE advertised a contract opportunity on Find a Tender (reference 2024/S 000-003347) (on behalf of itself and HSENI), inviting prospective providers to submit proposals in connection with the supply of certain Concession Services, Ancillary Services and potential Additional Services to HSE and HSENI in connection with the gas installers registration scheme concessions.

(C) The Provider responded to HSE’s request and, based on a proposal supplied by the Provider and subsequent clarifications and negotiations, HSE selected the Provider as its supplier of choice to provide the services specified in this Agreement.

(D) HSENI has granted to the Provider the NI Scheme Approval.

(E) Accordingly, the Provider has agreed to supply certain Concession Services, Ancillary Services and Additional Services to HSE and HSENI, on the terms set out in this Agreement.

The Parties hereby agree as follows:

Preliminary

1. Interpretation
   1. In this Agreement the definitions set out in Schedule 0 (Glossary) shall apply.
   2. In this Agreement, except where the context requires:
      1. the singular includes the plural and vice versa;
      2. reference to a gender includes the other gender and the neuter;
      3. the words **“include”**, **“includes”**, **“including”**, **"in particular"**, **"for example"** and similar words shall not limit the generality of the preceding words and are to be construed as if they were immediately followed by the words “without limitation”;
      4. references to any person or party shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons and parties of whatever kind and however constituted;
      5. a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023) from time to time;
      6. headings are for convenience of reference only and shall not affect the interpretation or construction of the Agreement;
      7. references in this Agreement to any **"Clause"** or **"sub-Clause"**, **"Schedule"** or **"Annex"** without further designation shall be construed as a reference to the Clause, or sub-Clause of, or Schedule to, or Annex to a Schedule to, this Agreement so numbered;
      8. references in this Agreement to any **"paragraph"** or **"subparagraph"** without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule or to the relevant Annex to a relevant Schedule to this Agreement so numbered;
      9. references to a series of Clauses or paragraphs shall be inclusive of the Clause or paragraph numbers referenced;
      10. reference to a Clause is a reference to the whole of that Clause unless stated otherwise; and
      11. any reference in this Agreement which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
          1. any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (**"EU References"**) which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
          2. any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.

In this Clause 1.2.11, the term **"IP Completion Day"** has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020.

* 1. Subject to Clause 1.4, in the event of and only to the extent of any conflict between any of the Terms and Conditions, the Schedules, attachments to the Schedules and any other document attached to or otherwise incorporated by reference into this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
     1. these Terms and Conditions;
     2. Schedules 1 to 25 (inclusive);
     3. the Annexes to Schedules 1 to 25 (inclusive);
     4. any other document attached to or otherwise incorporated by reference into this Agreement; and
     5. Schedule 26 (Tender).
  2. Where Schedule 26 (Tender) contains provisions which are more favourable to HSE in relation to the rest of this Agreement, such provisions of the Tender shall prevail. HSE shall in its absolute and sole discretion determine whether any provision in the Tender is more favourable to it in this context.
  3. The Schedules and their Annexes form part of this Agreement.
  4. In entering into this Agreement, HSE is acting as part of the Crown.

1. Commencement, Term and Due Diligence
   1. Commencement and Duration
      1. This Agreement shall come into effect on the Effective Date and shall remain in force until the Expiry Date, unless terminated earlier in accordance with the provisions of Clause 41 (Termination and Exit Management).
   2. *Due Diligence*
      1. The Provider acknowledges that:
         1. HSE has delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance of its obligations under this Agreement;
         2. it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
         3. it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with HSE before the Effective Date) of all relevant details relating to:
            1. the HSE's requirements as set out in this Agreement;
            2. the operating processes and procedures and the working methods of HSE;
            3. the ownership, functionality, capacity, condition and suitability for use in the Services of the HSE Assets; and
            4. the existing contracts (including any licences, support, maintenance and other agreements relating to the HSE Assets) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Provider under this Agreement and/or which the Provider will require the benefit of for the provision of the Concession Services; and
         4. it has advised HSE in writing of:
            1. each aspect, if any, of the HSE Assets that are not suitable for the provision of the Concession Services;
            2. the actions needed to remedy each such unsuitable aspect; and
            3. a timetable for and, to the extent that such costs are to be payable to the Provider, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Agreement, including Schedule 1 (Concession Services Requirements) as applicable.

* + 1. The Provider shall not be excused from the performance of any of its obligations under this Agreement on the grounds, nor shall the Provider be entitled to recover any additional costs or charges arising as a result, of:
       1. any unsuitable aspects of the HSE Assets;
       2. any misinterpretation of the HSE's requirements as set out in this Agreement; and/or
       3. any failure by the Provider to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.
    2. The Provider acknowledges that:
       1. HSE is not granting any commitments or guarantees in relation to any particular minimum volume(s) of Businesses, Engineers and/or Services required under this Agreement; and
       2. the volumes of Businesses, Engineers and/or Services required under this Agreement may fluctuate from time to time during the Term.

Services

1. General
   1. *Grant of right to provide Concession Services* 
      1. HSE hereby appoints the Provider to provide the Concession Services in accordance with this Agreement and grants the Provider the right to levy the Charges as consideration for providing the Concession Services.
   2. *Territory* 
      1. The Provider shall, subject to the provisions of this Agreement, supply the Concession Services to Businesses and Engineers within the Territory.
   3. *Standard of Services*
      1. Without prejudice to the Provider's other obligations under this Agreement, the Provider shall:
         1. provide the Services in accordance with the terms of this Agreement, including Schedule 1 (Concession Services Requirements), Schedule 3 (Service Levels) and Schedule 8 (Key Performance Indicators);
         2. where:
            1. the Services to be provided from any Services Start Date are similar to services that the HSE was receiving immediately prior to that Services Start Date (such similar services being **“Preceding Services”**); and
            2. the standard and level of service received by HSE in respect of any of the Preceding Services in the 12 month period immediately prior to that Services Start Date have been disclosed to the Provider in the Due Diligence Information (such preceding services being **“Relevant Preceding Services”**),

the Services to be provided from the relevant Services Start Date that are similar to the Relevant Preceding Services are in each case, except where otherwise provided in this Agreement (including in the Schedules), provided to a standard and level of service which is at least as good as the standard and level of service received by HSE in respect of the Relevant Preceding Services in the 12 month period immediately prior to the relevant Services Start Date;

* + - 1. perform its obligations under this Agreement, including in relation to the supply of the Services, in accordance with:
         1. all applicable Law;
         2. Good Industry Practice;
         3. the Policies;
         4. the Procedures and Processes; and
      2. deliver the Services using efficient business processes and ways of working having regard to HSE’s obligation to ensure value for money.
  1. *Human Rights Act* 
     1. The Provider acknowledges that in performing the Concession Services it performs functions of a public nature and is, to that extent, a public authority for the purposes of the Human Rights Act 1998.
     2. The Provider shall ensure that at all times when performing the Concession Services it acts consistently with the provisions of the Human Rights Act 1998.
  2. *Competition law* 
     1. The Provider shall, in all of its commercial relations with third parties, act as if it were an undertaking, as that term is understood in the context of the Competition Act 1998 and shall not engage in any conduct, practice or concerted practice, enter into any understanding or agreement, or reach any decision in association with an undertaking, which, in any case, is contrary or likely to be contrary to the prohibitions contained in section 2(2) and section 18(1) of that Act.
  3. *Equal treatment of Businesses, Engineers and Consumers* 
     1. The Provider shall at all times treat Businesses, Engineers and Consumers equally and, in particular:
        1. shall not refuse to provide Concession Services or Additional Services to any Business, Engineer or Consumer; or
        2. provide any Business, Engineer or Public Users of the Register with different or inferior levels of service to any other Business, Engineer or Public User of the Register;

unless that refusal to provide Concession Services or difference in levels of service is proportionate and for one or more of the following reasons:

* + - 1. in the case of Businesses and Engineers:
         1. the payment or non-payment of Concession Charges or different amounts of registration fees;
         2. the Competence of an individual Business or Engineer;
         3. failure to comply with the Rules of Registration or other conditions connected with the Registration Scheme;
         4. the characteristics of an individual Business, including the number of Engineers employed or engaged by the Business;
         5. the Business’ internal processes and procedures for ensuring that Gas Work is undertaken safely; and/or
         6. abusive behaviour towards the Provider’s staff;

and such reasons shall be documented in the Rules of Registration;

* + - 1. in the case of Public Users of the Register:
         1. abusive behaviour towards the Provider’s staff;
         2. failure to comply with any applicable terms of use of the Register, including any Registration Data provided to the Consumer; and/or
         3. the making of vexatious complaints about a Business or Engineer;

and such reasons shall be publicised on the Provider’s website and made available on request.

* 1. *Documentation of processes and procedures*
     1. The Provider shall ensure that it:
        1. has in place appropriate and documented Processes and Procedures in accordance with Clause 4.3, so that its Provider Personnel comply with the requirements of Clauses 3.3, 3.5 and 3.6; and
        2. provides appropriate and effective training to Provider Personnel whose duties may require compliance with the requirements of Clauses 3.3, 3.5 and 3.6.
     2. The Provider shall notify HSE in writing within five (5) Working Days of receipt of any complaint or claim by a Business, Engineer or Consumer that the Provider has failed to comply with Clauses 3.3, 3.5 and 3.6 or any other legal duties to which it is subject which are substantially similar or analogous to Clauses 3.3, 3.5 and 3.6.
  2. *Co-operation with other suppliers*
     1. The Provider shall co-operate with any Other Supplier notified to the Provider by HSE from time to time by providing:
        1. reasonable information (including any Documentation);
        2. advice; and
        3. reasonable assistance,

in connection with the Services to any such Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to HSE and/or to any Replacement Provider in accordance with the following collaborative working principles:

* + - 1. proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";
      2. being open, transparent and responsive in sharing relevant and accurate information with such Other Suppliers;
      3. where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such Other Suppliers;
      4. providing reasonable cooperation, support, information and assistance to such Other Suppliers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
      5. identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

1. Concession Services
   1. *Provider’s responsibility to perform Concession Services* 
      1. Where the Provider is delivering the Services as a partnership or a consortium, each member shall be jointly and severally liable under this Agreement for performing the Services.
      2. The Provider will have the responsibility for delivery of the Concession Services in accordance with this Agreement and will perform, or cause to be performed, from the Effective Date, the Renewal Fee Collection Start Date and the Services Start Date (as applicable) the services, functions and responsibilities described in this Agreement, including those set out in Schedule 1 (Concession Services Requirements), as they may be supplemented, modified or replaced in accordance with this Agreement.
      3. The Provider shall provide reasonable information (including any documentation), advice and assistance in connection with the Services up to and including the Expiry Date (for whatever reason), to enable the timely transition of the supply of the Services (or any of them) to HSE and/or to any Replacement Provider.
      4. An obligation on the Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Provider to procure that all Sub-Contractors and Provider Personnel also do, or refrain from doing, such act or thing.
   2. *Identification of additional aspects of the Services* 
      1. If either Party identifies a function or responsibility of the Provider that is not specified in Schedule 1 (Concession Services Requirements), but which is reasonably and necessarily required for the proper performance and provision of the Concession Services, the Party identifying the omission shall promptly notify the other Party and the Parties shall discuss and amend Schedule 1 (Concession Services Requirements) accordingly so as to document that omitted function or responsibility. Any such amendment to Schedule 1 (Concession Services Requirements) will be implemented in accordance with Schedule 6 (Change Control Procedure).
   3. *Processes and procedures* 
      1. The Provider shall:
         1. identify all of the Processes that constitute the Concession Services and document them in one or more Procedures;
         2. ensure that such Processes and Procedures enable the efficient and effective operation of the Registration Scheme;
         3. document the Processes and Procedures in a draft Processes and Procedures Register; and

4.3.1(d) provide HSE with a copy of the draft Processes and Procedures Register when it is compiled and in any event no later than four (4) weeks before the Services Start Date.

* + 1. HSE shall, within one (1) month after the receipt of the draft Processes and Procedures Register, provide its comments and suggestions or indicate that the Processes and Procedures Register is approved. The Provider shall, within one (1) further month and taking into account such comments and suggestions, prepare an updated Processes and Procedures Register for HSE’s final approval. The Processes and Procedures Register shall not take effect until HSE has given its final approval, which shall not be unreasonably withheld or delayed.
    2. The Processes and Procedures Register shall describe and include, in a manner that is suitable for use by HSE or any Replacement Provider to understand the Services:
       1. how the Provider shall perform and deliver the Services under this Agreement;
       2. the documentation (including operations manuals, user guides and specifications) which provides further details of such activities;
       3. the activities that the Provider proposes to undertake in order to provide the Services, including those direction, supervision, monitoring, staffing, reporting, planning and oversight activities normally undertaken to provide services of the type the Provider is to provide under this Agreement; and
       4. the Provider’s problem management and escalation procedures.
    3. The Provider shall regularly, and at least annually, maintain and update the Processes and Procedures Register, as appropriate, including the incorporation of any relevant significant events or changes in any operations or procedures described therein. Updates of the Processes and Procedures Register shall be provided to HSE for review, comment and Approval (which shall not be unreasonably withheld or delayed but in any event within ten (10) Working Days) prior to their implementation and the Provider shall incorporate HSE’s reasonable comments or suggestions and provide HSE with a copy of each final updated version.
    4. The Provider shall:
       1. ensure that the Processes and Procedures reflect the actual activities performed by its Provider Personnel in the performance of the Concession Services; and
       2. ensure that at all times its Provider Personnel provide the Concession Services in accordance with the Processes and Procedures.

1. Additional Services
   1. The Provider shall obtain HSE’s Approval before commencing New Additional Services, which shall be:
      1. given or withheld by HSE at its sole discretion; and
      2. made subject to such conditions or restrictions as HSE in its sole discretion may specify.
   2. The Provider shall ensure that any New Additional Services proposed by the Provider will not amount to a substantial modification to this Agreement.
   3. In seeking consent from HSE, for the operation or provision of any New Additional Services, the Provider shall provide to HSE such information as HSE may require to enable HSE to:
      1. satisfy itself that such New Additional Services will not compromise, present any material risk to the successful performance or delivery of, or impede the operation or delivery of the Concession Services (or otherwise breach the provisions of Clause 5.5.3);
      2. understand the use that the New Additional Services would make of the Registration Data and, in particular, any Personal Data;
      3. understand:
         1. the effect that the New Additional Services would have on competitors or potential competitors; and
         2. whether the New Additional Services would create barriers or additional barriers to a competitor or potential competitor entering any market;
      4. satisfy itself as to the financial standing and reputation of any organisation or entity which will be involved in providing such New Additional Service;
      5. understand the expected costs and revenues of any such New Additional Service, including how:
         1. such revenues will be applied to reduce the Concession Charges; and
         2. such Additional Service will or may affect the financial position of the Provider; and
      6. satisfy itself that the Provider will, in performing the New Additional Services, at all times comply with the requirements of Clause 5.5.
   4. Where HSE Approves any New Additional Services, that service shall be added to Schedule 2 (Additional and Ancillary Services) and any conditions relating to that service shall be added to Schedule 2 (Additional and Ancillary Services).
   5. The Provider shall ensure that any New Additional Services are performed in accordance with the following conditions:
      1. the aim and effect of such New Additional Services is to generate Additional Charges;
      2. the Additional Charges generated under Clause 5.5.1 are treated in accordance with Clause 18 (Charges);
      3. the New Additional Services do not compromise nor present any material risk nor impediment to the provision of the Services in accordance with this Agreement;
      4. all Additional Charges generated as a result of New Additional Services are properly accounted for in accordance with Clause 24 (Audit);
      5. the New Additional Services do not include the offering of any retail services in any industry sector;
      6. the New Additional Services do not include the offering of registration services;
      7. the New Additional Services shall be developed, branded, marketed, promoted, offered and supplied separately from and to the Concession Services;
      8. any agreements entered into by the Provider during the Term for the purposes of or related to any New Additional Service shall be made without preference or favour and on terms equivalent to terms which would have been obtained had the transaction taken place on the open market;
      9. any New Additional Services are appropriate to and in accordance with the reputation and image of HSE; and
      10. any New Additional Services are performed in accordance with any further general conditions or any specific conditions relating to that New Additional Service contained in Schedule 2 (Additional and Ancillary Services).
   6. In the event that HSE considers that any Additional Service or New Additional Service (or the provision by the Provider of the same):
      1. compromises, presents a material risk to or impedes the successful performance or delivery of the Concession Services or otherwise breaches the provisions of Clause 5.5.3 (above); or
      2. is not being (or has not been) operated or provided in accordance with the requirements of this Clause 5 (Additional Services) or any relevant conditions contained in Schedule 2 (Additional and Ancillary Services),

HSE may require the Provider by notice in writing to modify, suspend or cease forthwith the operation or provision of any such Additional Services or New Additional Services.

* 1. The Provider shall immediately comply with any notice given by HSE under Clause 5.6 subject to any pre-existing contractual relationships with third parties in relation to the Additional Services or New Additional Services.
  2. HSE shall not be responsible to the Provider for any Losses it may incur or suffer as the result of complying with any notice given by HSE under Clause 5.6.
  3. The Provider shall ensure that any agreement with a third party related to or in connection with any Additional Services or New Additional Services includes terms that:
     1. exclude, to the fullest extent permissible by any applicable law, any liability of HSE to any third party for any and all losses that any third party may suffer, by the operation or provision of, or otherwise in connection with or arising out of, any Additional Services or New Additional Services;
     2. provide for the automatic termination of such third party agreements upon the expiry (or termination for whatever reason) of this Agreement; and
     3. provide that no charges or compensation shall be payable by or due from HSE to the Provider or to any third party upon any termination of any Additional Services or New Additional Services under Clause 5.6 or any third party agreement in accordance with Clause 5.9.2 above.
  4. The Provider shall notify HSE (in accordance with the provisions of Clause 22 (Notices)) and obtain HSE’s consent:
     1. prior to its commencement (or intended commencement), of the operation or provision of any Additional Services or New Additional Services; and
     2. (subject to Clause 5.11) in respect of any modification, suspension or termination the Provider may make (or intend to make) of any Additional Services or New Additional Services prior to any such modification, suspension or termination.
  5. Where any modification, suspension or termination of any Additional Services or New Additional Services by the Provider is unplanned, the Provider shall notify HSE of the same as soon as reasonably practicable (and in any event within three (3) Working Days) (in accordance with the provisions of Clause 22 (Notices)) and such notice shall provide full and complete reasons for such modification, suspension or termination.
  6. The Provider shall comply with the provisions of Clause 25 (Reporting) in relation to Additional Services or New Additional Services.

1. Ancillary Services
   1. HSE may from time to time require the Provider to perform certain Ancillary Services, and the Provider shall not unreasonably withhold or delay its agreement to provide any Ancillary Services.
   2. In the event that HSE requires the Provider to perform any Ancillary Services, the Parties shall agree a Work Package for such Ancillary Services in accordance with Schedule 2 (Additional and Ancillary Services).
   3. The Provider shall charge for Ancillary Services in accordance with the provisions of Schedule 2 (Additional and Ancillary Services) and paragraph 4.4 of Schedule 4 (Charges).
   4. The Provider shall ensure that any agreement with a third party related to or in connection with any Ancillary Services includes terms that:
      1. exclude, to the fullest extent permissible by any applicable law, any liability of HSE to any third party for any and all losses that any third party may suffer, by the operation or provision of, or otherwise in connection with or arising out of, any Ancillary Services; and
      2. provide for the automatic termination of such third party agreements upon the expiry (or termination for whatever reason) of this Agreement.
   5. The Provider acknowledges that:
      1. HSE is under no obligation to source all or any of its requirement for Ancillary Services from the Provider; and
      2. no assurance, commitment, understanding or similar has been provided by HSE to source any particular Ancillary Service or any volume of Ancillary Services from the Provider.
   6. The Provider shall co-operate with HSE in relation to any review of the efficiency and effectiveness of the Ancillary Services and shall provide all such reasonable assistance as may be necessary for the purposes of such review as is required by Schedule 10 (Governance and Contract Management).
   7. The Provider shall comply with the provisions of Clause 25 (Reporting) in relation to Ancillary Services.
2. Key Performance Indicators
   1. The Provider shall comply with all its obligations related to the KPIs set out in this Agreement and in Schedule 8 (Key Performance Indicators).
   2. The Provider shall at all times during the Term comply with the KPIs and achieve the KPI Targets set out in Schedule 8 (Key Performance Indicators).
   3. Not more than once in each Contract Year, HSE may, on giving the Provider at least three (3) Months’ notice, change the target performance levels and/or apportionments of the Provider Profit and/or Gain Share Funds in respect of all or any of the KPIs, and the Provider shall not be automatically entitled to object to any such changes provided the principal purpose of the change is to reflect changes in HSE’s business requirements and/or priorities or to reflect changing industry standards. The Parties shall jointly consider the impact of any such changes to the target performance levels and/or apportionments in accordance with the Change Control Procedure.
   4. Without prejudice to clause 7.3, HSE reserves the right to adjust, introduce new, or remove KPIs throughout the Term, however any changes to KPIs shall be agreed between HSE and the Provider in accordance with Clause 26 (Change Control Procedure).
   5. The Provider acknowledges that KPIs 1–3 have been apportioned a proportion of each of:
      1. the Provider Profit as set out in Schedule 8 (Key Performance Indicators) and in paragraph 4 of Schedule 5 (Financial Model and Gain Share); and
      2. the Provider’s share of any Gain Share Funds as set out in Schedule 8 (Key Performance Indicators) and in paragraph 5 of Schedule 5 (Financial Model and Gain Share).
   6. Failure to achieve a KPI Target in respect of KPIs 1-3 (but not, for the avoidance of doubt, KPI 4) shall result in the Provider not having access to (i) the full amount of the Provider Profit attached to that KPI Target and (ii) the full apportioned share of any Gain Share Funds attached to that KPI Target. The impact on the apportioned share of each of the (i) the Provider Profit and (ii) any Gain Share Funds shall be as set out in Schedule 8 (Key Performance Indicators) and shall depend on the extent of failure. Any such impact on the apportioned share of (i) the Provider Profit and (ii) any Gain Share Funds shall be HSE’s sole and exclusive financial remedy for a KPI Failure.
   7. The level of failure to achieve a KPI Target shall be categorised in accordance with Annex 1 of Schedule 8 (Key Performance Indicators).
   8. Annex 1 of Schedule 8 (Key Performance Indicators) describes the additional measures available to HSE in the event of a failure to achieve a KPI Target.
   9. *Potential KPI Failure* 
      1. If the Provider believes that there is likely to be a KPI Failure, the Provider shall comply with the provisions set out in Clause 11 (Improvement Plan).
      2. Where HSE has reasonable concerns, based upon complaints or comments or upon trends in the measurements of KPIs, that there is likely to be a KPI Failure, HSE may raise its concerns with the Provider and/or require the Provider to submit an Improvement Plan.
      3. Where HSE has raised concerns in accordance with Clause 7.9.2, the Parties shall, without delay, meet to discuss those concerns. Where, following such discussions, the Provider agrees that the concerns are justified or is unable to demonstrate to HSE’s reasonable satisfaction that the concerns are without foundation, the Provider shall comply with Clause 11 (Improvement Plan).
3. Service Levels
   1. The Parties shall comply with the provisions of Schedule 3 (Service Levels).
   2. The Provider shall at all times during the Term provide the Services to meet or exceed the Service Level Performance Measure for each Service Level.
   3. The Provider acknowledges that any Service Level Failure may have a material adverse impact on Businesses, Engineers and Consumers in addition to the business and operations of HSE and that it shall entitle HSE to exercise any of the Service Level Failure Rights.
   4. The Provider acknowledges and agrees that:
      1. HSE may, in respect of any occasion of Service Level Failure, exercise none, any or all of the Service Level Failure Rights available to it; and
      2. a decision by HSE in a particular circumstance not to exercise all or any of its Service Level Failure Rights, to exercise one Service Level Failure Right rather than another, or to exercise any Service Level Failure Right in a certain way shall not operate to prevent HSE from exercising any or all of its Service Level Failure Rights or exercising its Service Level Failure Rights in a different manner in any other circumstance of Service Level Failure.
   5. Not more than once in each Contract Year, HSE may, on giving the Provider at least three (3) Months’ notice, change the criticality of all or any of the Service Level Performance Measures in respect of one or more Service Levels and the Provider shall not be automatically entitled to object to the change in criticality provided the principal purpose of the change is to reflect changes in HSE’s business requirements and/or priorities or to reflect changing industry standards. The Parties shall jointly consider the impact of any such changes to the criticality and any change to Service Points or Charges shall be considered in accordance with the Change Control Procedure.
   6. The Provider shall measure and report its performance against the Service Levels in accordance with the reporting requirements set out in Clause 25 (Reporting) and Schedule 11 (Management Information, Reporting and Records). The Provider shall agree the relevant measuring and monitoring tools with HSE prior to using the same, and shall provide HSE with information and access to these measurement and reporting tools and procedures on reasonable request, to enable HSE to verify that they accurately measure the Provider’s performance.
   7. HSE will continuously monitor the Service Levels and the Parties shall:
      1. formally review the Service Levels annually (or otherwise as required); and
      2. taking into account any improved performance capabilities of the Provider, make such adjustments to the Service Levels (including amending or removing Service Levels and adding new Service Levels) as appropriate in accordance with Schedule 6 (Change Control Procedure).
   8. *Potential Service Level Failure* 
      1. If the Provider believes that there is likely to be a Service Level Failure, the Provider shall comply with the provisions set out in Clause 11 (Improvement Plan).
      2. Where HSE has reasonable concerns, based upon complaints or comments or upon trends in the measurements of Service Levels, that there is likely to be a Service Level Failure, HSE may raise its concerns with the Provider and/or require the Provider to submit an Improvement Plan.
      3. Where HSE has raised concerns in accordance with Clause 8.8.2, the Parties shall, without delay, meet to discuss those concerns. Where, following such discussions, the Provider agrees that the concerns are justified or is unable to demonstrate to HSE’s reasonable satisfaction that the concerns are without foundation, the Provider shall comply with Clause 11 (Improvement Plan).
   9. *Retention of data* 
      1. Unless otherwise agreed, the Provider shall retain data in relation to, and underlying the measuring and reporting of, the Service Levels and KPIs for a period of six (6) years after the later of the Expiry Date or earlier termination of this Agreement.
4. Service Points
   1. *Accumulation of Service Points* 
      1. Service Points are calculated on a monthly and/or annual basis depending on the Service Measurement Period.
      2. Each Service Level shall be measured during the Service Measurement Period and, in the event of a Service Level Failure, the Provider shall accumulate Service Points in respect of each Service Level Performance Measure it has not Achieved in accordance with Annex 1 of Schedule 3 (Service Levels).
      3. Where, there is a repeat Service Level Failure as set out in Schedule 3 (Service Levels), the Service Points accumulated by the Provider in respect of the failure to achieve that service level performance measure shall be multiplied in accordance with Schedule 3 (Service Levels).
   2. *Consequences of Service Point accumulation* 
      1. HSE shall be entitled to the following rights in respect of Service Point accumulation:
         1. Service Credits; and
         2. Where, on a rolling twelve (12) Month period commencing on the Services Start Date, total Service Points accumulated by the Provider in respect of Monthly Service Levels exceed 80 points or in respect of Annual Service Levels exceed 40 points, HSE may, in its sole discretion:
            1. exercise Direction Rights in accordance with Clause 12 (Direction Rights); and/or
            2. exercise Step-in Rights in accordance with Clause 13.1 (Step-in Rights); and/or
            3. exercise Remedial Adviser Rights in accordance with Clause 13.2 (Remedial Adviser).
      2. Where, in respect of a rolling 12 months, the aggregate Service Points accumulated by the Provider exceed 120 points HSE may, in its sole discretion terminate this Agreement in accordance with Clause 41 (Termination and Exit Management).
5. Service Credits
   1. The Provider acknowledges and agrees that any Service Credit is a monetary adjustment and not an estimate of the Loss that may be suffered by HSE as a result of the Provider’s failure to Achieve any Service Level.
   2. Service Credits apply on a monthly basis and do not include VAT.
   3. Table 2 of Schedule 3 (Service Levels) sets out the Service Credits due as a result of a Service Point accumulation.
   4. The Provider confirms that it has modelled the Service Credits and has taken them into account in setting the level of the Charges. Both Parties agree that the Service Credits are a reasonable method of monetary adjustment to reflect poor performance; and Service Credits shall be HSE’s sole and exclusive financial remedy for Service Level Failure except where HSE is entitled to or does terminate the Agreement pursuant to Clause 9.2.2.
6. Improvement Plan
   1. For the purposes of this Clause 11:
      1. Service Level Failures or repeated Service Level Failures of the same Service Levels shall be categorised in accordance with Table 3 of Schedule 3 (Service Levels); and
      2. KPI Failures shall be categorised as set out in Annex 1 of Schedule 8 (Key Performance Indicators),

and failure to comply with Clause 11.4.1 shall result in the category of Service Level Failure and/or KPI Failure being raised to the next level.

* 1. *Service Level Failures*
     1. Where there is a repeat Service Level Failure of the same Service Level within the relevant Rolling Period as set out in paragraph 6 of Schedule 3, in addition to the provisions set out in the remainder of this Clause 11, the Service Level Failure shall be raised and escalated, at the sole discretion of HSE, to either the Contract Review Board or the Executive Review Board to determine any additional measures which may be required by the Provider.
     2. Where there are multiple Service Level Failures of different Service Levels with a criticality rating of “A” within the relevant Rolling Period as set out in Schedule 3 (Service Levels), in addition to the provisions set out in paragraph 6 of the remainder of this Clause 11, the occurrence of such multiple Service Level Failures shall be reported to the Contract Review Board by HSE to determine any additional measures which may be required by the Provider.
  2. *KPI Failures*
     1. In addition to the provisions set out in the remainder of this Clause 11, where the category of KPI Failure is minor or moderate HSE, in its sole discretion, may escalate the occurrence of the KPI Failure to the Contract Review Board to determine any additional measures which the Provider may be required to take.
     2. In addition to the provisions set out in the remainder of this Clause 11, where the category of KPI Failure is major HSE, in its sole discretion, may escalate the occurrence of the KPI Failure to the Executive Review Group to determine any additional measures which the Provider may be required to take.
  3. Where there is a:
     1. Service Level Failure or KPI Failure the Provider shall issue HSE with a draft Improvement Plan within five (5) Working Days; or
     2. potential Service Level Failure or potential KPI Failure, the Provider shall issue HSE with a draft Improvement Plan within five (5) Working Days of the Provider becoming aware of the potential Service Level Failure of potential KPI Failure.
  4. A draft Improvement Plan issued under Clause 11.4 shall contain the following information:
     1. the potential or actual Service Level Failure or KPI Failures;
     2. the improvements that HSE would expect to see in the Services; and
     3. the actions the Provider intends to take to effect an improvement in the Services and to prevent the Service Level Failure or the KPI Failure from taking place or recurring.
  5. Upon receipt of a draft Improvement Plan, HSE shall, within ten (10) Working Days of its receipt:
     1. approve the draft Improvement Plan;
     2. reject the draft Improvement Plan and inform the Provider why it does not accept the draft Improvement Plan and the changes that should be made to make the Improvement Plan acceptable; or
     3. take no further action, in which case the draft Improvement Plan shall be deemed to be Approved after the expiry of ten (10) Working Days.
  6. Where HSE rejects a draft Improvement Plan, the Provider shall address all HSE’s concerns in a revised Improvement Plan, which it shall submit to HSE within two (2) Working Days (or such other period as agreed with HSE) of receipt of HSE’s comments and Clause 11.6 shall apply to the revised Improvement Plan.
  7. The Provider shall, upon the Approval of the Improvement Plan immediately commence work on implementing it and take any other remedial action that is reasonable to undertake to prevent the Service Level Failure from taking place or recurring.
  8. Where there is a repeated Service Level Failure of the same Service Level within the periods set out in paragraph 4 of Schedule 3, the Provider shall review and amend the Improvement Plan it submitted at the point of the first Service Level Failure and submit this revised Improvement Plan to HSE within five (5) Working Days of that repeated Service Level Failure.
  9. If the Provider fails to implement or successfully complete an Approved Improvement Plan by the date indicated in the Improvement Plan HSE may, at its sole discretion:
     1. allow the Provider a further opportunity to submit or resume full implementation (as appropriate) of the Improvement Plan;
     2. invoke the Dispute Resolution Procedure; and/or
     3. where such failure is a Material Breach:
        1. exercise Direction Rights in accordance with Clause 12 (Direction Rights);
        2. exercise its rights under Clause 13 (Step-In Rights and Remedial Adviser); or
        3. upon at least 30 days’ notice in writing, terminate this Agreement in accordance with Clause 41 (Termination and Exit Management).

1. Direction Rights
   1. Without prejudice to its other rights under and/or pursuant to the Agreement, HSE may exercise the rights set out in Clause 12.2:
      1. in the circumstances set out in Clause 11.10;
      2. where HSE is entitled to exercise Direction Rights as a consequence of Service Point accumulation by the Provider; or
      3. where HSE is entitled to terminate this Agreement as a consequence of:
         1. Service Point accumulation by the Provider; or
         2. Material Breach of this Agreement by the Provider.
   2. HSE may direct the Provider to do one or more of the following:
      1. replace any member or members of the Provider’s Senior Management Team responsible for that aspect or those aspects of the Services which were subject to the Service Level Failure and engage a suitable replacement member or members;
      2. terminate any existing Sub-Contract relating to that aspect or those aspects of the Services which were subject to the Service Level Failure and engage a suitable replacement Sub-Contractor; or
      3. engage an external professional adviser to review and make recommendations in respect of any aspect of the Provider’s organisation, activities or Procedures and Processes and implement those recommendations.
   3. The Provider shall comply promptly with any directions given by HSE under Clause 12.2.
   4. Where the Provider refuses or fails to comply with any directions given by HSE under Clause 12.2, HSE may, upon at least 30 days’ notice in writing, terminate this Agreement in accordance with Clause 41 (Termination and Exit Management). For the purposes of this Clause 12.4, a refusal or failure to comply with a direction shall include an unreasonable delay in complying with that direction.
2. Step-In Rights and Remedial Adviser
   1. *Step-In Rights*
      1. On the occurrence of a Step-In Trigger Event, HSE may serve notice on the Provider (a **"Step-In Notice"**) that it will be taking action under this Clause 13.1 (Step-in Rights), either itself or with the assistance of a third party (provided that the Provider may require any third parties to comply with a confidentiality undertaking equivalent to Clause 31 (Confidentiality)). The Step-In Notice shall set out the following:
         1. the action HSE wishes to take and in particular the Services that it wishes to control (the **"Required Action"**);
         2. the Step-In Trigger Event that has occurred and whether HSE believes that the Required Action is due to the Provider's Default;
         3. the date on which it wishes to commence the Required Action;
         4. the time period which it believes will be necessary for the Required Action;
         5. whether HSE will require access to the Provider's premises and/or the Sites; and
         6. to the extent practicable, the impact that HSE anticipates the Required Action will have on the Provider's obligations to provide the Services during the period that the Required Action is being taken.

For the avoidance of doubt, if the Step-In Trigger Event also gives rise to a right for HSE to terminate the Agreement, HSE has no obligation to exercise its rights under this Clause 13.1 prior to or instead of exercising its right to terminate this Agreement.

* + 1. Following service of a Step-In Notice, HSE shall:
       1. take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
       2. keep records of the Required Action taken and provide information about the Required Action to the Provider;
       3. co-operate wherever reasonable with the Provider in order to enable the Provider to continue to provide the Services in relation to which HSE is not assuming control; and
       4. act reasonably in mitigating the cost that the Provider will incur as a result of the exercise of HSE rights under this Clause 13.1.
    2. For so long as and to the extent that the Required Action is continuing, then:
       1. the Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
       2. no Service Credits shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 10 shall apply to Service Credits in respect of other Services; and
       3. the Provider shall reimburse HSE's for its costs of taking the Required Action.
    3. Before ceasing to exercise its Step-In Rights under this Clause 13.1, HSE shall deliver a written notice to the Provider (a **"Step-Out Notice"**), specifying:
       1. the Required Action it has actually taken; and
       2. the date on which HSE plans to end the Required Action (the **"Step-Out Date"**) subject to HSE being satisfied with the Provider's ability to resume the provision of the Services and the Provider's plan developed in accordance with Clause 13.1.5.
    4. The Provider shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for HSE's approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Provider of the Services, including any action the Provider proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
    5. If HSE does not approve the draft Step-Out Plan, HSE shall inform the Provider of its reasons for not approving it. The Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to HSE for HSE's approval. HSE shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
    6. The Provider shall bear its own costs in connection with any step-in by HSE under this Clause 13.1, provided that HSE shall reimburse the Provider's reasonable additional expenses incurred directly as a result of any step-in action taken by HSE under:
       1. limbs (f) or (g) of the definition of a Step-In Trigger Event; or
       2. limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of HSE serving the Step-In Notice is identified as not being the result of the Provider's Default).
    7. Where the Provider fails or refuses:
       1. to co-operate with HSE, its agents or contractors;
       2. provide all reasonable assistance required by HSE, its agents or contractors; or
       3. provide reasonable access to the Sites or Equipment to HSE, its agents or contractors,

as required by Clause 13.1.1 HSE may, upon at least 30 days’ notice in writing, terminate this Agreement in accordance with Clause 41 (Termination and Exit Management). For the purposes of this Clause 13.1.8, a refusal or failure to co-operate or provide reasonable assistance or access shall include an unreasonable delay in co-operating or providing that reasonable assistance or access.

* 1. *Remedial Adviser*
     1. If:
        1. any of the Intervention Trigger Events occur; or
        2. HSE reasonably believes that any of the Intervention Trigger Events are likely to occur,

(each an **"Intervention Cause"**), HSE may give notice to the Provider (an **"Intervention Notice"**) giving reasonable details of the Intervention Cause and requiring:

* + - 1. a meeting between the HSE Contract Manager and the Provider Contract Manager to discuss the Intervention Cause; and/or
      2. the appointment as soon as practicable by the Provider of a Remedial Adviser, as further described in this Clause 13.2.

For the avoidance of doubt, if the Intervention Cause also gives rise to a right for HSE to terminate the Agreement, HSE has no obligation to exercise its rights under this Clause 13.2 prior to or instead of exercising its right to terminate this Agreement.

* + 1. If HSE gives notice that it requires the appointment of a Remedial Adviser:
       1. the Remedial Adviser shall be:
          1. a person selected by the Provider and approved by HSE; or
          2. if none of the persons selected by the Provider have been approved by HSE (or no person has been selected by the Provider) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by HSE;
       2. the terms of engagement and start date agreed with the Remedial Adviser must be approved by HSE; and
       3. any right of HSE to terminate this Agreement pursuant to Clause 41.1.1 (Termination on Material Breach) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties) (the **"Intervention Period"**).
    2. The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Provider's responsibilities under this Agreement), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
       1. observe the conduct of and work alongside the Provider Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
       2. gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
       3. write reports and provide information to HSE in connection with the steps being taken by the Provider to remedy the Intervention Cause;
       4. make recommendations to HSE and/or the Provider as to how the Intervention Cause might be mitigated or avoided in the future; and/or
       5. take any other steps that HSE and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
    3. The Provider shall:
       1. work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
       2. ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the HSE Assets;
       3. submit to such monitoring as HSE and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
       4. implement any reasonable recommendations made by the Remedial Adviser that have been approved by HSE within the timescales given by the Remedial Adviser; and
       5. not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of HSE (such consent not to be unreasonably withheld).
    4. The Provider shall be responsible for:
       1. the costs of appointing, and the fees charged by, the Remedial Adviser; and
       2. its own costs in connection with any action required by HSE and/or the Remedial Adviser pursuant to this Clause 13.2.
    5. If:
       1. the Provider:
          1. fails to perform any of the steps required by HSE in an Intervention Notice; and/or
          2. is in Default of any of its obligations under Clause 13.2; and/or
       2. the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a **"Remedial Adviser Failure"**), HSE shall be entitled to terminate this Agreement pursuant to Clause 41.1.1(c) (Termination on Material Breach).

1. Licenses granted by HSE
   1. HSE hereby grants to the Provider a royalty-free, non-exclusive, non-transferable licence during the Term to use, reproduce and (save in respect of the Brand IPR) update, amend and adapt HSE Existing IPR, HSE Data and New IPR solely to the extent necessary for performing the Services in accordance with this Agreement, including (but not limited to) the right to grant sub-licences to Sub-Contractors provided that:
      1. any relevant Sub-Contractor has entered into a confidentiality undertaking with the Provider as required by Clause 31 (Confidentiality); and
      2. the Provider shall not, without HSE’s prior written consent, use (or permit the use of) the licensed materials for any other purpose or for the benefit of any person other than HSE; and
      3. the Provider complies with such other conditions as are contained in this Agreement relating to its use of the licensed materials.
   2. In the event of the termination or expiry of this Agreement, the licence granted pursuant to Clause 14.1 and any sub-licence granted by the Provider in accordance with that Clause shall terminate automatically on the date of such termination or expiry and the Provider shall (unless HSE shall direct otherwise in writing for the purposes of Termination Assistance):
      1. immediately cease all use of HSE Existing IPR, HSE Data and New IPR (as the case may be);
      2. return or deliver to HSE or the Replacement Provider, as HSE shall direct in writing, all documents and other materials including software that contain or which relate to any of the HSE Existing IPR, HSE Data and New IPR; and
      3. ensure, so far as reasonably practicable, that any HSE Existing IPR, HSE Data and New IPR that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Provider computer, word processor, voicemail system or any other Provider device containing such HSE Existing IPR, HSE Data and/or New IPR.

Implementation of Services

1. Conditions precedent
   1. *Conditions precedent for Renewal Fee collection* 
      1. The Provider shall, on or before the **‘Renewal Fee Able-to-Proceed Date**’ deliver to HSE a certificate signed by a director or senior manager of the Provider stating that the Provider has:

15.1.1(a) delivered all Deliverables set out in the Transition Plan relating to the collection of Renewal Fees; and

15.1.1(b) proposed KPI methodologies, data capture, and calculations.

* + 1. The Provider shall, on or before the Renewal Fee Collection Start Date deliver to HSE:

15.1.1(a) an executed copy of the Guarantee (a copy of which is attached to this Agreement as Annex 1 to Schedule 17 (Parent Company Guarantee)) or an alternative agreed by HSE; and

15.1.1(b) a copy extract certified by a director or senior manager of the Provider of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

* + 1. Upon receipt by HSE of the documents set out in Clauses 15.1.1 and 15.1.2, the Provider shall be entitled to commence collection of Renewal Fees from the Renewal Fee Collection Start Date.
    2. Subject to Clause 15.1.5, where the Provider is unable to provide a certificate as required by Clause 15.1.1, the Parties shall without delay meet and in good faith agree a Correction Plan in accordance with the provisions of Clause 17.5 (Correction Plan), subject to the following further conditions:
       1. the draft Correction Plan shall be delivered to HSE on the Renewal Fee Able-to-Proceed Date;
       2. the time limits set out in Clause 17.5.3 shall be reduced to two (2) Working Days; and
       3. the draft Correction Plan shall include provisions requiring the Provider to:
          1. devote such additional resources as may be required, such additional resources to be at the Provider’s risk and expense; and
          2. use its best endeavours;

to ensure that the Provider is able to commence collection of Renewal Fees on the Renewal Fee Collection Start Date.

* + 1. Where the Provider is unable to deliver the certificate required by Clause 15.1.1, the Provider shall, on the Renewal Fee Able-to-Proceed Date, deliver to HSE a Change Control Note detailing its plans for overcoming the failure and the impact of those plans on the collection of Renewal Charges, the Services Start Date, the Services and the Charges, and the Change Control Procedure shall apply to that Change Control Note.
  1. *Conditions precedent for Services commencement* 
     1. The Provider shall, no later than one (1) calendar month before the Services Start Date:
        1. [Not Used];
        2. [Not Used];
        3. deliver to HSE certificates of insurance or broker’s verification of insurance showing that the Provider has obtained appropriate insurance in accordance with Clause 36 (Insurance);
        4. notify to HSE the identity of the Key Personnel, save as set out in Schedule 14;
        5. deliver to HSE for its comments and suggestions the draft Processes and Procedures Register in accordance with Clause 4.3.1 (Procedures and processes); and
        6. deliver to HSE a certificate signed by a director or senior manager of the Provider stating that the Provider has, to the best of that individual’s knowledge and belief, delivered all the Deliverables set out in the Transition Plan relating to the commencement of Services.
     2. Where the Provider fails to comply with the requirements of Clause 15.2.1, the provisions of Clause 15.1.3 shall apply, save that:
        1. the reference to collection of Renewal Fees shall be read as a reference to the commencement of Services; and
        2. the reference to the Renewal Fee Collection Start Date shall be read as a reference to the Services Start Date.

1. Effect of Business Changes (Numbers of Businesses and Engineers) on Charges
   1. Where the Provider becomes aware that its costs (calculated in accordance with the Financial Model) will increase or decrease as the result of **Business Changes** it shall, on two occasions, the first being no later than the Renewal Fee Able-to-Proceed Date (“First True Up”) and the second within four (4) months following the Services Start Date (“Second True Up”), deliver to HSE a Change Control Note detailing the impact of the Business Changes upon its costs and the changes it considers are necessary to the Charges (to maintain the Revenue levels as defined in the Financial Model submitted by the Provider at Best and Final Offer).
   2. Any impact on the Provider’s costs or revenue as a result of the First True Up shall:
      1. in the case of an increase in the Provider’s costs apply to:
         1. Concession Charges for Year 1 and subsequent Contract Years; and/or
         2. a reduction in the amount paid by the Provider to the Gas Safety Charity in accordance with paragraph 3.2.1(d) of Schedule 5 (Financial Model and Gain Share);

at HSE’s discretion; and

* + 1. in the case of a decrease in the Provider’s costs apply to Concession Charges for Year 1.
  1. Any impact on the Provider’s costs as a result of the Second True Up shall:
     1. in the case of an increase in the Provider’s costs apply to:
        1. Concession Charges for Year 2 and subsequent Contract Years; and/or
        2. a reduction in the amount paid by the Provider to the Gas Safety Charity in accordance with paragraph 3.2.1(d) of Schedule 5 (Financial Model and Gain Share);

at HSE’s discretion; or

* + 1. in the case of a decrease in the Provider’s costs apply to Concession Charges for Year 2 and subsequent Contract Years.

1. Transitional arrangements
   1. *Obligations of the Provider* 
      1. The Provider shall, from the Effective Date, perform the Transition Activities in accordance with the Transition Plan.
   2. *Development of Updated Transition Plan* 
      1. Updates to the Transition Plan shall be made in accordance with Schedule 6 (Change Control Procedure).
      2. The Parties shall consider and review the Transition Plan and progress towards its successful implementation at the meetings of the Transition Governance Board held in accordance with Schedule 10 (Governance and Contract Management). In preparation for such meetings the current Transition Plan and project status report shall be provided by the Provider to HSE not less than two (2) Working Days in advance of each meeting of the Transition Governance Board, and the Provider shall, on request, provide such further details regarding the Transition Activities as HSE may reasonably request.
   3. *Deliverables during Transition Period* 
      1. Where the Transition Plan requires the Provider to deliver to HSE any Deliverables for Approval, the Provider shall do so in accordance with the provisions of the Transition Plan.
      2. HSE shall comply with any requirements in the Transition Plan concerning the Approval of any Deliverables.
   4. *Delay in Transition Period* 
      1. If, at any time, the Provider becomes aware that it has not implemented or will not implement any material aspect of the Transition Plan in accordance with its terms (a “**Transition Delay**”), it shall inform HSE of the fact and summarise the reasons for it.
      2. The Provider shall, as soon as possible and in any event not later than five (5) Working Days after the initial notification under Clause 17.4.1, give HSE full details in writing of:
         1. the reasons for the Transition Delay; and
         2. the consequences of the Transition Delay;

and shall submit to HSE a Correction Plan in accordance with Clause 17.5.

* + 1. The Provider shall use all reasonable endeavours to eliminate or mitigate the consequences of the Transition Delay.
    2. Any Dispute arising out of or in connection with any Transition Delay shall be resolved through the Dispute Resolution Procedure. Pending the resolution of the Dispute both parties shall continue to work to resolve the causes of, and mitigate the effects of, the Transition Delay.
  1. *Correction Plan* 
     1. The Provider shall submit a draft Correction Plan where:
        1. it becomes aware that there will or may be a Transition Delay; or
        2. there has been a Transition Delay.
     2. The draft Correction Plan shall identify the issues arising out of the Transition Delay and the steps that the Provider proposes to ensure that it complies with the Transition Plan, including recovering any time lost as a result of the Transition Delay.
     3. HSE shall, within five (5) Working Days after the receipt of the draft Correction Plan, provide its comments and suggestions or indicate that the Correction Plan is approved. The Provider shall, within five (5) further Working Days and taking into account such comments and suggestions, prepared an updated Correction Plan for HSE’s final Approval. The Correction Plan shall not take effect until HSE has given its final Approval, which shall not be unreasonably withheld or delayed.
     4. The Provider shall comply with its Correction Plan following its approval by HSE.
  2. *End of Transition Period* 
     1. The Transition Period shall end when the Provider has complied fully with all the requirements and delivered the Phase 1 Deliverables set out in the Transition Plan in accordance with the Transition Plan to the approval of HSE, such approval not to be unreasonably withheld.
  3. [Not used]
  4. *Consequences of failure to comply with Transition Plan*
     1. If the Provider has failed to comply with the provisions of the Transition Plan such that it will be unable to provide the Services in accordance with the Service Levels from the Services Start Date, HSE shall require the Provider to undertake such parts of the Services as HSE may specify by notice in writing and to formulate a further plan for the delivery of those parts of the Services not so specified, such plan to include provisions requiring the Provider to:
        1. devote such additional resources as may be necessary, such additional resources to be at the Provider’s risk and expense; and
        2. to ensure the Provider is able to commence full provision of the Services as soon as possible after the Services Start Date.
     2. The exercise by HSE of its rights under Clause 17.8.1 shall not:
        1. to any extent relieve the Provider of its obligation to meet the Service Levels or of any other liability or obligation under this Agreement; or
        2. entitle it to any sum by way of increased Charges.

Charges and Value For Money

1. Charges
   1. In consideration of providing the Concession Services in accordance with this Agreement the Provider shall, subject to having complied with Clause 15 (Conditions Precedent) be entitled from the Renewal Fee Collection Start Date to levy the Charges in accordance with Schedule 4 (Charges).
   2. The Provider shall not increase the Charges beyond those set out in Schedule 4 (Charges) or levy any additional charges or fees, except by way of indexation in accordance with that Schedule (in the case of increase to the Charges) or following the Change Control Procedure.
   3. Each Contract Year, HSE shall have the right to require the Provider to reduce the Charges provided that any such a reduction is fully funded by way of a subsidy in accordance with paragraph 4.3.5(c) of Schedule 5 (Financial Model and Gain Share).
2. Value for money
   1. The Parties shall comply with their respective responsibilities under Schedule 5 (Financial Model and Gain Share).
3. Set-off
   1. If any sum of money shall be due from the Provider to HSE, the same may be deducted from any sum then due or which at any time thereafter may become due to the Provider under this Agreement and/or any other agreement with HSE.
   2. The Provider may not exercise any rights of set-off, withholding or similar rights in connection with any sums that are due or which at any time thereafter may become due to HSE under this Agreement and/or any other agreement with the Provider.

Contract Management

1. Contract management
   1. The Parties shall manage this Agreement through the governance arrangements as set out in Schedule 10 (Governance and Contract Management).
   2. Each Party shall have a representative for the duration of this Agreement who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Agreement.
   3. The initial Provider Contract Manager shall be the person named as such in Schedule 14 (Key Personnel). Any change to the Provider Contract Manager shall be agreed in accordance with Clause 29.2 (Key Personnel).
   4. HSE shall notify the Provider of the identity of the initial HSE Contract Manager within 5 Working Days of the Effective Date. HSE may, by written notice to the Provider, revoke or amend the authority of the HSE Contract Manager or appoint a new HSE Contract Manager.
2. Notices
   1. Except as otherwise expressly provided in this Agreement, no notice or other communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Party concerned.
   2. Any notice or other communication which is to be given by a Party to the other shall be given by letter delivered by personal delivery or sent by first-class post or electronic mail. Such notices or communications shall be addressed to the other Party in the manner referred to in Clause 22.3.
   3. For the purposes of Clause 22.2, the address of each Party shall be as follows:
      1. for HSE:

Redgrave Court

Merton Road

Bootle

Merseyside L20 7HS

* + 1. REDACTEDREDACTEDfor Provider:

First Floor, 2 Kingdom Street

Paddington

London W2 6BD

* 1. [REDACTED](mailto:REDACTED) REDACTED Each Party may change the addresses and other contact details for itself listed in Clause 22.3 by providing written notice in accordance with Clause 22.2 to the other Party.
  2. Any correctly addressed notice to be given under this Clause 22 shall be deemed to be received:
     1. if delivered in person, at time of receipt evidenced by signature of a delivery receipt;
     2. if sent by email, when sent unless an error message is received; or
     3. if sent by first-class post, on the third (3rd) Working Day after posting.
  3. This Clause 22 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a notice invoking the Dispute Resolution Procedure).

1. Inspection and access
   1. The Provider shall allow during normal business hours and on the giving of reasonable notice access by HSE or its representatives, agents or nominees to those Sites, Equipment, systems and information used by the Provider in the running and administration of the Services for the purposes of inspecting the operations relating to the Services and ensuring the Provider’s compliance with this Agreement.
2. Audit
   1. Without prejudice to the Provider's duties under Clause 25 (Reporting), the Provider shall keep (or cause to be kept) and maintain (or cause to be maintained) for a minimum of six (6) years following the termination or expiry of this Agreement full and accurate records (the “Records”) in relation to the Services performed in connection with this Agreement.
   2. Without prejudice to HSE's other rights under this Agreement (including, but not limited to, under Schedule 5 (Financial Model and Gain Share) and Schedule 11 (Management Information, Reporting and Records)), HSE (or HSE’s auditors and their respective authorised agents, as applicable) may once during each year of the Term and at least once in the six (6) years following the expiry or earlier termination of this Agreement, have the right on reasonable prior written notice (save where the giving of such notice would be incompatible with the purpose of the audit) of reasonable access to the Records (including a right to make copies thereof at cost) and to any Sites and Equipment, to conduct an audit of the Provider (and the Provider shall provide all reasonable assistance in connection therewith) for any or all of the following purposes:
      1. in connection with any audit and certification of HSE’s accounts;
      2. to verify the accuracy and completeness of any information supplied by the Provider to HSE under this Agreement;
      3. to audit the Provider’s quality management and information security systems;
      4. to carry out an audit of the Provider’s compliance with this Agreement;
      5. to carry out an audit of all activities, security and integrity in connection with the provision of the Services;
      6. to carry out any other audit that may be required by HSE or any regulatory body; and
      7. to carry out an unannounced or semi-announced inspection of any Site and speak directly to any Provider Personnel in a confidential manner and in the native language of such Provider Personnel in respect of workforce conditions, working or employment practices and recruitment practices.
   3. The Provider shall bear its own costs of any audit or inspection under Clause 24.2 unless any audit reveals a breach of this Agreement, in which case the Provider shall bear its own and HSE’s costs and reasonable expenses incurred with such audit.
   4. HSE shall use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider in the performance of its obligations under this Agreement or in its daily operations in the normal course of business.
3. Reporting
   1. The Provider shall report to HSE on the operation and provision of the Services in accordance with Schedule 11 (Management Information, Reporting and Records) and the provisions of this Clause 25 (Reporting).
   2. The Provider shall supply HSE with a mid-Contract Year update including where required a presentation and an annual report in such form as is agreed between HSE and the Provider in accordance with Schedule 10 (Governance and Contract Management).
   3. The Provider shall annually at the end of each Contract Year (or otherwise at the direction of HSE) provide HSE with true and complete accounts concerning the provision of the Services and the revenues and costs (including apportionment of overheads to this Agreement) relating thereto, such accounts to be:
      1. in writing; and
      2. signed by a director of the Provider, or if no such person is appointed, by the chief financial officer or equivalent officer of the Provider.
   4. The Provider shall annually at the end of each Contract Year (or otherwise at the direction of HSE) provide HSE with true and complete accounts concerning the provision of the Additional Services or New Additional Services, and the revenues and costs (including apportionment of overheads to this Agreement) relating thereto, such accounts to:
      1. be in writing;
      2. be signed by a director of the Provider, by the chief financial officer or equivalent officer of the Provider;
      3. clearly indicate the effect that such revenues have, will or are expected to have, on the Concession Charges; and
      4. clearly indicate what proportion and level of such revenues the Provider proposes to retain in accordance with Schedule 5 (Financial Model and Gain Share).
   5. The Provider shall upon request supply HSE within a reasonable period of time a copy of any Registration Data.
   6. The Provider shall during the Term provide HSE with a copy of all audited accounts of the Provider within one month of publication.
4. Change Control Procedure
   1. Any changes to the Services supplied by the Provider, this Agreement, the Service Levels or (without prejudice to the terms of, respectively, Clause 5 and Clause 6) any requirement for the provision of Additional Services or Ancillary Services shall be implemented through the Change Control Procedure.
   2. The Provider shall not begin performing any proposed Change to the Services until the Change Control Note(s) relating to the same are approved by HSE in writing and signed by both Parties in accordance with Schedule 6 (Change Control Procedure).
   3. The Provider acknowledges and agrees that the Services and their method of delivery (provided that such does not adversely affect the Service Levels or the Charges) may evolve and be supplemented and enhanced over time to keep pace with technological advancements and improvements in methods of delivering services, and that such evolution, supplementation and improvement of the Services over time will not be subject to Schedule 6 (Change Control Procedure) or result in an amendment (save for a downward amendment) to the Charges unless agreed with HSE in accordance with the Change Control Procedure.
   4. Without prejudice to HSE's other rights under the Change Control Procedure, if the Provider does not agree a Change Control Note that has been initiated by HSE in accordance with the Change Control Procedure and/or the other relevant provisions of this Agreement, the Dispute Resolution Procedure shall apply. The Provider will not unreasonably withhold or delay its agreement to any Change that is proposed by HSE in accordance with the Change Control Procedure.
   5. The Provider shall neither be relieved of its obligations to supply the Services in accordance with the terms of 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 Effective Date.
   6. If a Specific Change in Law occurs or will occur during the Term (other than those referred to in Clause 26.5), the Provider shall:
      1. notify HSE as soon as reasonably practicable of the likely effects of that change, including:
         1. whether any Change is required to the Services, the Charges or this Agreement; and
         2. whether any relief from compliance with the Provider’s obligations is required, including any obligation to meet the Service Levels at any time; and
      2. provide, to HSE’s reasonable satisfaction, evidence:
         1. that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-Contractors;
         2. as to how the Specific Change in Law has affected the cost of providing the Services; and
         3. demonstrating any expenditure that has been avoided.
   7. Subject to Clause 26.6, the Provider shall be entitled to a change in the Charges and/or relief from the Provider’s obligations resulting from a Specific Change in Law (other than as referred to in Clause 26.5.2) which shall be implemented in accordance with the Change Control Procedure.
5. HSE Policies
   1. The Provider shall comply with the Policies when performing the Services and shall ensure that all Provider Personnel responsible for or involved in performing the Services are aware of the Policies and comply with the same when performing the Services.
   2. The Policies listed in Schedule 7 (Policies) shall apply in their entirety unless the Parties acting reasonably agree in writing within ninety (90) days following the Effective Date that any of them are not relevant to the Services.
6. Dispute Resolution
   1. The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure as set in Schedule 19 (Dispute Resolution).
   2. The Provider shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.
7. Provider Personnel and Supply Chain Matters
   1. *[Not used].*
   2. *Key Personnel*
      1. Schedule 14 (Key Personnel) lists the key roles (“**Key Roles**”) and names of the persons who the Provider shall appoint to fill those Key Roles at the Effective Date.
      2. The Provider shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term.
      3. HSE may identify any further roles as being Key Roles and, following agreement to the same by the Provider, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
      4. The Provider shall not remove or replace any Key Personnel (including when carrying out its obligations under Schedule 12 (Exit Management)) unless:
         1. requested to do so by HSE;
         2. the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
         3. the person’s employment or contractual arrangement with the Provider or a Sub-Contractor is terminated for material breach of contract by the employee; or
         4. the Provider obtains HSE’s prior written consent (such consent not to be unreasonably withheld or delayed).
      5. The Provider shall:
         1. notify HSE promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Provider shall ensure appropriate temporary cover for that Key Role);
         2. ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
         3. give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel’s employment contract, this will mean at least three (3) Months’ notice;
         4. ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Services; and
         5. ensure that any replacement for a Key Role:
            1. has a level of qualifications and experience appropriate to the relevant Key Role; and
            2. is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced; and
         6. shall procure that any Sub-Contractor shall not remove or replace any Key Personnel during the Term without Approval.
      6. HSE may require the Provider to remove any Key Personnel that HSE considers in any respect unsatisfactory. HSE shall not be liable for the cost of replacing any Key Personnel in any circumstances.
   3. *Provider Personnel*
      1. The Provider shall:
         1. provide in advance of any admission to HSE Premises a list of the names of all Provider Personnel requiring admission to HSE Premises, specifying the capacity in which they require admission and giving such other particulars as HSE may reasonably require;
         2. ensure that all Provider Personnel:
            1. are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
            2. are vetted in accordance with Good Industry Practice and, where applicable, the Security Policy and the standards referred to in Table 1 of Schedule 20 (IT Requirements);
            3. obey all lawful instructions and reasonable directions of HSE (including, if so required by HSE, the ICT Policy) and provide the Services to the reasonable satisfaction of HSE; and
            4. comply with all reasonable requirements of HSE concerning conduct at the HSE Premises, including the security requirements set out in Schedule 21 (Security Requirements and Plan);
         3. subject to Schedule 9 (Staff Transfer), retain overall control of the Provider Personnel at all times so that the Provider Personnel shall not be deemed to be employees, agents or contractors of HSE;
         4. be liable at all times for all acts or omissions of Provider Personnel, so that any act or omission of a member of any Provider Personnel which results in a Default under this Agreement shall be a Default by the Provider;
         5. use all reasonable endeavours to minimise the number of changes in Provider Personnel;
         6. replace (temporarily or permanently, as appropriate) any Provider Personnel as soon as practicable if any Provider Personnel have been removed or are unavailable for any reason whatsoever;
         7. bear the programme familiarisation and other costs associated with any replacement of any Provider Personnel; and
         8. procure that the Provider Personnel shall vacate HSE Premises immediately upon the Expiry Date or upon termination of this agreement (if applicable).
      2. If HSE reasonably believes that any of the Provider Personnel are unsuitable to undertake work in respect of this Agreement, it may:
         1. refuse admission to the relevant person(s) to HSE Premises (if applicable); and/or
         2. direct the Provider to end the involvement in the provision of the Services of the relevant person(s).
      3. The decision of HSE as to whether any person is to be refused access to the HSE Premises shall be final and conclusive.
      4. *Employment Indemnity*
         1. The Parties agree that:
            1. the Provider shall both during and after the Term indemnify HSE against all Employee Liabilities that may arise as a result of any claims brought against HSE by any person where such claim arises from any act or omission of the Provider or any Provider Personnel; and
            2. HSE shall both during and after the Term indemnify the Provider against all Employee Liabilities that may arise as a result of any claims brought against the Provider by any person where such claim arises from any act or omission of HSE or any of HSE’s employees, agents, consultants and contractors.
      5. *Staff Transfer*
         1. The Parties agree that:
            1. where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9 (Staff Transfer) shall apply as follows:

where the Relevant Transfer involves the transfer of Transferring Authority Employees (if any), Part A and Part D of Schedule 9 (Staff Transfer) shall apply;

where the Relevant Transfer involves the transfer of Transferring Former Provider Employees, Part B and Part D of Schedule 9 (Staff Transfer) shall apply;

where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Provider Employees, Parts A, B and D of Schedule 9 (Staff Transfer) shall apply; and

Part C of Schedule 9 (Staff Transfer) shall not apply;

* + - 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 9 (Staff Transfer) shall apply, Part D of Schedule 9 may apply and Parts A and B of Schedule 9 (Staff Transfer) shall not apply; and
      2. Part E of Schedule 9 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.
    1. *Employment Law*
       1. The Provider must perform its obligations meeting the requirements of all applicable Law regarding employment.
  1. *Appointment of Sub-Contractors*
     1. The Provider shall:
        1. subject to Clauses 29.4.3 and 29.4.4, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Services above a minimum threshold of £25,000 that arise during the Term;
        2. within ninety (90) days of awarding a Sub-Contract to a Sub-Contractor, update the notice on Contracts Finder with details of the successful Sub-Contractor;
        3. monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
        4. provide reports on the information at Clause 29.4.1(c) to HSE in the format and frequency as reasonably specified by HSE; and
        5. promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
     2. Each advert referred to in Clause 29.4.1 above shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Provider.
     3. The obligation at Clause 29.4.1 shall only apply in respect of Sub-Contract opportunities arising after the Effective Date.
     4. Notwithstanding Clause 29.4.1, HSE may, by giving its prior written approval, agree that a Sub-Contract opportunity is not required to be advertised on Contracts Finder.
     5. Without prejudice to Clause 29.4.1, the Provider shall exercise due skill and care in the selection of any Sub-Contractors to ensure that the Provider is able to:
        1. manage any Sub-Contractors in accordance with Good Industry Practice;
        2. comply with its obligations under this Agreement in the delivery of the Services; and
        3. assign, novate or otherwise transfer to HSE or any Replacement Provider any of its rights and/or obligations under each Sub-Contract that relates exclusively to this Agreement.
     6. Prior to sub-contracting any of its obligations under this Agreement, the Provider shall notify HSE and provide HSE with:
        1. the proposed Sub-Contractor’s name, registered office and company registration number:
        2. the scope of any Services to be provided by the proposed Sub-Contractor; and
        3. where the proposed Sub-Contractor is an Affiliate of the Provider, evidence that demonstrates to the reasonable satisfaction of HSE that the proposed Sub-Contract has been agreed on “arm’s-length” terms.
     7. If requested by HSE within ten (10) Working Days of receipt of the Provider’s notice issued pursuant to Clause 29.4.6, the Provider shall also provide:
        1. a copy of the proposed Sub-Contract; and
        2. any further information reasonably requested by HSE.
     8. HSE may, within ten (10) Working Days of receipt of the Provider’s notice issued pursuant to Clause 29.4.6 (or, if later, receipt of any further information requested pursuant to Clause 29.4.7), object to the appointment of the relevant Sub-Contractor if it considers that:
        1. the appointment of a proposed Sub-Contractor may prejudice the provision of the Services or may be contrary to the interests of HSE under this Agreement;
        2. the proposed Sub-Contractor is unreliable and/or has not provided reliable goods and/or reasonable services to its other customers;
        3. the proposed Sub-Contractor employs unfit persons; and/or
        4. the proposed Sub-Contractor should have been excluded in accordance with Clause 29.7 (Termination of Sub-Contracts),

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

* + 1. If:
       1. HSE has not notified the Provider that it objects to the proposed Sub-Contractor’s appointment by the later of ten (10) Working Days of receipt of:
          1. the Provider’s notice issued pursuant to Clause 29.4.2; and
          2. any further information requested by HSE pursuant to Clause 29.4.3; and
       2. the proposed Sub-Contract is not a Key Sub-Contract which shall require the written consent of HSE in accordance with Clause 29.5 (Appointment of Key Sub-Contractors),

the Provider may proceed with the appointment and, where the Sub-Contract is entered into exclusively for the purpose of delivery of the Services, may notify HSE that the relevant Sub-Contract shall constitute a Third Party Contract for the purposes of Schedule 13 (Third Party Contracts).

* 1. *Appointment of Key Sub-Contractors*
     1. HSE has consented to the engagement of the Key Sub-Contractors listed in Schedule 13 (Third Party Contracts).
     2. Where the Provider wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of HSE (the decision to consent or otherwise not to be unreasonably withheld or delayed). HSE may reasonably withhold its consent to the appointment of a Key Sub-Contractor inter alia if it considers that:
        1. the appointment of a proposed Key Sub-Contractor may prejudice the provision of the Services or may be contrary to HSE's interests;
        2. the proposed Key Sub-Contractor is unreliable and/or has not provided reasonable services to its other customers;
        3. the proposed Key Sub-Contractor employs unfit persons; and/or
        4. the proposed Sub-Contractor should have been excluded in accordance with Clause 29.7 (Termination of Sub-Contracts).
     3. Except where HSE has given its prior written consent to the contrary, the Provider shall ensure that each Key Sub-Contract shall include:
        1. provisions which will enable the Provider to discharge its obligations under this Agreement;
        2. a right under Contracts (Rights of Third Parties) Act 1999 for HSE to enforce any provisions under the Key Sub-Contract which confer or are capable of conferring a benefit upon HSE;
        3. a provision enabling HSE to enforce the Key Sub-Contract as if it were the Provider;
        4. a provision enabling the Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-Contract to HSE or any Replacement Provider without restriction (including any need to obtain any consent or approval) or payment by HSE;
        5. obligations no less onerous on the Key Sub-Contractor than those imposed on the Provider under this Agreement in respect of:
           1. data protection requirements set out in Clause 32 (Data protection) and Clause 37 (HSE Data and Security Requirements);
           2. FOIA requirements set out in Clause 33 (Freedom of information and Transparency Information);
           3. the obligation not to embarrass HSE or otherwise bring HSE into disrepute set out in Clause 34.1.1(y);
           4. the keeping of records in respect of the Services being provided under the Key Sub-Contract, including the maintenance of Open Book Data; and
           5. the conduct of audits set out in Clause 24 (Audit);
        6. provisions enabling the Provider to terminate the Key Sub-Contract on notice on terms no more onerous on the Provider than those imposed on HSE under Clause 41 (Termination and Exit Management);
        7. a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the Services provided to the Provider under the Sub-Contract without first seeking the written consent of HSE;
        8. [Not used];
        9. [Not used];
        10. a provision requiring the Key Sub-Contractor to:
            1. promptly notify the Provider in writing of the occurrence of a material detrimental change in the financial standing and/or the credit rating of the Key Sub-Contractor which (a) adversely impacts on the Key Sub-Contractor’s ability to supply the services under the Key Sub-Contract or (b) could reasonably be expected to have an adverse impact on the Key Sub-Contractor’s ability to supply the services under the Key Sub Contract;
            2. [Not used]; and
        11. a provision, where a provision in Schedule 9 (Staff Transfer) imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, requiring the Key Sub-Contractor to provide such indemnity, undertaking or warranty to HSE or the Replacement Provider as the case may be.
     4. [Not used].
  2. *Supply Chain Protection*
     1. The Provider shall ensure that all Sub-Contracts (which in this sub-Clause means any contract in the Provider’s supply chain entered into after the Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement) contain a provision:
        1. requiring the Provider to pay any undisputed sums which are due from it to the Sub-Contractor within a specified period not exceeding thirty (30) days from the receipt of a valid and undisputed invoice;
        2. requiring that any invoices submitted by a Sub-Contractor shall be considered and verified by the Provider in a timely fashion and that if the Provider or other party fails to consider and verify an invoice in accordance with this Clause 29.6.1(b) the invoice shall be regarded as valid and undisputed for the purpose of Clause 29.6.1(a) after a reasonable time has passed;
        3. conferring a right to HSE to publish the Provider’s compliance with its obligation to pay undisputed invoices to the Sub-Contractor within the specified payment period;
        4. giving the Provider a right to terminate the Sub-Contract if the Sub-Contractor fails to comply in the performance of the Sub-Contract with legal obligations in the fields of environmental, social or labour law; and
        5. requiring the Sub-Contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that sub-contract, requirements to the same effect as those required by this Clause 29.6.1.
     2. The Provider shall:
        1. pay any undisputed sums which are due from it to a Sub-Contractor within thirty (30) days from the receipt of a valid invoice; and
        2. include within the reports required pursuant to Clause 25 (Reporting) a summary of its compliance with Clause 29.6.2(a), such data to be certified each quarter by a director of the Provider as being accurate and not misleading.
     3. [Not used].
     4. Without prejudice to Clause 29.6.2(a), the Provider shall:
        1. pay any sums which are due from it to any Sub-Contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
           1. the date set out for payment in the relevant Sub-Contract; or
           2. the date that falls sixty (60) days after the day on which the Provider receives an invoice (or otherwise has notice of an amount for payment); and
        2. include within the relevant report required pursuant to Clause 25 (Reporting) a summary of its compliance with Clause 29.6.4(a) such data to be certified every six months by a director of the Provider as being accurate and not misleading.
     5. If any relevant report provided by the Provider pursuant to Clause 25 (Reporting) shows that in either of the last two six month periods the Provider failed to pay 95% or above of all Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Provider shall submit to HSE within 15 Working Days of submission of the latest report an action plan (the **“Action Plan”**) for improvement. The Action Plan shall include, but not be limited to, the following:
        1. identification of the primary causes of failure to pay 95% or above of all Sub-Contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
        2. actions to address each of the causes set out in Clause 29.6.5(a); and
        3. mechanism for and commitment to regular reporting on progress to the Provider’s Board.
     6. The Action Plan shall be certificated by a director of the Provider and the Action Plan or a summary of the Action Plan published on the Provider's website within 10 Working Days of the date on which the Action Plan is submitted to HSE.
     7. Where the Provider fails to pay any sums due to any Sub-Contractor in accordance with the terms set out in the relevant Sub-Contract, the Action Plan shall include details of the steps the Provider will take to address this.
     8. The Provider shall comply with the Action Plan or any similar action plan connected to the payment of Sub-Contractors which is required to be submitted to HSE as part of the procurement process and such action plan shall be included as part of the Provider's Tender (to the extent it is not already included).
     9. Notwithstanding any provision of Clauses 30.8 (Brand) and 31 (Confidentiality) if the Sub-Contractor notifies HSE (in a report required under Clause 25 (Reporting) or otherwise) that the Provider has failed to pay a valid and undisputed Sub-Contractor’s invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors within sixty (60) days after the day on which the Provider receives an invoice or otherwise has notice of an amount for payment, or HSE otherwise discovers the same, HSE shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).
  3. *Termination of Sub-Contracts* 
     1. HSE may require the Provider to terminate:
        1. a Sub-Contract where:
           1. the acts or omissions of the relevant Sub-Contractor have caused or materially contributed to HSE’s right of termination pursuant to Clause 41 (Termination and Exit Management);
           2. the relevant Sub-Contractor or its Affiliates have embarrassed HSE or otherwise brought HSE into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in HSE, regardless of whether or not such act or omission is related to the Sub-Contractor’s obligations in relation to the Services or otherwise;
           3. the relevant Sub-Contractor has failed to comply in the performance of its Sub-Contract with legal obligations in the fields of environmental, social or labour law; and/or
           4. HSE has found grounds for exclusion of the Sub-Contractor in accordance with Clause 29.10; and
        2. a Key Sub-Contract where there is a Change of Control of the relevant Key Sub-Contractor, unless:
           1. HSE has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
           2. HSE has not served its notice of objection within six (6) months of the later of the date the Change of Control took place or the date on which HSE was given notice of the Change of Control.
     2. The Provider shall at all times during and after the Term indemnify and keep indemnified HSE against all Losses incurred by awarded against or agreed to be paid by HSE arising out of or in connection with any claim made by a Sub-Contractor or Key Sub-Contractor arising out of or in connection with the exercise by HSE of its rights under this Clause 29.7.
  4. *Competitive Terms*
     1. If HSE is able to obtain from any Sub-Contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Provider or the Provider Personnel in the supply of the Services, then HSE may require the Provider to replace its existing commercial terms with that person with the more favourable commercial terms obtained by HSE in respect of the relevant item.
     2. If HSE exercises its option pursuant to Clause 29.8.1, then the relevant Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
  5. *Retention of Legal Obligations* 
     1. Notwithstanding the Provider’s right to subcontract pursuant to this Clause 29, the Provider shall be and remain responsible for all acts and omissions of its Sub-Contractor and the acts and omissions of those employed or engaged by the Sub-Contractor as if they were its own.
     2. An obligation on the Provider to do, or to refrain from doing, any act or thing shall include an obligation upon the Provider to procure that its Provider Personnel its Sub-Contractor, and its Sub-Contractor’s employees, staff and agents also do, or refrain from doing, such act or thing.
  6. *Exclusion of Sub-Contractors*
     1. Where HSE considers whether there are grounds for the exclusion of a Sub-Contractor under Regulation 42 of the Concession Contracts Regulations 2016, then:
        1. if HSE finds there are compulsory grounds for exclusion, the Provider shall replace or shall not appoint the Sub-Contractor; and/or
        2. if HSE finds there are non-compulsory grounds for exclusion, HSE may require the Provider to replace or not to appoint the Sub-Contractor and the Provider shall comply with such a requirement.
  7. *Reporting SME/VCSE Sub-Contracts*
     1. In addition to any other Management Information requirements set out in this Agreement, the Provider agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to HSE thirty (30) days prior to the of the end of each financial year by providing all of the information described in the Supply Chain Transparency Information template in the format set out in the Schedule 11 (Management Information, Reporting and Records) Annex 5 and in accordance with any guidance issued by HSE from time to time.
     2. HSE may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days’ notice and specifying the date from which it must be used.

Information and Data

1. Intellectual Property and Brand Marketing
   1. *General Provisions* 
      1. Each Party keeps ownership of its own Existing IPR. Neither Party has the right to use the other Party's Existing IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under the Agreement or otherwise agreed in writing between authorised representatives of the Parties.
      2. Except as expressly granted elsewhere under the Agreement, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
   2. *Licences granted by the Provider: Provider Existing IPR*
      1. Where the Provider creates and/or provides Services and/or Deliverables which contain or rely upon Provider Existing IPR, the Provider hereby grants HSE a Provider Existing IPR Licence on the terms set out in Clause 30.2.2.
      2. Subject to Clause 30.2.3, the Provider Existing IPR Licence granted by the Provider to HSE is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Provider Existing IPR which is reasonably required by HSE to enable:
         1. HSE to use and receive the Services and the Deliverables; or
         2. HSE to use, sub-licence or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,

for any purpose relating to the exercise of HSE's or any Central Government Body's business or function.

30.2.3 In respect of any Provider Existing IPR which is in software, the licence referred to in Clause 30.2.2 shall only be royalty-free, and shall only be granted, for the Term. If HSE or any Replacement Provider wish to use, or continue to use (as applicable) such software for the purposes set out in Clause 30.2.2 after the expiry or termination of the Term, the terms of such use will need to be agreed between the relevant parties, using reasonable endeavours and acting in good faith.

* 1. *New IPR; Licences granted by HSE*
     1. Any New IPR created under and/or pursuant to the Agreement is owned by HSE. The Provider hereby irrevocably assigns, by way of present and future assignment, all of its rights, title and interest, with full title guarantee, in and to all New IPR to HSE upon creation of the relevant New IPR Item(s).
     2. HSE grants the Provider a licence to use HSE Existing IPR, HSE Data and New IPR subject to and in accordance with the terms of Clause 14 (Licenses Granted by HSE).
     3. Where a Party acquires ownership of IPR incorrectly under this Agreement it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.
     4. Unless otherwise agreed in writing, the Provider and HSE will keep a record of any New IPR and keep this updated throughout the Term. The omission of any New IPR from any record that is maintained pursuant to this Clause 30.3.4 does not prejudice the operation of the other provisions of this Clause 30, including, in particular, the ownership position in relation to all New IPR as set out Clause 30.3.1.
  2. *Open Licence Publication*
     1. Subject to Clause 30.4.4, the Provider agrees that HSE may at its sole discretion publish under Open Licence all or part of the New IPR Items.
     2. Subject to Clause 30.4.4, the Provider hereby warrants that the New IPR Items are suitable for release under Open Licence.
     3. The Provider will supply any or all New IPR Items in a format suitable for publication under Open Licence ("the Open Licence Publication Material") within 30 days of written request from HSE ("HSE Open Licence Request").
     4. The Provider may within 15 days of an HSE Open Licence Request under Clause 30.4.3 request in writing that HSE excludes all or part of:
        1. the New IPR; or
        2. Provider Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to HSE pursuant to Clause 30.4.3,

from Open Licence publication.

* + 1. Any decision to Approve any such request from the Provider pursuant to Clause 30.4.4 shall be at HSE's sole discretion, not to be unreasonably withheld, delayed or conditioned.
    2. HSE will not be liable to the Provider in the event that any Provider Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by HSE.
  1. *Third Party IPR*
     1. The Provider shall not use in the delivery of the Services and/or any Deliverables any Third Party IPR unless Approval is granted by HSE (which is deemed to have been provided in respect of the Key Sub-Contractors and Sub-Contractors identified in Schedule 13 as updated from time to time) and the Provider has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted to HSE a Third Party IPR Licence on the terms set out in Clause 30.5.3. If the Provider cannot obtain for HSE a licence on the terms set out in Clause 30.5.3 in respect of any Third Party IPR the Provider shall:
        1. notify HSE in writing; and
        2. use the relevant Third Party IPR only if HSE has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.
     2. In spite of any other provisions of the Agreement and for the avoidance of doubt, award of this Agreement by HSE and the instruction of any Services and/or Deliverables under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 - 243 of the Copyright, Designs and Patents Act 1988.
     3. Subject to clause 30.5.4, the Third Party IPR Licence granted to HSE shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by HSE to enable it to receive and use the Services and the Deliverables and make use of the services and deliverables provided by a Replacement Provider.
     4. In respect of any Third Party IPR which is in software, the licence referred to in Clause 30.5.3 shall only be royalty-free, and shall only be granted, for the Term. If HSE or any Replacement Provider wish to use, or continue to use (as applicable) such software for the purposes set out in Clause 30.5.3 after the expiry or termination of the Term, the terms of such use will need to be agreed between the relevant parties using reasonable endeavours and acting in good faith.
  2. *Termination of licences*
     1. The Provider Existing IPR Licence granted pursuant to Clause 30.2 and the Third Party IPR Licence granted pursuant to Clause 30.5 shall survive the expiry or termination of this Agreement.
     2. The Provider shall, if requested by HSE and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Provider and subject to Clauses 30.2.3 and 30.5.4, grant (or procure the grant) to the Replacement Provider a licence to use any Provider Existing IPR and/or Third Party IPR on terms equivalent to the Provider Existing IPR Licence or Provider Party IPR Licence (as applicable) subject to the Replacement Provider entering into reasonable confidentiality undertakings with the Provider.
     3. Any licence granted to the Provider pursuant to Clause 14 (Licences Granted by HSE) shall terminate automatically at the end of the Term (or, if earlier, on the date of termination this Agreement) and the Provider shall:
        1. immediately cease all use of the HSE Existing IPR and New IPR (including the HSE Data within which the HSE Existing IPR and/or New IPR may subsist);
        2. at the sole discretion of HSE, return or destroy documents and other tangible materials that contain any of the HSE Existing IPR, New IPR and/or the HSE Data, provided that if HSE has not made an election within six months of the termination of the licence, the Provider may destroy the documents and other tangible materials that contain any of the HSE Existing IPR, New IPR and the HSE Data (as the case may be); and
        3. ensure, so far as reasonably practicable, that any HSE Existing IPR, New IPR and HSE Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Provider containing such HSE Existing IPR, New IPR or HSE Data.
  3. *Provider Existing IPRs* 
     1. Without prejudice to the other provisions of this Clause 30.7, the Provider hereby warrants in relation to Provider Existing IPR that are used by or on behalf of the Provider in connection with the performance of the Services and/or this Agreement:
        1. it or a member of the Provider’s Group is the sole proprietor of those Provider Existing IPR upon the Effective Date (or, if later, on the date of their creation);
        2. it or a member of the Provider’s Group will not, during the Term, cease to be the sole proprietor of such Provider Existing IPR;
        3. it or a member of the Provider’s Group will be the sole proprietor of any developments of or adaptations to such Provider Existing IPRs during the Term; and
        4. where the Provider is the sole proprietor of such Provider Existing IPR, it will not assign or otherwise transfer any rights in that Provider Existing IPR to a member of the Provider’s Group without HSE’s prior express written permission, which shall not be unreasonably withheld or delayed (and the Provider shall ensure that where the Provider Existing IPR is owned by a member of the Provider’s Group the Provider shall have and continue to have throughout the Term such licence to use it in order to shall enable the Provider to comply with its obligations under this Agreement); and
        5. such Provider Existing IPR are not subject to any third party rights and the Provider or a member of the Provider’s Group will not grant any third-party any rights over the Provider Existing IPR which may affect:
           1. the ability of the Provider to perform the Services and/or this Agreement; or
           2. the ability of the Provider to grant a licences of the Provider Existing IPR in accordance with the terms of this Clause 30.
  4. *Brand* 
     1. HSE’s permission to the Provider to use the Brand under licence, and at no charge, during the Term for the purposes of providing the Services is subject to the Provider complying with the terms of this Clause 30.8.
     2. The Provider shall ensure that the Brand is appropriately marketed and protected to ensure that:
        1. the identity of the Register and the Brand is well known to Consumers, Businesses and Engineers;
        2. the Brand is kept separate from any branding of the Provider and is not associated with any other good or service in the gas sector; and
        3. neither the Brand (nor the use of the Brand) brings either Party into disrepute.
     3. Where HSE becomes aware of any occasion where the circumstances referred to in Clause 30.8.2(b) or 30.8.2(c) exist, or of any third-party infringement of the Brand (including passing-off) or of any of the IPR in the Brand (collectively, a **“Brand Infringement”**), it shall immediately inform the Provider of the same.
     4. Where the Provider becomes aware of a Brand Infringement it shall immediately notify HSE of the same.
     5. On being notified or becoming aware of a Brand Infringement the Provider shall take all appropriate steps to ensure that the Brand Infringement ceases as soon as is reasonably possible. The Provider shall not however institute legal proceedings against any third party in respect of any Brand Infringement by any third party without first obtaining written permission from HSE.
     6. All copyrights, trademarks, and other Intellectual Property consisting of or associated with the Brand, together with promotional materials developed by the Provider to promote the Brand shall remain owned by HSE. HSE may use the brand at any time and for any purpose whatsoever related to the Register or not.
  5. *IPR Claims* 
     1. HSE shall notify the Provider, and the Provider shall notify HSE, immediately in writing of any IPR Claim.
     2. The Provider shall conduct all negotiations and any litigation arising in connection with any such IPR Claim, provided always that the Provider shall:
        1. consult and accept the direction of HSE on all substantive issues which arise during the conduct of such litigation and negotiations;
        2. take due and proper account of the interests of HSE; and
        3. not offer, settle or compromise any IPR Claim without HSE’s prior written consent, such consent not to be unreasonably withheld or delayed.
     3. HSE shall at the request of the Provider afford to the Provider all reasonable assistance for the purpose of contesting or conducting any IPR Claim or any other claim or demand made or action brought against or by the Provider for infringement or alleged infringement of IPR in connection with the performance of this Agreement.
     4. Neither the Provider nor HSE shall make any admissions which may be prejudicial to the conduct, defence or settlement of any IPR Claim.
     5. If any IPR Claim is made or in the reasonable opinion of the Provider is likely to be made, the Provider may at its own expense and subject to the consent of HSE, modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative services of equivalent performance and functionality so as to avoid the infringement or the alleged infringement, provided that the terms of this Agreement shall apply with necessary changes to such modified Services or to the substituted services.
  6. *Appointment of counsel, etc* 
     1. Where any proceedings, actions or claims are issued or defended under this Clause 30 the Provider shall (and shall procure that any counsel or other advisers and agents shall) provide such information, and report in relation to such proceedings, as HSE may require from time to time and shall allow HSE full access to all documents and data relating to such proceedings, actions or claims in its possession or control.
     2. The terms of this Clause 30.10 and Clause 30.9 are without prejudice to the operation and/or benefit of the indemnity that is granted by the Provider under Clause 34.4.1(a).
  7. *IP Register* 
     1. The Provider shall establish and maintain a current register (“**IP Register**”) (in a format specified by HSE) of:
        1. all IPR used by the Provider in performing its obligations under this Agreement (and, for the avoidance of doubt, this shall include the Provider Existing IPR, the HSE Existing IPR, the Third Party IPR and the New IPR);
        2. all licences and sub-licences of IPR granted by or to the Provider, including, but not limited to, Third Party IPR used by the Provider; and
        3. the status of any assignment, application for registration, application or amendment of any such IPR.
     2. The Provider shall provide HSE a copy of the up to date IP Register on demand, and every time it is updated.
  8. *Guidelines on Use of IPRs* 
     1. The Provider shall:
        1. submit for approval by HSE guidelines relating to the use and mode of display of any IPR (including, but not limited to, Provider Existing IPR, HSE Existing IPR, Brand IPR and New IPR) in connection with this Agreement and their level of prominence and relationship to other logos and products, and shall comply with all such guidelines as approved by HSE;
        2. update such guidelines prior to any new logo or design being used in relation to the Services, and all such updates shall be subject to HSE’s approval; and
        3. make such amendments to the guidelines or updates submitted to HSE as HSE shall require.

1. Confidentiality
   1. For the purposes of this Clause 31, the term **“Disclosing Party”** shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and **“Recipient”** shall mean the Party which receives or obtains directly or indirectly Confidential Information.
   2. Except to the extent set out in this Clause 31 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:
      1. treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
      2. not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
      3. not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
      4. immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.
   3. The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
      1. the Recipient is required to disclose the Confidential Information by Law, provided that Clause 33 (Freedom of Information and Transparency Information) shall apply to disclosures required under the FOIA or the EIRs;
      2. the need for such disclosure arises out of or in connection with:
         1. any legal challenge or potential legal challenge against HSE arising out of or in connection with this Agreement;
         2. the examination and certification of HSE's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE is making use of any Services provided under this Agreement; and/or
         3. the conduct of a Crown Body review in respect of this Agreement; and/or
      3. the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
   4. If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
   5. The Provider may disclose the Confidential Information of HSE on a confidential basis only to:
      1. Provider Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Provider’s obligations under this Agreement;
      2. its auditors; and
      3. its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Provider discloses Confidential Information of HSE pursuant to this Clause 31.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

* 1. HSE may disclose the Confidential Information of the Provider:
     1. on a confidential basis to any Crown Body for any proper purpose of HSE or of the relevant Crown Body;
     2. to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
     3. to the extent that HSE (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
     4. on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 31.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
     5. on a confidential basis to any person for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 11 or Clause 13.1 (Step-In Rights), its rights to appoint a Remedial Adviser pursuant to Clause 13.2 (Remedial Adviser) and its rights under Clause 41 (Consequences of Termination and Exit Management) and Schedule 12 (Exit Management);
     6. on a confidential basis to any person engaged in providing any goods or services to HSE for any purpose relating to, connected with or otherwise ancillary to this Agreement;
     7. on a confidential basis to any person who has been invited to submit a proposal or tender to provide the Services or services substantially similar to the Services following or in anticipation of the expiry or termination of this Agreement; and/or
     8. on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on HSE under this Clause 31.

* 1. Nothing in this Clause 31 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party’s Confidential Information or an infringement of Intellectual Property Rights.
  2. The Parties acknowledge that each shall be entitled to the remedies of injunction and other equitable relief against the other (in addition to any other rights available under this Agreement or at law) if that other Party breaches or threatens to breach any of its obligations under this Clause 31 (Confidentiality).
  3. The provisions of this Clause 31 shall apply during the Term and indefinitely after the expiry or termination of this Agreement.

1. Data protection
   1. *Status of the Controller*
      1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Agreement will determine the status of each Party under the Data Protection Legislation. A Party may act as:
         1. “Controller” (where the other Party acts as the “Processor”);
         2. “Processor” (where the other Party acts as the “Controller”);
         3. “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);
         4. “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 24 (Processing, Personal Data and Data Subjects) which scenario or scenarios are intended to apply under this Agreement.

* 1. *Where one Party is Controller and the other Party its Processor*
     1. Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 24 (Processing, Personal Data and Data Subjects) by the Controller and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).
     2. The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.
     3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
        1. a systematic description of the envisaged processing operations and the purpose of the processing;
        2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
        3. an assessment of the risks to the rights and freedoms of Data Subjects; and
        4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
     4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
        1. process that Personal Data only in accordance with Schedule 24 (Processing, Personal Data and Data Subjects), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify HSE before processing the Personal Data unless prohibited by Law;
        2. ensure that it has in place Protective Measures, including in the case of the Provider the measures set out in Clause 37 (HSE Data and Security Requirements), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
           1. nature of the data to be protected;
           2. harm that might result from a Data Loss Event;
           3. state of technological development; and
           4. cost of implementing any measures;
        3. ensure that:
           1. the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 24 (Processing, Personal Data and Data Subjects));
           2. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

are aware of and comply with the Processor’s duties under this Clause 32, Clauses 31 (Confidentiality) and 37 (HSE Data and Security Requirements);

are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;

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

have undergone adequate training in the use, care, protection and handling of Personal Data;

* + - 1. not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
         1. the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
         2. the Controller and/or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the Controller which could include relevant parties entering into:

where the transfer is subject to UK GDPR:

the UK International Data Transfer Agreement as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or

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

where the transfer is subject to EU GDPR, the EU SCCs,

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

* + - * 1. the Data Subject has enforceable rights and effective legal remedies;
        2. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
        3. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
      1. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.
    1. Subject to Clause 32.2.6, the Processor shall notify the Controller as soon as reasonably practicable (and in any event within one (1) Working Day in respect of the matter described in Clause 32.2.5(f) or within three (3) Working Days in respect of any matters described in Clauses 32.2.5(a), (b), (c), (d) or (e)) if it:
       1. receives a Data Subject Access Request (or purported Data Subject Access Request);
       2. receives a request to rectify, block or erase any Personal Data;
       3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
       4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
       5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
       6. becomes aware of a Data Loss Event.
    2. The Processor’s obligation to notify under Clause 32.2.5 shall include the provision of further information to the Controller in phases, as details become available.
    3. Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 32.2.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
       1. the Controller with full details and copies of the complaint, communication or request;
       2. such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
       3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
       4. assistance as requested by the Controller following any Data Loss Event; and/or
       5. assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
    4. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 32. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
       1. the Controller determines that the processing is not occasional;
       2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
       3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
    5. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.
    6. The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
    7. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
       1. notify the Controller in writing of the intended Sub-processor and processing;
       2. obtain the written consent of the Controller;
       3. enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 32 such that they apply to the Sub-processor; and
       4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
    8. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
    9. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office or any other regulatory authority. HSE may on not less than 30 Working Days’ notice to the Provider amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office or any other regulatory authority.
  1. *Where the Parties are Joint Controllers of Personal Data* 
     1. In the event that the Parties are Joint Controllers in respect of Personal Data under this Agreement, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 1 to Schedule 24 (Processing, Personal Data and Data Subjects).
  2. *Where the Parties are Independent Controllers of Personal Data* 
     1. With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
     2. Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
     3. Where a Party has provided Personal Data to the other Party in accordance with Clause 32.4.1, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
     4. The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Agreement.
     5. The Parties shall only provide Personal Data to each other:
        1. to the extent necessary to perform the respective obligations under this Agreement;
        2. in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);
        3. where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
           1. the destination country has been recognised as adequate by the UK government is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
           2. the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include the relevant parties entering into:

where the transfer is subject to UK GDPR

the UK International Data Transfer Agreement (the "IDTA") as published by the Information Commissioner’s Office or such updated version of such IDTA as is published by the Information Commissioner’s Office under section 119A(1) of the DPA 2018 from time to time; or

the European Commission’s Standard Contractual Clauses per decisions 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the “EU SCCs”), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the “Addendum”) as published by the Information Commissioner’s Office from time to time; and/or

where the transfer is subject to EU GDPR, the EU SCCs;

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

* + - * 1. the Data Subject has enforceable rights and effective legal remedies;
        2. the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
        3. the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and
      1. where it has recorded it in Schedule 24 (Processing, Personal Data and Data Subjects).
    1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.
    2. A Party processing Personal Data for the purposes of this Agreement shall maintain a record of its processing activities in accordance with Article 30 of the UK GDPR and shall make the record available to the other Party upon reasonable request.
    3. Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Agreement (the **"Request Recipient”**):
       1. the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or
       2. where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
          1. promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
          2. provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
    4. Each Party shall promptly notify the other Party upon it becoming aware of any Data Loss Event relating to Personal Data provided by the other party pursuant to this Agreement and shall:
       1. do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
       2. implement any measures necessary to restore the security of any compromised Personal Data;
       3. work with the other Party to make any required notifications to the Information Commissioner’s Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
       4. not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
    5. Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Agreement as specified in Schedule 24 (Processing, Personal Data and Data Subjects).
    6. Personal Data shall not be retained or processed for longer than is necessary to perform each Party’s obligations under this Agreement which is specified in Schedule 24 (Processing, Personal Data and Data Subjects).
    7. Notwithstanding the general application of Clause 32.2 to relevant Personal Data, where the Provider is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 32.4.
  1. *Standard Contractual Clauses*
     1. It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the **“UK Adequacy Decision”**). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Agreement is not covered by the UK Adequacy Decision or at any time during the term of the Agreement the UK Adequacy Decision is:
        1. withdrawn, invalidated, overruled or otherwise ceases to have effect, or
        2. amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Agreement,

Clauses 32.5.2 to 32.5.3 below shall apply.

* + 1. The Parties agree:
       1. that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU in respect of data transfers by the Provider outside of the EU to the UK;
       2. that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
       3. to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
       4. that if there is any conflict between this Agreement and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.
    2. In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:
       1. that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in use at the time of such update, amendment, substitution, adoption or publication and that such incorporation is not a Change;
       2. that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Agreement (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
       3. to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
       4. that if there is any conflict between this Agreement and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

1. Freedom of information and Transparency Information
   1. The Provider acknowledges that HSE is subject to the requirements of the FOIA and the EIRs and shall assist and cooperate with HSE to enable HSE to comply with those requirements.
   2. Notwithstanding any other provision of this Agreement, the Provider hereby gives its consent for HSE to publish to the general public this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Agreement agreed from time to time.
   3. The Provider shall assist and co-operate with HSE to enable HSE to publish this Agreement.
   4. The Provider shall and shall procure that its Sub-Contractor(s) shall:
      1. transfer any Request for Information to HSE as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
      2. provide HSE with a copy of all information in its possession, power or control in the form that HSE may require within five (5) Working Days (and shall use commercially reasonable efforts to provide such information within a lesser period if so requested by HSE) of HSE requesting that information; and
      3. provide all necessary assistance as reasonably requested by HSE to enable HSE to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIRs.
   5. The Provider acknowledges that HSE is responsible for determining at its absolute discretion whether any information provided by the Provider, including any Confidential Information:
      1. is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs; or
      2. is to be disclosed in response to a Request for Information.
   6. On no occasion shall the Provider or any Sub-Contractor respond directly to a Request for Information unless expressly authorised to do so by HSE in writing.
   7. The Provider acknowledges that HSE may, acting in accordance with the Minister for Cabinet Office’s’ Code of Practice on the discharge of public authorities’ functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose information:
      1. without consulting the Provider; or
      2. following consultation with the Provider and having taken its views into account.
   8. Subject to Clauses 33.5 and 33.7, HSE shall use reasonable endeavours to consult with the Provider before disclosing under FOIA or EIR any Information provided to HSE by the Provider.
   9. The Parties acknowledge that:
      1. the Transparency Reports;
      2. the content of this Agreement, including any changes to this Agreement agreed from time to time, except for –
         1. any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by HSE; and
         2. Commercially Sensitive Information; and
      3. the Publishable Performance Information,

(together the **“Transparency Information”**) are not Confidential Information.

* 1. Notwithstanding any other provision of this Agreement, the Provider hereby gives its consent for HSE to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). HSE shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
  2. The Provider shall assist and co-operate with HSE to enable HSE to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 3.3 of Schedule 11 (Management Information, Reporting and Records).
  3. If HSE believes that publication of any element of the Transparency Information would be contrary to the public interest, HSE shall be entitled to exclude such information from publication. HSE acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, HSE acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Provider.
  4. HSE shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Provider.
  5. The Provider agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to HSE on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. HSE may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 31.6(c)) and Open Book Data) publish such Information. The Provider shall provide to HSE within five (5) Working Days (or such other period as HSE may reasonably specify) any such Information requested by HSE.

HSE and Provider Protections

1. Representations, warranties and indemnities
   1. *Undertakings, Representations and Warranties by Provider* 
      1. The Provider undertakes, represents and warrants to HSE that:
         1. it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
         2. the Provider has, and shall at all relevant times have, the requisite power, capacity and authority, and all necessary licences, permits and consents to enter into this Agreement and to perform the obligations contemplated herein;
         3. this Agreement is executed by its duly authorised representative(s);
         4. the Services shall be performed in compliance with this Agreement;
         5. all obligations shall be performed by appropriately qualified and experienced staff and discharged with all due care, skill and diligence and in accordance with Schedule 7 (Policies);
         6. adequate numbers of appropriately qualified individuals will be used to perform the Services, including as may be required by law, regulation or the Policies;
         7. the Provider shall perform its obligations under this Agreement in a manner that complies with all applicable law and regulations, and shall notify HSE immediately if it becomes aware of any non-compliance with any applicable law, regulation;
         8. there are no actions, suits, proceedings or regulatory investigations pending, or to its knowledge, threatened against or affecting the Provider before any court or administrative body or arbitration tribunal that might affect the ability of the Provider to meet and carry out its obligations under this Agreement, and shall notify HSE in writing within 10 Working Days if it becomes aware of any such actions, suits, proceedings or regulatory investigations;
         9. the Provider’s execution, delivery and performance of this Agreement shall not:
            1. constitute a violation of any Law by which Provider is bound, or of any judgment, order or decree of any court or governmental agency to which the Provider is a party, or by which the Provider is bound;
            2. constitute a violation, breach or default under any contract by which the Provider or any of its assets (whether tangible or intangible) are bound (whether by charge, pledge, lien or otherwise); or
            3. result in the termination, cancellation or acceleration (whether after the giving of notice, passage of time, or both) of any contract by which the Provider or any of its assets (whether tangible or intangible) are bound (whether by charge, pledge, lien or otherwise);
         10. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
         11. all written statements and representations in any written submissions made by the Provider as part of the procurement process, including without limitation its response to the selection questionnaire and invitation to tender, its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Provider has otherwise disclosed to HSE in writing prior to the date of this Agreement;
         12. no Occasions of Tax Non-Compliance have occurred in respect of the Provider, and that if, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Provider shall:
             1. notify HSE in writing of such fact within 5 Working Days of its occurrence; and
             2. promptly provide to HSE:

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

such other information in relation to the Occasion of Tax Non-Compliance as HSE may reasonably require;

* + - 1. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
      2. within the 12 months preceding the Effective Date, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Agreement had this Agreement been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist;
      3. it will provide HSE with such assistance as HSE may reasonably require during the Term in respect of the Services, and it will gather, collate and provide such information and co-operation as HSE may reasonably require for the purposes of ascertaining the Provider's compliance with this Agreement;
      4. transactions between the Provider and any other entities within the Provider’s parent company’s (or ultimate parent company’s) Control entered into during the Term shall be made on arm’s-length terms equivalent to terms which would have been obtained had that transaction taken place on the open market;
      5. none of the events referred to in Clause 41.2 (Termination on Insolvency) is in effect in relation to the Provider as at the Effective Date;
      6. the Provider is not aware, as at the Effective Date, of any matter or thing which will or might adversely affect its ability to fulfil its obligations under this Agreement;
      7. the Provider has not violated any applicable law or any applicable regulation, or any Policy notified to the Provider regarding the offering of inducements in connection with this Agreement;
      8. the Provider has no conflict of interest in relation to this Agreement;
      9. the Provider has no ownership or active interest in any gas installation business which is required under any applicable law or regulation to register with a registration scheme approved by HSE;
      10. the Provider shall perform and deliver the Concession Services in an efficient manner that does not impose any burden beyond that reasonably necessary for the provision of the Concession Services to Businesses and/or Engineers;
      11. the Provider shall maintain during the Term appropriate insurance against any losses or damages arising from the Provider’s performance of this Agreement, in accordance with the provisions of Clause 36 (Insurance), evidence of which shall be provided to HSE upon request;
      12. the Provider shall act at all times with probity and in accordance with core public sector values of fairness, honesty and openness, efficiency, effectiveness and professionalism;
      13. neither the Provider, nor any of its Affiliates or Sub-Contractors, shall embarrass HSE or otherwise bring HSE into disrepute by engaging in any act or omission in relation to this Agreement which is reasonably likely to diminish the trust that the public places in HSE;
      14. the Provider has, and shall at all relevant times have, all necessary rights in IPR and any other materials used or made available by the Provider (and/or any Sub-Contractor) to perform the Provider’s obligations under this Agreement;
      15. the Provider’s performance of its obligations under this Agreement will not infringe any third party IPR; and
      16. the Provider’s use of the Brand under this Agreement does not and will not constitute an infringement of any third-party IPR.
    1. Each of the undertakings, representations and warranties set out in Clause 34.1.1 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.
    2. If at any time the Provider becomes aware that a representation or warranty given by it under Clause 34.1.1 has been breached, is untrue or is misleading, it shall immediately notify HSE of the relevant occurrence in sufficient detail to enable HSE to make an accurate assessment of the situation.
    3. The Parties acknowledge and agree that the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which HSE may have in respect of breach of that provision by the Provider.
    4. Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.
  1. *Provider’s Exit Warranties* 
     1. The Provider represents and warrants to HSE that:
        1. the Processes and Procedures Register shall at all times during the Term be true, correct and complete in all material respects; and
        2. the Replacement Provider will be able to provide the Services (including the operation of the Registration Scheme), using adequate numbers of appropriately skilled and experienced staff using all due care, skill and diligence, by following the Processes and Procedures Register.
  2. *Provider’s Indemnities* 
     1. In relation to this Agreement, the Provider shall, at all times during and after the Term, indemnify HSE and keep HSE indemnified against all Losses incurred by, awarded against or agreed to be paid by HSE arising from or in connection with:
        1. any claim that the use, other than in accordance with this terms of this Agreement, of the Brand by the Provider in connection with the Concession Services or for the purpose of domestic gas safety infringes the IPR of any third party;
        2. any claim, action or demand by any third party arising out of or in connection with any Additional Service, except insofar as such claim, action or demand arises out of a negligent act or omission to act by HSE;
        3. death or bodily injury caused by a negligent act or omission of the Provider or the Provider’s Sub-Contractor;
        4. fraudulent or dishonest acts of the Provider and/or wilful misconduct of the Provider, any Sub-Contractor and/or Provider Personnel that impacts the Agreement;
        5. any breach by the Provider or the Provider’s Sub-Contractor or Sub-processor of the provisions of:
           1. Clause 31 (Confidentiality); and
           2. Clause 32 (Data protection);
        6. any breach by the Provider or the Provider’s Sub-Contractor of any applicable law or regulation.
  3. *Other Provider Indemnities*
     1. *IPR*
        1. The Provider shall at all times, during and after the Term, on written demand indemnify HSE, and keep HSE indemnified, against all Losses incurred by, awarded against or agreed to be paid by HSE arising from or in connection with any IPR Claim arising:
           1. in connection with any New IPR that is provided, created and/or developed by or on behalf of the Provider and/or any member of the Provider's Group;
           2. in connection with any Provider Existing IPR, Third Party IPR that is licensed to HSE under and/or pursuant to Clause 30; and/or
           3. as a result of a failure on the part of the Provider to comply with Clause 30 (Intellectual Property and Brand Marketing) and/or as a result of any misrepresentation by or on behalf of the Provider and/or as a result of any breach of the warranties contained in Clause 30, Clause 34.1.1(aa) and/or Clause 34.1.1(bb).
     2. *VAT*
        1. The Provider shall indemnify HSE on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on HSE at any time (whether before or after the making of a demand pursuant to the indemnity hereunder) in respect of the Provider’s failure to account for or to pay any VAT relating to payments made to the Provider under this Agreement.
     3. *Income Tax and National Insurance Contributions*
        1. Where the Provider or any Provider Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Agreement, the Provider shall:
           1. at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
           2. indemnify HSE against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made (whether before or after the making of a demand pursuant to the indemnity hereunder) in connection with the provision of the Services by the Provider or any Provider Personnel.
  4. *Undertakings, Representations and Warranties by HSE*
     1. HSE undertakes, represents and warrants that:
        1. it has full capacity and authority to enter into and to perform this Agreement;
        2. this Agreement is executed by its duly authorised representative;
        3. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
        4. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors’ rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).
  5. *HSE’s indemnities* 
     1. In relation to this Agreement, HSE shall, at all times during and after the Term, indemnify the Provider and keep the Provider indemnified against all Losses incurred by, awarded against or agreed to be paid by the Provider arising from or in connection with:
        1. any claim by a Business or Engineer that the Concession Charges levied by the Provider are, either in whole or in part, without lawful authority, save that, for the avoidance of doubt, such indemnity shall not extend to any claim by an Business or Engineer that the Concession Charges levied by the Provider, being lawful, are levied in an unlawful manner or are disproportionate to the Concession Services provided by the Provider to Businesses or Engineers;
        2. death or bodily injury caused by a negligent act or omission of HSE;
        3. fraudulent or dishonest acts of HSE; or
        4. any breach by HSE of the provisions of Clause 31 (Confidentiality).
  6. *Indemnification Procedure* 
     1. Each Party (the “Indemnified Party”) shall notify the other Party (the “Indemnifying Party”) in detail in writing (a “Notice of Claim”) promptly after it becomes aware of claim against it or any event which may give rise to a claim against it, which it believes will or may give rise to a claim for indemnification under the provisions of the indemnity obligations set out in this Clause 34 (an “Indemnified Claim”).
     2. Within fifteen (15) days following receipt of a Notice of Claim from the Indemnified Party, but not later than ten (10) days before the date on which any response to legal process is due, the Indemnifying Party shall notify the Indemnified Party in writing whether or not the Indemnifying Party acknowledges and unconditionally accepts its indemnification obligation and elects to assume control of the defence and settlement of that Indemnified Claim (a “Notice of Election”).
     3. Provided that the Indemnifying Party delivers a suitable Notice of Election within the specified period, the Indemnifying Party shall be entitled, at its own expense, to control the conduct, defence and settlement of any litigation and negotiations arising in respect of the Indemnified Claim (subject to Clause 30.9 (IPR Claims)), provided that where there is an impact on the Indemnified Party, the Indemnifying Party will consult with the Indemnified Party and will at all times keep the Indemnified Party informed of all material matters. The Indemnified Party shall be entitled to participate and employ legal assistance in any such litigation or negotiations provided that unless the participation of the Indemnified Party was in response to a request by the Indemnifying Party, the Indemnifying Party shall not be liable to the Indemnified Party for any legal costs and expenses incurred by the indemnified party relating to the Indemnified Claim incurred after the Indemnifying Party delivered a Notice of Election, provided that this was delivered in a timely manner.
     4. At the request of the Indemnifying Party, the Indemnified Party shall afford to the Indemnifying Party reasonable assistance and documentation for the purpose of contesting any Indemnified Claim, and act as or be joined as defendant in legal proceedings. The Indemnifying Party shall promptly reimburse the Indemnified Party for reasonable costs and expenses (including legal fees on a solicitor/own client basis and disbursements and costs of investigation) incurred in so doing.
     5. If the Indemnifying Party does not deliver a Notice of Election relating to the Indemnified Claim, or otherwise fails to acknowledge and unconditionally accept its indemnification obligation or to assume the defence of the Indemnified Claim within the required notice period, or ceases to defend the Indemnified Claim, the Indemnified Party shall have the right to defend the Indemnified Claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party, including payment of any judgement or award and the costs of settlement or compromise of the Indemnified Claim. The Indemnifying Party shall promptly reimburse the Indemnified Party for all such costs and expenses (including legal fees on a solicitor/own client basis and disbursements and costs of investigation).
     6. At the request of the Indemnified Party, the Indemnifying Party shall assign or otherwise pass through to the Indemnified Party, to the extent that the Indemnifying Party is able, the benefit of any indemnities given to the Indemnifying Party by third parties which are applicable to the Indemnified Claim.
     7. The Indemnified Party shall not make any admissions (except as required by court order or applicable regulation) in relation to the Indemnified Claim, without the prior written approval of the Indemnifying Party.
     8. The Indemnifying Party shall not cease to defend, compromise or settle any Indemnified Claim without the Indemnified Party’s prior written consent, if such cessation, compromise or settlement:
        1. would impose or result in the continuation of an injunction or other equitable relief upon the Indemnified Party; or
        2. does not include or result in the third party’s release of the Indemnified Party from all liability relating to such Indemnified Claim.
     9. The Parties acknowledge and agree that the terms of this Clause 34.7 shall not apply in respect of any IPR Claim, which shall be handled in accordance with the terms of Clause 30.9.
  7. *Enforcement of Indemnities* 
     1. It is not necessary for either Party to incur expense or make payment before enforcing a right under any indemnity conferred by this Agreement.

1. Liability
   1. *Liability*
      1. Where the Provider is delivering the Services as a partnership or a consortium, each partner or member of a consortium shall be jointly and severally liable under this Agreement.
   2. *Unlimited Liability*
      1. Neither Party limits its liability for:
         1. death or personal injury caused by its negligence, or that of its employees, agents or Sub-Contractors; or
         2. fraud or misrepresentation by it or its employees;
         3. breach of any obligation as to title implied by statute; or
         4. any other act or omission, for which liability may not be limited under applicable law.
      2. The Provider's liability in respect of the indemnities in Clause 29.3.4 (Employment Indemnity), Clause 34.4 (Other Provider Indemnities), Schedule 9 (Staff Transfer) and the Annexes to Schedule 9 (Staff Transfer) shall be unlimited, and in each case whether before or after the making of a demand pursuant to the indemnity therein.
      3. HSE's liability in respect of the indemnities in Clause 29.3.4 (Employment Indemnity), Schedule 9 (Staff Transfer) and the Annexes to Schedule 9 (Staff Transfer) shall be unlimited.
   3. *Financial Limits*
      1. Subject to Clause 35.2, the Provider’s total aggregate liability:
         1. in respect of all Service Credits payable in respect of each Contract Year shall be REDACTED of the Provider’s Operating Costs and Profit Margin for that Contract Year;
         2. in respect of loss of or damage to HSE Data or Losses incurred by HSE due to breach of Data Protection Legislation that is caused by Default of the Provider occurring in each and any Contract Year shall in no event exceed REDACTED; and
         3. in respect of all other Losses incurred by HSE under or in connection with this Agreement shall in no event exceed:
            1. in respect of the period from the Effective Date to the end of the Year 1, REDACTED
            2. in any subsequent Contract Year REDACTED,

provided that where any Losses referred to in this Clause 35.3.1(c) have been incurred by HSE as a result of the Provider’s abandonment of this Agreement or the Provider’s wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the reference(s) (as applicable) in: (i) Clause 35.3.1(c)(i) to REDACTED "; and/or (ii) Clause 35.3.1(c)(ii) to REDACTED

* + 1. The Outstanding Renewal Charges calculated in accordance with the provisions of Schedule 4 (Charges) shall be excluded from any calculations of liability pursuant to Clause 35.3.
  1. Subject to Clause 35.2 and Clause 35.5, neither Party shall be liable to the other Party for:
     1. any indirect, special or consequential loss or damage; and/or
     2. any loss of profits, loss of business opportunities, revenue or damage to goodwill (in each case whether direct or indirect).
  2. Notwithstanding Clause 35.4 but subject to Clause 35.3, the Provider acknowledges that HSE may, amongst other things, recover from the Provider the following Losses incurred by HSE to the extent that they arise as a result of a Default by the Provider:
     1. additional operational and/or administrative costs and expenses incurred by HSE, including costs relating to time spent by or on behalf of HSE in dealing with the consequences of the Default;
     2. any wasted expenditure or charges rendered unnecessary;
     3. any additional cost of procuring and implementing Replacement Services for the remainder of the anticipated Term, which shall include any incremental costs associated with such Replacement Services above those which would have been payable under this Agreement;
     4. all costs, expenses, compensation and/or interest incurred by HSE in respect of third parties;
     5. the reasonable costs incurred by HSE in exercising its rights under Clauses 13 (Step-in Rights and Remedial Adviser) and 41 (Termination and Exit Management); and
     6. any fines or penalties incurred by HSE pursuant to Law and/or arising from a breach by Provider of any Law and any costs incurred by HSE in defending any proceedings which result in such fines or penalties.
  3. Subject to Clause 35.2, 35.7 and 43.3.3(b), HSE’s total aggregate liability for Losses incurred by the Provider shall in no event exceed REDACTED
  4. HSE’s liability in respect of the indemnities set out in Clause 34.6.1(a) is unlimited.
  5. Nothing in this Agreement shall be taken as in any way reducing or affecting a general duty to mitigate loss suffered by a Party and the Parties shall at all times use all reasonable endeavours to:
     1. mitigate any loss in respect of which the affected Party is entitled to bring a claim (including in respect of any indemnity) against the other Party under this Agreement; and
     2. mitigate the effects, circumstances or events adversely affecting the performance of their obligations under this Agreement which would otherwise entitle the affected Party to relief under this Agreement.
  6. The Provider shall not be liable for any Service Level Failure or other Default by the Provider or other liability arising in connection with this Agreement where and to the extent such Service Level Failure, Default or other liability arises directly from any act, omission, instruction or breach of contract of HSE, HSE’s employees, HSE's agents or HSE's sub-contractors, provided always that the Provider shall:
     1. notify HSE, as soon as the Provider is aware, of any such act, omission, instruction or breach of contract and its effect on the Services or other obligations of the Provider; and
     2. have provided a reasonable opportunity to HSE to remedy such act, omission, instruction or breach.

1. Insurance
   1. *Obligation To Maintain Insurances*
      1. Without prejudice to its obligations to HSE under this Agreement, including its indemnity and liability obligations, the Provider shall for the periods specified in Clause 36.7.2 take out and maintain, or procure the taking out and maintenance of the insurances as set out in Clause 36.7.1 and any other insurances as may be required by applicable Law (together the **"Insurances"**).The Provider shall ensure that each of the Insurances is effective no later than the date on which the relevant risk commences.
      2. The Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
      3. The Insurances shall be taken out and maintained with insurers who are:
         1. of good financial standing;
         2. appropriately regulated;
         3. regulated by the applicable regulatory body and is in good standing with that regulator; and
         4. except in the case of any Insurances provided by an Affiliate of the Provider, of good repute in the international insurance market.
      4. The Provider shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which HSE shall be indemnified in respect of claims made against HSE in respect of death or bodily injury or third party property damage arising out of or in connection with the Agreement and for which the Provider is legally liable.
   2. *General Obligations*
      1. Without limiting the other provisions of this Agreement, the Provider shall:
         1. take or procure the taking of all reasonable risk management and risk control measures in relation to the Services as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
         2. promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Provider is or becomes aware; and
         3. hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.
   3. *Failure To Insure*
      1. The Provider shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
      2. Where the Provider has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, HSE may elect (but shall not be obliged) following written notice to the Provider to purchase the relevant Insurances, and HSE shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Provider.
   4. *Evidence of Insurances*
      1. The Provider shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to HSE, that the Insurances are in force and effect and meet in full the requirements of this Clause 36. Receipt of such evidence by HSE shall not in itself constitute acceptance by HSE or relieve the Provider of any of its liabilities and obligations under this Agreement.
   5. *Cancellation*
      1. Subject to Clause 36.5.2, the Provider shall notify HSE in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
      2. Without prejudice to the Provider's obligations under Clause 36.4, Clause 36.5.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Clause 36.
   6. *Insurance Claims, Premiums and Deductibles*
      1. The Provider shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Agreement for which it may be entitled to claim under any of the Insurances. In the event that HSE receives a claim relating to or arising out of the Services and/or this Agreement, the Provider shall co-operate with HSE and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
      2. The Provider shall maintain a register of all claims under the Insurances in connection with this Agreement and shall allow HSE to review such register at any time.
      3. Where any Insurance requires payment of a premium, the Provider shall be liable for and shall promptly pay such premium.
      4. Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Provider shall be liable for such excess or deductible. The Provider shall not be entitled to recover from HSE any sum paid by way of excess or deductible under the Insurances whether under the terms of this Agreement or otherwise.
   7. *Insurances*
      1. The Insurances entered into and maintained by the Provider under this Clauses 36 shall provide the following minimum levels of cover:
         1. public liability: REDACTED in respect of each incident or series of related incidents;
         2. employer’s liability: REDACTED in respect of each incident or series of related incidents; and
         3. professional indemnity: REDACTED in respect of each incident or series of related incidents.
      2. The Provider shall maintain the Insurances referred to in Clauses 36.7.1(a) and 36.7.1(b) from the Effective Date and throughout the Term. The Provider shall maintain the Insurance referred to in Clauses 36.7.1(c) from the Effective Date and throughout the Term and for a period of six years after the end of the Term.
      3. The Insurances shall include an indemnity to principals clause under which HSE shall be indemnified in respect of claims made against HSE in respect of claims arising out of or in connection with the Agreement and for which the Provider is legally liable.
      4. The Provider shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained for the minimum limit of indemnity for the periods specified in this Clause 36.
      5. Where the Provider intends to claim under any of the Insurances for an amount or amounts that are significant in the opinion of HSE for any matters that are not related to the Services and/or the Agreement, where such claim is likely to result in the level of cover available under any of the Insurances being reduced below the minimum limit of indemnity specified in this Clause 36, the Provider shall promptly notify HSE and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Clause 36.

Risk Management

1. HSE Data and Security Requirements
   1. The Provider shall not delete or remove any proprietary notices contained within or relating to the HSE Data.
   2. The Provider shall not store, copy, disclose, or use the HSE Data except as necessary for the performance by the Provider of its obligations under this Agreement or as otherwise expressly authorised in writing by HSE.
   3. To the extent that HSE Data is held and/or processed by the Provider, the Provider shall supply that HSE Data to HSE as requested by HSE in the format specified in Schedule 1 (Concession Description).
   4. The Provider shall preserve the integrity of HSE Data and prevent the corruption or loss of HSE Data at all times that the relevant HSE Data is under its control or the control of any Sub-Contractor.
   5. The Provider shall perform secure back-ups of all HSE Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Provider shall ensure that such back-ups are available to HSE (or to such other person as HSE may direct) at all times upon request and are delivered to HSE at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties) via a secure encrypted method.
   6. The Provider shall ensure that any system on which the Provider holds any HSE Data, including back-up data, is a secure system that complies with Schedule 21 (Security Requirements and Plan).
   7. If the HSE Data is corrupted, lost or sufficiently degraded as a result of the Provider's Default so as to be unusable, HSE may:
      1. require the Provider (at the Provider's expense) to restore or procure the restoration of HSE Data to the extent and in accordance with the requirements specified in Schedule 15 (Service Continuity Plan and Corporate Resolution Planning) and the Provider shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of HSE's notice; and/or
      2. itself restore or procure the restoration of HSE Data, and shall be repaid by the Provider any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).
   8. If at any time the Provider suspects or has reason to believe that HSE Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Provider shall notify HSE immediately and inform HSE of the remedial action the Provider proposes to take.
   9. The Provider shall comply with the Security Policy and the requirements of Schedule 21 (Security Requirements and Plan) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Provider fully complies with the Security Policy.
   10. HSE shall notify the Provider of any changes or proposed changes to the Security Policy.
   11. If the Provider believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Services it may submit a Change Control Note to HSE. In doing so, the Provider shall support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be subject to the Change Control Procedure.
   12. Until and/or unless a change to the Charges is agreed by HSE pursuant to the Change Control Procedure, the Provider shall continue to perform the Services in accordance with its existing obligations.
2. Service Continuity and Corporate Resolution Planning
   1. The Parties shall comply with the provisions of Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).
3. Force Majeure
   1. Subject to the remainder of this Clause 39 (and, in relation to the Provider, subject to its compliance with any obligations in Clause 38 (Service Continuity and Corporate Resolution Planning)), a Party may claim relief under Clause 39 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Provider in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-Contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-Contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Provider.
   2. The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
   3. If the Provider is the Affected Party, it shall not be entitled to claim relief under Clause 39 to the extent that consequences of the relevant Force Majeure Event:
      1. are capable of being mitigated, but the Provider has failed to do so;
      2. should have been foreseen and prevented or avoided by a prudent provider of Services similar to the Services, operating to the standards required by this Agreement; and/or
      3. are the result of the Provider’s failure to comply with its duties under and/or pursuant to Schedule 15 (Service Continuity Plan and Corporate Resolution Planning) (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of its duties under and/or pursuant to Schedule 15 (Service Continuity Plan and Corporate Resolution Planning).
   4. Subject to Clause 39.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
   5. The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
   6. Where, as a result of a Force Majeure Event:
      1. an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
         1. the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure unless the provision of the Services is materially impacted by a Force Majeure Event which endures for a continuous period of more than ninety (90) days; and
         2. neither party shall be liable for any Default arising out of such failure;
      2. the Provider fails to perform its obligations in accordance with this Agreement:
         1. HSE shall not be entitled:
            1. during the continuance of the Force Majeure Event to exercise its step-in rights under Clause 13.1 as a result of such failure; and
            2. to receive Service Credits to the extent that a Service Level Failure has been caused by the Force Majeure Event; and
         2. the Provider shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be provided in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
   7. The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.
   8. Relief from liability for the Affected Party under Clause 39.1 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 39.7.

Remedies and Relief

1. HSE Remedies for Default
   1. *Remedies*
      1. Without prejudice to any other right or remedy of HSE howsoever arising and subject to any exclusive financial remedy provisions, if the Provider commits any Default of this Agreement then HSE may (whether or not any part of the Services have been provided) in the following order:
         1. give the Provider the opportunity (at the Provider’s expense) to remedy the Default together with any damage resulting from such Default (where such Default is capable of remedy) or to carry out any other necessary work to ensure that the terms of this Agreement are fulfilled, in each case within such period as HSE may reasonably specify;

if the action in 40.1.1(a) fails to remedy the Default, HSE may:

* + - 1. at the Provider’s expense procure or carry out any Replacement Services and/or carry out any work necessary to make the provision of the Services comply with this Agreement; or
      2. if the Default is a Material Breach that is capable of remedy (or there have been a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a Material Breach);
         1. instruct the Provider to comply with the Rectification Plan Process;
         2. suspend this Agreement (whereupon the relevant provisions of Clause 42 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) the Services; and/or
         3. without terminating or suspending the whole of this Agreement, terminate or suspend this Agreement in respect of part of the provision of the Services only (whereupon the relevant provisions of Clause 42 (Partial Termination, Suspension and Partial Suspension) shall apply) and step-in to itself supply or procure a third party to supply (in whole or in part) such part of the Services.
    1. Where HSE exercises any of its step-in rights under this Agreement, HSE shall have the right to charge the Provider for and the Provider shall on demand pay any costs or expenses reasonably incurred by HSE (including any reasonable administration costs or expenses) in respect of the supply of any part of the Services by HSE or a third party and provided that HSE uses its reasonable endeavours to mitigate any additional costs or expense in obtaining Replacement Services.
    2. With respect to KPI or Service Level Failures, HSE will, where applicable, invoke the remedies available in Clauses 9, 10, 11 and 12 before those identified in Clause 40.
  1. *Rectification Plan Process*
     1. Where HSE has instructed the Provider to comply with the Rectification Plan Process pursuant to Clause 40.1.1(c)(i):
        1. the Provider shall submit a draft Rectification Plan to HSE for it to review as soon as possible and in any event within 10 (ten) Working Days (or such other period as may be agreed between the Parties) from the date of HSE’s instructions. The Provider shall submit a draft Rectification Plan even if the Provider disputes that it is responsible for the Default giving rise to HSE’s request for a draft Rectification Plan; and
        2. the draft Rectification Plan shall set out:
           1. full details of the Default that has occurred, including a cause analysis;
           2. the actual or anticipated effect of the Default; and
           3. the steps which the Provider proposes to take to rectify the Default (if applicable) and to prevent such Default from recurring, including timescales for such steps and for the rectification of the Default (where applicable).
     2. The Provider shall promptly provide to HSE any further documentation that HSE requires to assess the Provider’s root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Schedule 19 (Dispute Resolution).
     3. HSE may reject the draft Rectification Plan by notice to the Provider if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
        1. is insufficiently detailed to be capable of proper evaluation;
        2. will take too long to complete;
        3. will not prevent reoccurrence of the Default; and/or
        4. will rectify the Default but in a manner which is unacceptable to HSE.
     4. HSE shall notify the Provider whether it consents to the draft Rectification Plan as soon as reasonably practicable. If HSE rejects the draft Rectification Plan, HSE shall give reasons for its decision and the Provider shall take the reasons into account in the preparation of a revised Rectification Plan. The Provider shall submit the revised draft of the Rectification Plan to HSE for review within five (5) Working Days (or such other period as agreed between the Parties) of HSE’s notice rejecting the first draft. In the event that HSE rejects the second draft, it may invoke the Dispute Resolution Procedure.
     5. If HSE consents to the Rectification Plan, the Provider shall immediately start work on the actions set out in the Rectification Plan.

1. Termination and Exit Management
   1. *Termination on Material Breach* 
      1. HSE may terminate this Agreement for Material Breach by issuing a Termination Notice to the Provider where:
         1. a representation or warranty given by the Provider pursuant to Clause 34 (Representations, warranties and indemnities) or Clause 44 (Prevention of Fraud and Bribery) is materially untrue or misleading, and the Provider fails to provide details of proposed mitigating factors which in the reasonable opinion of HSE are acceptable;
         2. as a result of any Defaults by the Provider, HSE incurs Losses in any Contract Year which exceed 80% of the value of the Provider’s aggregate annual liability limit for that Contract Year as set out in Clauses 35.3.1(b), 35.3.1(c)(i) and/or 35.3.1(c)(ii) (Liability);
         3. HSE expressly reserves the right to terminate this Agreement for Material Breach, including (but not limited to) pursuant to any of the following Clauses: (Service Points), 11.10.3(b) (Improvement Plan), 12.4 (Direction Rights), 13.1.8 (Step-in Rights), 13.2.6 (Remedial Adviser Failure), 44.6.2 (Prevention of Fraud and Bribery), or pursuant to Schedule 9 (Staff Transfer);
         4. the Provider commits any Material Breach of this Agreement which is not, in the reasonable opinion of HSE, capable of remedy;
         5. any changes are made to the memorandum, articles or constitution of the Provider which, in the reasonable opinion of HSE, are likely to impact adversely and materially on the performance by the Provider of its obligations under this Agreement;
         6. HSE has become aware that the Provider should have been excluded under Regulation 44 of the Concession Contracts Regulations 2016 from the procurement procedure leading to the award of this Agreement;
         7. there is a failure by the Provider to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law;
         8. the Provider commits a Material Breach, which in the opinion of HSE is remediable but the Provider has not remedied such Default to the satisfaction of HSE in accordance with the Rectification Plan Process or in accordance with Clause 40.1.1(a) (whichever is applicable);
         9. the Provider is in Material Breach of any Joint Controller Agreement relating to the Agreement;
         10. a Default that occurs and continues to occur on one or more occasions within 6 Months following HSE serving a warning notice on the Provider that it may terminate for persistent breach of the Agreement; or
         11. the Provider or its Affiliates embarrass or bring HSE into disrepute or diminish the public trust in them,

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

* + 1. For the purpose of Clause 41.1.1, a Material Breach may be a single Default or may be a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a Material Breach.
  1. *Termination on Insolvency*
     1. HSE may terminate this Agreement by issuing a Termination Notice to the Provider where an Insolvency Event affecting the Provider occurs and this Agreement shall terminate on the date specified in the Termination Notice.
  2. [Not Used]
  3. *Termination on Change of Control*
     1. The Provider shall notify HSE immediately in writing and as soon as the Provider is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.
     2. The Provider shall ensure that any notification made pursuant to Clause 41.4.1 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
     3. HSE may terminate this Agreement by issuing a Termination Notice under this Clause 41 to the Provider within six (6) Months of:
        1. being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
        2. where no notification has been made, the date that HSE becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

which in either case, in HSE’s reasonable opinion, is likely to result or results in:

* + - 1. a material degradation in the performance of the Services; or
      2. an adverse impact on HSE’s ability to exercise all or any of its rights pursuant to or arising out of this Agreement,

but shall not be permitted to terminate where Approval of the Change of Control was granted prior to the Change of Control, and this Agreement shall terminate on the date specified in the Termination Notice.

* 1. *Termination in Relation to Change Control Procedure*
     1. Subject to paragraph 3.7.1 of Schedule 6 (Change Control Procedure), HSE may terminate this Agreement by issuing a Termination Notice to the Provider for failure of the Provider to implement a Variation in accordance with the Change Control Procedure and this Agreement shall terminate on the date specified in the Termination Notice. HSE will not invoke the provision of this Clause 41.5.1 without first giving the Provider a further opportunity to implement the Variation.
  2. *Termination By Either Party in relation to Force Majeure*
     1. Either Party may, by issuing a Termination Notice to the other Party, terminate this Agreement in accordance with Clause 39 (Force Majeure) and this Agreement shall terminate on the date specified in the Termination Notice.
  3. *Termination without Cause*
     1. HSE shall have the right to terminate this Agreement at any time by issuing a Termination Notice to the Provider giving at least six (6) calendar months’ written notice and this Agreement shall terminate on the date specified in the Termination Notice.
  4. *Termination as a Consequence of De-regulation of the Register*
     1. HSE may terminate this Agreement by issuing a Termination Notice where the legal requirement that Businesses and Engineers be Registered with the Registration Scheme is removed and this Agreement shall terminate on the date specified in the Termination Notice.
  5. *Termination in Relation to Guarantee*
     1. HSE may terminate this Agreement without liability by issuing a Termination Notice to the Provider where:
        1. the Provider fails to deliver the documents in accordance with Clause 15.1.2 (Conditions precedent for renewal fee collection);
        2. the Guarantor withdraws the Guarantee for any reason whatsoever;
        3. the Guarantor is in breach or anticipatory breach of the Guarantee;
        4. an Insolvency Event occurs in respect of the Guarantor;
        5. the Guarantee becomes invalid or unenforceable for any reason whatsoever,

and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to HSE, and this Agreement shall terminate on the date specified in the Termination Notice.

1. Partial Termination, Suspension and Partial Suspension
   1. Where HSE has the right to terminate this Agreement, HSE shall be entitled to terminate or suspend all or part of this Agreement provided always that, if HSE elects to terminate or suspend this Agreement in part, the parts of this Agreement not terminated or suspended can, in HSE’s reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of this Agreement.
   2. Any suspension of this Agreement under Clause 42.1 shall be for such period as HSE may specify and without prejudice to any right of termination which has already accrued, or subsequently accrues, to HSE.
   3. The Parties shall seek to agree any Variation necessitated by a partial termination, suspension or partial suspension in accordance with the Change Control Procedure, to take account of the effect that the partial termination, suspension or partial suspension may have on the provision of any other Services and the Charges, provided that the Provider shall not be automatically entitled to either:
      1. an increase in the Charges in respect of the provision of the Services that have not been terminated if the partial termination arises due to the exercise of any of HSE’s termination rights under Clause 41 (Termination and Exit Management) except Clause 41.7 (Termination Without Cause); nor
      2. reject the Variation.
2. Consequences of Expiry or Termination
   1. The consequences of termination under Clauses 41.1 (Termination on Material Breach), 41.2 (Termination on Insolvency), 41.3 (Termination in Relation to Financial Standing) 41.4 (Termination on Change of Control) 41.5 (Termination in Relation to Change of Control Procedure) and 41.9 (Termination in relation to Guarantee) shall be as follows, subject to Clause 35.5.3:
      1. Where HSE:
         1. terminates (in whole or in part) this Agreement under any of the Clauses referred to in Clause 43.1; and
         2. then makes other arrangements for the supply of the Services,

HSE may (without prejudice to its other rights and/or remedies under and/or pursuant to the Agreement) seek to recover from the Provider the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by HSE throughout the remainder of the anticipated Term provided that HSE shall take all reasonable steps to mitigate such additional expenditure. No further payments shall be payable by HSE to the Provider until HSE has established the final cost of making those other arrangements.

* 1. The consequences of termination under Clause 41.6 (Termination by Either Party in relation to Force Majeure) shall be as follows:
     1. The costs of termination incurred by the Parties shall lie where they fall if either Party terminates or partially terminates this Agreement for a continuing Force Majeure Event pursuant to Clause 41.6 (Termination by Either Party in relation to Force Majeure). No Losses or other costs, expenses or compensation shall be payable by HSE to the Provider in consequence of termination, in whole or in part, under this Clause 43.2.
  2. The consequences of termination under Clause 41.7 (Termination without Cause) and Clause 41.8 (Termination as a Consequence of De-regulation of the Register) shall be as follows:
     1. Where HSE terminates (in whole or in part) this Agreement under Clause 41.7 (Termination without Cause) or Clause 41.8 (Termination as a Consequence of De-regulation of the Register) HSE shall indemnify the Provider against any reasonable and proven Losses which would otherwise represent an unavoidable loss by the Provider by reason of the termination of this Agreement, provided that the Provider takes all reasonable steps to mitigate such Losses.
     2. The Provider shall submit a fully itemised and costed list of such Losses, with supporting evidence including such further evidence as HSE may require, reasonably and actually incurred by the Provider as a result of termination under Clause 41.7 (Termination without Cause) or Clause 41.8 (Termination as a Consequence of De-regulation of the Register).
     3. HSE shall not be liable under Clause 43.3.1 to pay any sum which:
        1. was claimable under insurance held by the Provider, and the Provider has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
        2. when added to any sums paid or due to the Provider under this Agreement, exceeds the total sum (Agreed Operating Costs plus Provider Profit) that the Provider would have been entitled to if this Agreement had not been terminated.
  3. In all cases of termination (whatever the reason) or on expiry of this Agreement:
     1. Save as expressly provided in this Agreement:
        1. termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at the time of such termination or expiry; and
        2. the termination or expiry of the Agreement shall not affect the continuing rights or obligations of HSE and the Provider under any provision of this Agreement which is expressed to survive expiry or termination or which is required to give effect to such expiry or termination, including the following provisions:
           1. Clauses 24 (Audit), 28 (Dispute Resolution), 30 (Intellectual Property and Brand Marketing), 31 (Confidentiality), 32 (Data Protection) 33 (Freedom of Information), 35 (Liability), 43 (Consequences of Expiry or Termination), Clause 46 (Official Secrets Provisions), 50 (Third Party Rights), 53 (Severance), 54 (Entire Agreement), and 62 (Governing Law and Jurisdiction), and the provisions of Schedule 0 (Glossary), Schedule 4 (Charges), Schedule 5 (Financial Model and Gain Share), Schedule 9 (Staff Transfer), Schedule 12 (Exit Management), Schedule 19 (Dispute Resolution Procedure).
     2. Accumulated rights of the Parties shall not be affected by termination or expiry of the Agreement.
     3. The provisions of Schedule 12 (Exit Management) shall come into effect and the Provider shall co-operate fully.

Miscellaneous

1. Prevention of Fraud and Bribery
   1. The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Personnel, have at any time prior to the Effective Date:
      1. committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
   2. The Provider shall not during the Term:
      1. commit a Prohibited Act; and/or
      2. do or suffer anything to be done which would cause HSE or any of HSE’s employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
   3. The Provider shall during the Term:
      1. establish, maintain and enforce, and require that its Sub-Contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
      2. have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that "Associated Persons" (as defined in Section 44(4) of the Criminal Finances Act 2017) of the Provider do not commit tax evasion facilitation offences as defined under that Act;
      3. take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017;
      4. keep appropriate records of its compliance with its obligations under Clause 44.3.1 and make such records available to HSE on request;
      5. if so required by HSE, within twenty (20) Working Days of the Effective Date, and annually thereafter, certify to HSE in writing that the Provider and all persons associated with it or its Sub-Contractors or other persons who are supplying the Services in connection with this Agreement are compliant with the Relevant Requirements. The Provider shall provide such supporting evidence of compliance as HSE may reasonably request; and
      6. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to HSE on request) to prevent it and any Provider Personnel or any person acting on the Provider’s behalf from committing a Prohibited Act.
   4. The Provider shall immediately notify HSE in writing if it becomes aware of any breach of Clause 44.1 and/or 44.2, or has reason to believe that it has or any of the Provider Personnel have:
      1. been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
      2. been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
      3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
   5. If the Provider makes a notification to HSE pursuant to Clause 44.4, the Provider shall respond promptly to HSE’s enquiries, co-operate with any investigation, and allow HSE to audit any books, records and/or any other relevant documentation in accordance with Clause 24 (Audit).
   6. If the Provider has misrepresented or is in breach of its warranty concerning the matters represented and warranted in Clause 44.1, or breaches any of Clauses 44.2 to 44.4, HSE may by notice:
      1. require the Provider to remove from performance of this Agreement any Provider Personnel whose acts or omissions have caused the Provider’s breach; or
      2. immediately terminate this Agreement for Material Breach in accordance with Clause 41.1.
   7. Any notice served by HSE under Clause 44.6 shall specify the nature of the Prohibited Act, the identity of the Party who HSE believes has committed the Prohibited Act and the action that HSE has elected to take (including, where relevant, the date on which this Agreement shall terminate).
2. Discrimination
   1. The Provider shall, and shall procure that its employees shall, comply with any applicable anti-discrimination Law.
   2. The Provider shall take all reasonable steps to secure the observance of all applicable anti-discrimination Law by its suppliers or Sub-Contractors engaged in the execution of this Agreement.
   3. The Provider shall prepare appropriate policies and internal controls to demonstrate its compliance with applicable anti-discrimination Law and shall provide HSE with copies of those policies and internal controls and any updates or amendments to them.
   4. The Provider shall notify HSE of any occasion where it suspects or has grounds for suspicion that its employees, its suppliers or Sub-Contractors or its suppliers’ or Sub-Contractors’ employees have breached any applicable anti-discrimination Law.
3. Official Secrets provisions
   1. The Provider shall comply with and ensure that its employees involved in performing its obligations under this Agreement comply with, the provisions of:
      1. the Official Secrets Acts 1911 to 1989; and
      2. section 182 of the Finance Act 1989,

(together the **“Official Secrets Provisions”**).

* 1. The Provider shall:
     1. provide HSE with such information as HSE may reasonably require to satisfy itself that the Provider is complying with its obligations under the Official Secrets Provisions;
     2. promptly notify HSE of any breach or suspected breach of their obligations under the Official Secrets Provisions and comply with any instructions that HSE might give in writing following such breach; and
     3. ensure that it does nothing knowingly or negligently which places HSE in breach of HSE’s obligations under the Official Secrets Provisions.
  2. The provisions of Clause 46.1 shall apply during the Term and indefinitely after the expiry or termination of this Agreement.

1. Health and Safety
   1. The Provider shall at all times during the Term comply with its duties under the Health and Safety at Work etc. Act 1974 and any other Law relating to health, safety and welfare, which may apply to its staff and others not in its employment in the performance of its obligations under this Agreement.
   2. The Provider shall have in place at the commencement of the Term and shall keep in place during the Term a health and safety management system that includes provision for a health and safety policy; organising, planning and implementing health and safety measures; monitoring performance; and auditing and review.
   3. The Provider shall notify HSE immediately in the event of any incident occurring in the performance of its obligations under this Agreement where that incident causes death or serious bodily injury or ill health, or any significant damage to property that could give rise to serious bodily injury or ill health.
2. Financial Distress
   1. The Parties shall comply with the provisions of Schedule 25 (Financial Distress) in relation to the assessment of the financial standing of the Provider and the consequences of a change to that financial standing.
3. Assignment and Novation
   1. The Provider shall not assign, novate, Sub-Contract or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement or any part of it without Approval.
   2. HSE may at its discretion assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under this Agreement and/or any associated licences or any part thereof to:
      1. any Crown Body and/or any part of the Crown; or
      2. any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by HSE; or
      3. any private sector body which substantially performs the functions that are performed by HSE,

and the Provider shall, at HSE’s request, enter into an assignment or a novation agreement in such form as HSE shall reasonably specify in order to enable HSE to exercise its rights pursuant to this Clause 49.2.

* 1. A change in the legal status of HSE (including if it ceases to be a Crown Body) shall not, subject to Clause 49.4, affect the validity of this Agreement and this Agreement shall be binding on any successor body to HSE.
  2. If HSE 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 49.2.3 or if a body which is not a Crown Body succeeds HSE (the “Transferee” in the rest of this Clause 49.4) the right of termination of HSE in Clause 41.2 (Termination on Insolvency) shall be available to the Provider in the event of insolvency of the Transferee (as if the references to Provider in Clause 41.2 (Termination on Insolvency) and to Provider or Guarantor in the definition of Insolvency Event were references to the Transferee).

1. Third-party rights
   1. The provisions of Schedule 9 (Staff Transfer) and Schedule 12 (Exit Management) (together “**Third Party Provisions**”) confer benefits on persons named in such provisions other than the Parties (each such person a **“Third Party Beneficiary”**) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act (CTRPA).
   2. Subject to Clause 50.1, a person who is not a Party to this Agreement has no right under the CTRPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
   3. No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Parties, which may, if given, be given on and subject to such terms as the Parties may determine.
   4. Any amendments or modifications to this Agreement may be made, and any rights created under Clause 50.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.
2. Variation
   1. This Agreement shall not be varied or modified (except in accordance with Schedule 6 (Change Control Procedure).
3. Waiver
   1. The rights and remedies under this Agreement may be waived only by notice in accordance with Clause 22 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by Law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
   2. Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by Law, in equity or otherwise.
4. Severance
   1. If any provision or part provision of this Agreement is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
5. Entire agreement
   1. This Agreement constitutes the entire agreement and understanding of the Parties in respect of its subject matter and supersedes and extinguishes any prior negotiations, representations, warranties, understandings, course of dealing or arrangements relating to the subject matter of this Agreement, whether written or oral.
   2. Neither Party has been given, nor entered into this Agreement in reliance on, any statement, promise, representation or warranty that is not expressly stated in this Agreement.
   3. This Clause 54 does not exclude liability for fraudulent misrepresentation.
6. Relationship of the Parties
   1. Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
7. Conflicts of Interest
   1. The Provider shall take appropriate steps to ensure that neither the Provider nor any Provider Personnel is placed in a position where, in the reasonable opinion of HSE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to HSE under the provisions of the Agreement. The Provider will disclose to HSE full particulars of any such conflict of interest which may arise.
   2. HSE reserves the right to terminate the Agreement immediately by notice in writing in accordance with Clause 41.1 and/or to take such other steps it deems necessary where, in the reasonable opinion of HSE, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to HSE under the provisions of the Agreement. The actions of HSE pursuant to this Clause 56 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to HSE.
8. Equality and Diversity
   1. The Provider shall:
      1. perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
         1. all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
         2. HSE's equality and diversity policy as provided to the Provider from time to time; and
         3. any other requirements and instructions which HSE reasonably imposes in connection with any equality obligations imposed on HSE at any time under applicable equality Law; and
      2. take all necessary steps, and inform HSE of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).
9. Prevention of Modern Slavery
   1. The Provider:
      1. shall not use, nor allow its Sub-Contractors to use forced, bonded or involuntary prison labour;
      2. shall not require any Provider Personnel or the personnel of any Sub-Contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;
      3. warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
      4. warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
      5. shall make reasonable enquires to ensure that its officers, employees and Sub-Contractors have not been convicted of slavery or human trafficking offences anywhere around the world;
      6. shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Sub-Contractors anti-slavery and human trafficking provisions;
      7. shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Agreement;
      8. shall prepare and deliver to HSE, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
      9. shall not use, nor allow its employees or Sub-Contractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Sub-Contractors;
      10. shall not use or allow child or slave labour to be used by its Sub-Contractors;
      11. shall report the discovery or suspicion of any slavery or trafficking by it or its Sub-Contractors to HSE and the Modern Slavery Helpline;
      12. shall comply with any request by HSE to complete the Modern Slavery Assessment Tool within sixty (60) days of such request;
      13. shall, if the Provider or HSE identifies any occurrence of modern slavery connected to this Agreement, comply with any request of HSE to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the guidance Tackling Modern Slavery in Government Supply Chains, which can be found at:

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/>attachment\_data/file/830150/September\_2019\_Modern\_Slavery\_Guidance.pdf

and such remedial action plan shall be deemed to be a Rectification Plan;

* + 1. shall comply with any request by HSE to provide a Supply Chain Map within fourteen (14) days of such request;
    2. shall comply with any request by HSE to provide a copy of any reports of any Sub-Contractor regarding any or all of workplace conditions, working or employment practices and recruitment practices within fourteen (14) days of such request;
    3. shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied; and
    4. shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to HSE and relevant national or local law enforcement agencies.
  1. For the purposes of an audit carried out pursuant to Clause 24.2.7 (Audit), in addition to any other rights under the Agreement, HSE may instruct the Provider to carry out such an audit of any Sub-Contractor by an independent third party and, if so instructed, the Provider shall deliver a report to HSE within ninety (90) days of such instruction.
  2. If the Provider notifies HSE pursuant to Clause 59 (Whistleblowing) it shall respond promptly to HSE's enquiries, co-operate with any investigation, and allow HSE to audit any books, records and/or any other relevant documentation in accordance with the Agreement.
  3. If the Provider is in Default under Clause 58.1 HSE may by notice:
     1. require the Provider to remove from performance of the Agreement any Sub-Contractor, Provider Personnel or other persons associated with it whose acts or omissions have caused the Default; or
     2. immediately terminate the Agreement in accordance with Clause 41.1.

1. Whistleblowing
   1. As soon as it is aware of it the Provider and Provider Personnel must report to HSE any actual or suspected breach of:
      1. Law;
      2. Clauses 47 (Health and Safety), 29.3.6 (Employment Law), Clause 46 (Official Secrets Provisions), 56 (Conflicts of Interest), 58 (Prevention of Modern Slavery), 57 (Equality and Diversity) or 59.2; or
      3. Clause 44 (Prevention of Fraud and Bribery).
   2. The Provider must not retaliate against any of the Provider Personnel who in good faith reports a breach listed in this Clause to HSE or a Prescribed Person.
2. Publicity
   1. The Provider shall not:
      1. make any press announcements or publicise this Agreement or its contents in any way; or
      2. use HSE's name or brand in any promotion or marketing or announcement of orders;

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

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

1. Further assurances
   1. Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Agreement.
2. Governing law and jurisdiction
   1. This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
   2. Subject to Clause 28 (Dispute Resolution) and Schedule 19 (Dispute Resolution), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.