





**SCHEDULE 5**

**SOFTWARE**

## Software

### 1 THE SOFTWARE

- 1.1 The Software below is licensed to the Authority and/or any Authority Service Recipient in accordance with Clauses 16 (*Intellectual Property Rights*) and 17 (*Transfer and Licences Granted by the Supplier*).
- 1.2 The Parties agree that they will update this Schedule periodically to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

### 2 SUPPLIER SOFTWARE

The Supplier Software includes the following items:

Software	Supplier (if an Affiliate of the Supplier)	Purpose	Number of Licences	Restrictions	Number of Copies		Term/ Expiry

**3 THIRD PARTY SOFTWARE**

The Third Party Software shall include the following items:

Not applicable.

Third Party Software	Supplier	Purpose	Number of Licences	Restrictions	Number of Copies		Term/ Expiry







































































**SCHEDULE 6.1**

**PROJECT PLAN**

## Project Plans

### 1 INTRODUCTION

#### 1.1 This Schedule:

- (a) defines the process for the preparation and implementation of Outline Project Plans and Detailed Project Plans;
- (b) identifies the Milestones (and associated Deliverables) including the Milestones which trigger payment to the Supplier of the applicable Milestone Payments following the issue of the applicable Milestone Achievement Certificate; and
- (c) includes the form of the Statement of Work, which is to be used for the Implementation Services and Optional Services (and which contains references to the relevant Project Plans).

### 2 IMPLEMENTATION PLAN

The Outline Implementation Plan is as set out in the Statement of Work for Implementation Services (the Outline Implementation Plan being in substantially the same form as set out in Annex 4 (Outline Implementation Plan) of this Schedule 6.1 (Project Plan)).

### 3 OUTLINE PROJECT PLANS

- 3.1 The Supplier shall provide an Outline Project Plan for Optional Services in the form set out in ANNEX 1 within 10 Working Days (or such other time period agreed in writing by the Parties) of receipt of a Brief.

### 4 APPROVAL OF THE DETAILED PROJECT PLAN

- 4.1 The Supplier shall submit to the Authority a draft Detailed Project Plan within the timescales set out in the Statement of Work (or if no timescales are set out, within 5 Working Days (or such other timescale as may be agreed in writing by the Parties) of the execution of the Statement of Work), and shall ensure that the draft Detailed Project Plan:

- (a) incorporates all of the Milestones and Milestone Dates set out in the Outline Project Plan;
- (b) includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
  - (i) the completion of each design document;
  - (ii) the completion of the build phase;
  - (iii) the completion of any Acceptance Testing to be undertaken in accordance with Schedule 6.2 (*Testing Procedures*); and
  - (iv) training and roll-out activities;

- (c) clearly outlines all the steps required to implement the Milestones, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
  - (d) clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
  - (e) is produced using a software tool as specified, or agreed by the Authority.
- 4.2 Prior to the submission of the draft Detailed Project Plan to the Authority in accordance with Paragraph 4.1, the Authority shall have the right:
- (a) to review any documentation produced by the Supplier in relation to the development of the Detailed Project Plan, including:
    - (i) details of the Supplier's intended approach to the Detailed Project Plan and its development;
    - (i) copies of any drafts of the Detailed Project Plan produced by the Supplier; and
    - (ii) any other work in progress in relation to the Detailed Project Plan; and
  - (b) to require the Supplier to include any reasonable changes or provisions in the Detailed Project Plan.
- 4.3 Following receipt of the draft Detailed Project Plan from the Supplier, the Authority shall:
- (a) review and comment on the draft Detailed Project Plan as soon as reasonably practicable; and
  - (b) notify the Supplier in writing that it approves or rejects the draft Detailed Project Plan no later than 10 Working Days (or such other timescale as may be agreed in writing by the Parties) after the date on which the draft Detailed Project Plan is first delivered to the Authority.
- 4.4 If the Authority rejects the draft Detailed Project Plan:
- (a) the Authority shall inform the Supplier in writing of its reasons for its rejection; and
  - (b) the Supplier shall then revise the draft Detailed Project Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Project Plan to the Authority for the Authority's approval within 10 Working Days (or such other timescale as may be agreed in writing by Parties) of the date of the Authority's notice of rejection. The provisions of Paragraph 4.3 and this Paragraph 4.4 shall apply again to any resubmitted draft Detailed Project Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 4.5 If the Authority approves the draft Detailed Project Plan, it shall replace the Outline Project Plan from the date of the Authority's notice of approval.







## ANNEX 2: OUTLINE IMPLEMENTATION PLAN

[The Outline Implementation Plan is the Outline Project Plan set out in the Implementation SOW]

## ANNEX 3: FORM OF BRIEF

### BRIEF NO. [INSERT] FDP AGREEMENT

<b>FDP AGREEMENT REFERENCE:</b>	[Insert contract reference number]
<b>THE AUTHORITY:</b>	NHS England
<b>AUTHORITY ADDRESS:</b>	Quarry House, Quarry Hill, Leeds LS1 7UE
<b>THE SUPPLIER:</b>	[Insert name of Supplier]
<b>SUPPLIER ADDRESS:</b>	[Insert registered address (if registered)]
<b>REGISTRATION NUMBER:</b>	[Insert registration number (if registered)]
<b>DATE OF THIS BRIEF:</b>	[Insert date]

- A. This Brief is issued in accordance with the provisions of the Agreement relating to a federated data platform and associated services entered (with contract reference number [INSERT]) dated [INSERT] between the Authority and the Supplier (the "Agreement").
- B. This Brief is for the provision of Optional Services under the Agreement. The Authority requires the Supplier to provide such Services and comply with such requirements as specified and/or referred to in this Brief on and subject to (i) the terms of the relevant Statement Work issued and agreed pursuant to this Brief and (ii) the terms of the Agreement.
- C. In this Brief, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) of the Agreement.

#### 1 SERVICES REQUIRED UNDER THIS BRIEF

<b>OPTIONAL SERVICES:</b>	The Authority requires the Supplier to provide the following Optional Services:  1. [INSERT] 2. [INSERT]
<b>ASSUMPTIONS:</b>	The assumptions shall be as follows:  1. [INSERT]

	2. [INSERT]
<b>REQUIREMENTS:</b>	The Authority requires the Supplier to meet the following Authority's requirements:  1. [INSERT] 2. [INSERT]
<b>PROJECT PLANS:</b>	The Authority requires the Supplier to prepare Project Plans in respect of the Services required under this Brief in accordance with Paragraphs 3 and 4 of Schedule 6.1 (Project Plan) to the Agreement, including the Outline Project Plan in respect of Optional Services.
<b>ADDITIONAL KPIS:</b>	In addition to all applicable Key Performance Indicators as set out in Annex 1 of Schedule 2.2 (Performance Levels) of the Agreement, the Authority requires the Supplier to agree the following additional KPIs in the relevant Statement of Work in respect of the Optional Services required under this Brief:  1. [INSERT] OR [N/A]
<b>STANDARDS:</b>	In addition to complying with Clause 5.5 of the Agreement, including those Standards set out in in Schedule 2.3 (Standards), the additional standards the Supplier is required to comply with under this Brief are:  1. [INSERT] OR [No additional Standards]
<b>ADDITIONAL INSURANCES</b>	[Insert Not additional insurances required or insert details of Additional Insurances required in accordance with Schedule 2.5 (Insurance Requirements) of the Agreement]
<b>SOCIAL VALUE REQUIREMENTS</b>	The Authority requires the Supplier, in providing the Optional Services and performing its obligations under this Brief, to comply with the social value requirements in Schedule 2.1 (Services Description) to the Agreement, together with the following additional requirements:  [INSERT] or [N/A]

## 2 DURATION OF SERVICES

2.1 The Authority requires that the Optional Services are delivered as follows:

- (a) Commencement date: [insert Day Month Year];
- (b) End date: [insert Day Month Year]; and
- (c) Optional extension period: [insert Month] OR [N/A].



### 3 CHARGES AND PAYMENT

- 3.1 The additional Charges shall be discussed and agreed in the relevant Statement of Work issued pursuant to this Brief.
- 3.2 [SoW Anticipated Potential Value: The Authority expects the SoW Anticipated Potential Value to be [in the range of] or [no more than] £[insert].]

## ANNEX 4: FORM OF STATEMENT OF WORK

### STATEMENT OF WORK NO. [INSERT] FDP AGREEMENT

STATEMENT OF WORK TITLE	
FDP AGREEMENT REFERENCE:	[Insert contract reference number]
THE AUTHORITY:	NHS England
AUTHORITY ADDRESS:	Quarry House, Quarry Hill, Leeds LS1 7UE
THE SUPPLIER:	[Insert name of Supplier]
SUPPLIER ADDRESS:	[Insert registered address (if registered)]
REGISTRATION NUMBER:	[Insert registration number (if registered)]
DATE OF THIS STATEMENT OF WORK:	[Insert date]

- A. This Statement of Work is issued in accordance with the provisions of the Agreement relating to a federated data platform and associated services entered (with contract reference number [INSERT]) dated [INSERT] between the Authority and the Supplier (the "Agreement").
- B. This SoW is for the provision of Optional Services [DRAFTING NOTE: for the initial Implementation Services, replace reference to Optional Services with 'Implementation Services'] under the Agreement. The Supplier shall provide such Services as specified and/or referred to in this SoW (including any attachments to this SoW) to the Authority and Authority Service Recipients on and subject to the terms of the Agreement for the duration of this SoW. The SoW shall take effect on the SoW Start Date (as defined below) and shall expire at the end of the SoW End Date (subject to earlier termination of the Agreement or this SoW).
- C. If there is any conflict between this SoW and the Agreement, the terms of this SoW shall take precedence.
- D. In this SoW, unless the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) of the Agreement.

- 
- E. This SoW shall comprise:
- a. This document headed "Statement of Work";
  - b. Appendix A to this Statement of Work: Services;
  - c. Appendix B to this Statement of Work: Outline Project Plan (together with the Detailed Project Plan, once agreed by the Parties in accordance with Paragraph 4 of Schedule 6.1 (Project Plan) to the Agreement);
  - d. Appendix C to this Statement of Work: Additional KPIs;
  - e. Appendix D to this Statement of Work: Details Of Data Processing;
  - f. **[INSERT other incorporated documents/appendices]**.

4 DURATION OF STATEMENT OF WORK

STATEMENT OF WORK START DATE:	[Insert Day Month Year]
STATEMENT OF WORK END DATE:	[Insert Day Month Year] OR [Insert other appropriate end date reference]
STATEMENT OF WORK OPTIONAL EXTENSION PERIOD:	[Insert Months] OR [N/A]

Where an optional extension period has been indicated in the table above, the Authority may elect to extend the duration of the SoW by giving the Supplier at least 30 days' written notice before the Statement of Work End Date.

5 SERVICES UNDER THIS STATEMENT OF WORK

SERVICES:	The Supplier shall provide such Services as specified and/or referred to in Part 1 of Appendix A to this SoW.
ASSUMPTIONS:	Shall be (if any) as set out in Appendix A to this SoW.
REQUIREMENTS:	The Supplier shall meet the Authority's requirements as set out [in Brief number {●} issued by the Authority to the Supplier on [DATE]] OR [Part 2 of Appendix A to this SoW].
PROJECT PLANS:	The Outline Project Plan[/s] in respect of the Services to be provided under this Statement of Work is as set out in Appendix B to this SOW.  The Supplier shall submit to the Authority the Detailed Project Plan in accordance with Paragraph 4 of Schedule 6.1 (Project Plan) to the Agreement within [5] Working Days of the execution of this Statement of Work.
PROJECT SERVICES AND ACCEPTANCE TESTING	The provisions of Clause 6 of the Agreement (including Schedule 6.2 (Testing Procedures) shall apply.
AUTHORITY RESPONSIBILITIES:	Shall be as set out in the [Outline Project Plan or Detailed Project Plan] under this SoW.
KEY PERFORMANCE INDICATORS AND SERVICE CREDITS:	[N/A] OR [The Supplier, from the date agreed in the above referenced Project Plans (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Services under this SoW) provide the relevant Services under this SoW to meet or exceed the applicable Target Performance Level in respect of all Key Performance Indicators applicable to those Services as set out in: (a) Annex 1 of Schedule 2.2 (Performance Levels) of the Agreement; and (b) Appendix C to this Statement of Work: Additional KPIs.

	Service Credits will accrue in accordance with Schedule 7.1 (Charges and Invoicing) to the Agreement.]
<b>STANDARDS:</b>	In addition to complying with Clause 5.5 of the Agreement, including those Standards set out in in Schedule 2.3 (Standards), the additional standards the Supplier is required to comply with under this SoW are: - [INSERT] OR [No additional Standards]
<b>PLATFORM USE TERMS:</b>	In accordance with and subject always to the provisions of Clause 17 of the Agreement, the Platform Use Terms applicable to this SOW shall be: [(a) as set out in Clause 17.2 to the Agreement;] or [Schedule 5 (Software)] [and/or] [(b) the Supplier terms set out in Part 3 of Appendix A to this SoW (as may be modified strictly in accordance with Clauses 17.12 to 17.15 (inclusive) to the Agreement.)]
<b>COMMERCIALY SENSITIVE INFORMATION</b>	[Insert Not applicable or insert Supplier's Commercially Sensitive Information]
<b>ADDITIONAL INSURANCES</b>	[Insert Not additional insurances applicable or insert details of Additional Insurances required in accordance with Schedule 2.5 (Insurance Requirements) of the Agreement]
<b>SOCIAL VALUE REQUIREMENTS</b>	The Supplier agrees, in providing the Optional Services and performing its obligations under this Statement of Work, that it will comply with the social value requirements in Schedule 2.9 (Social Value Commitments) to the Agreement, together with the following additional requirements: [INSERT] or [N/A]

## 6 CHARGES AND PAYMENT UNDER THIS STATEMENT OF WORK

<b>CHARGES AND PAYMENT PROFILE</b> (including applicable discount(s) / preferential pricing and exclusive of VAT):	[INSERT, including any Delay Payment rate and Milestone Retention amounts]
<b>REIMBURSABLE EXPENSES:</b>	[Insert None or insert Recoverable as stated in Schedule 7.1 (Charges and Invoicing) to the Agreement.]
<b>INVOICING AND PAYMENT TERMS:</b>	As set out in Part E of Schedule 7.1 (Charges and Invoicing).
<b>SOW ANTICIPATED POTENTIAL VALUE:</b>	The total anticipated potential value of this SoW is in the following potential range £[insert details].

7 PERSONNEL, GOVERNANCE AND DATA PROTECTION UNDER THIS STATEMENT OF WORK

AUTHORITY REPRESENTATIVE:	[Insert name] [Insert role] [Insert email address] [Insert address]														
AUTHORITY OTHER KEY PERSONNEL:	<table border="1"> <tr> <td>[Insert role]</td> <td>[Insert name]</td> </tr> </table>			[Insert role]	[Insert name]	[Insert role]	[Insert name]	[Insert role]	[Insert name]	[Insert role]	[Insert name]	[Insert role]	[Insert name]		
[Insert role]	[Insert name]														
[Insert role]	[Insert name]														
[Insert role]	[Insert name]														
[Insert role]	[Insert name]														
[Insert role]	[Insert name]														
SUPPLIER REPRESENTATIVE:	[Insert name] [Insert role] [Insert email address] [Insert address]														
SUPPLIER OTHER KEY PERSONNEL:	<table border="1"> <tr> <td>[Insert role]</td> <td>[Insert name]</td> </tr> </table>			[Insert role]	[Insert name]	[Insert role]	[Insert name]	[Insert role]	[Insert name]	[Insert role]	[Insert name]	[Insert role]	[Insert name]		
[Insert role]	[Insert name]														
[Insert role]	[Insert name]														
[Insert role]	[Insert name]														
[Insert role]	[Insert name]														
[Insert role]	[Insert name]														
SUB-CONTRACTORS	<p>For the purposes of this Statement of Work, the following shall be the relevant Sub-contractors (and the Supplier shall update Schedule 4.3 (Notified Sub-contractors) accordingly):</p> <p><b>Services Sub-contractors</b></p> <table border="1"> <thead> <tr> <th>Sub-contractor registered name</th> <th>Sub-contractor registered number</th> <th>Sub-contractor registered address</th> </tr> </thead> <tbody> <tr> <td>[Insert or N/A]</td> <td>[Insert or N/A]</td> <td>[Insert or N/A]</td> </tr> <tr> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td></td> <td></td> </tr> </tbody> </table> <p><b>Other Sub-contractors</b></p> <p>As set out in Clause 15.16 of the Agreement.</p>			Sub-contractor registered name	Sub-contractor registered number	Sub-contractor registered address	[Insert or N/A]	[Insert or N/A]	[Insert or N/A]						
Sub-contractor registered name	Sub-contractor registered number	Sub-contractor registered address													
[Insert or N/A]	[Insert or N/A]	[Insert or N/A]													
RECORDS, REPORTS & AUDITS	<p>The Supplier shall comply with Clause 12 and Schedules 8.4 (Reports and Records Provisions) and Schedule 7.4 (Audit Rights) to the Agreement in respect of this SoW [and shall, in addition, provide to the Authority:</p> <ul style="list-style-type: none"> <li>- A progress report in respect of the Services under this SoW on the first Working Day of each calendar month; and</li> <li>- [INSERT other reports].</li> </ul>														

<b>GOVERNANCE</b>	The Parties shall comply with Clause 11 and Schedule 8.1 (Governance) to the Agreement in respect of this SoW [and shall, in addition, meet at least [quarterly on the first Working Day of each quarter] to discuss this SoW, including its progress and the Charges under it.]
<b>DATA PROTECTION</b>	The Details of Data Processing under this Statement of Work are as set out in Appendix D to this Statement of Work.

## SIGNATURES

This Statement of Work has been duly executed by the Parties on date of this Statement of Work which appears on the first page of this SoW.

**SIGNED for and on behalf of** )  
**[SUPPLIER]** by a director: )  
 )  
 )

Signature:

Name (block capitals):

Position:

Date:

**SIGNED for and on behalf of NHS** )  
**ENGLAND** )  
 )  
 Signature: )

Name (block capitals):

Position:

Date:

**APPENDIX A TO THE STATEMENT OF WORK:  
SERVICES**

**PART 1: SERVICES UNDER THIS SOW**

**[The following Optional Services:]**

	<b>SERVICE / DELIVERABLE NAME</b>	<b>[USE CASE]</b>	<b>DETAILS AND SCOPE</b>	<b>ASSUMPTIONS</b>
1.	{●}	{●}	{●}	{●}
2.	{●}	{●}	{●}	{●}

**OR [The Implementation Services, being the Services relating to Mobilisation, Platform Enablement and Transition provided in accordance with the Outline Implementation Plan set out in Appendix B, and the Detailed Implementation Plan.]**

**PART 2: AUTHORITY REQUIREMENTS FOR THIS SOW**

**[INSERT] OR [As set out in the Brief referred to in section 8 of the SoW] OR [the requirements of the FDP-AS indicated as or relating to transition or implementation in [Schedule 2 to the Authority's tender] (including Appendices 2B and 2I to that Schedule)]**

**PART 3: PLATFORM USE TERMS FOR THIS SOW**

**[INSERT] OR [No additional or differing Platform Use Terms]**

APPENDIX B TO THE STATEMENT OF WORK:  
OUTLINE PROJECT PLAN

[INSERT outline project plan for the SoW]

[DRAFTING NOTE: this should be in the form set out in Annex 1 to Schedule 6.1 (Project Plan) to the Agreement, and for the Implementation Services, this should include the Outline Implementation Plan, based on the template in Annex 4 of Schedule 6.1]

APPENDIX C TO THE STATEMENT OF WORK:

ADDITIONAL KPIS

[COMPLETE below table] OR [N/A]

No.	Key Performance Indicator Title	Definition	Measurement Period	Defect Category	Service Points
KPI {●}	{●}	{●}	{●}	FDP Service Target Performance Level: [{●}]	0
				Minor KPI Failure: [{●}]	{●}
				Material KPI Failure: [{●}]	{●}
				KPI Service Threshold: [below {●}]	{●}

APPENDIX D TO THE STATEMENT OF WORK:

DETAILS OF DATA PROCESSING

[COMPLETE below table] OR [INSERT THE FOLLOWING AND DELETE TABLE: The Details of Data Processing under this Statement of Work are as set out in Annex 1 of Schedule 11 (Processing Personal Data)]

- 1.1 The contact details of the Controller's Data Protection Officer are: **[Insert Contact details]**.
- 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**.
- 1.3 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.4 Any such further instructions shall be incorporated into this Appendix.

Description	Details
Identity of Controller for each Category of Personal Data	<p><b>The Authority [and/or any Authority Service Recipient (as applicable)] is Controller and the Supplier is Processor</b></p> <p>The Parties acknowledge that in accordance with Clause 23.2 to 23.15 and for the purposes of the Data Protection Legislation, the Authority [and/or any Authority Service Recipient] is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none"><li>• <b>[Insert</b> <i>the scope of Personal Data for which the purposes and means of the processing by the Supplier is determined by the Authority and/or any Authority Service Recipient as applicable]</i></li></ul> <p><b>The Supplier is Controller and the Authority [and/or any Authority Service Recipient] as applicable is Processor</b></p> <p><i>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Authority is the Processor in accordance with Clause 23.2 to 23.15 of the following Personal Data:</i></p> <ul style="list-style-type: none"><li>• <b>[Insert</b> <i>the scope of Personal Data for which the purposes and means of the processing by the Authority and/or any Authority Service Recipient as applicable is determined by the Supplier]</i></li></ul> <p style="text-align: center;"><b>[REDACTED]</b></p>







**SCHEDULE 6.2**

**TESTING PROCEDURES**

## Testing Procedures

### 1 INTRODUCTION AND DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>Acceptance Procedure</b>	means the Acceptance Testing procedure set out in Paragraph 4 ( <i>Deliverables Acceptance Procedure</i> ) of this Schedule 6.2 ( <i>Testing Procedures</i> );
<b>Defect Category</b>	means one of the categories described as follows: <ul style="list-style-type: none"><li>(a) <b>Critical</b> The Deliverable Failure results in the failure of the complete system, or a subsystem, or a functional area or a service, making it unusable. No acceptable work around is available;</li><li>(b) <b>Major</b> The Deliverable Failure results in the failure of the complete system, or a subsystem, or a functional area or a service, severely impacting its function and / or performance. However the impact can be mitigated by a temporary workaround;</li><li>(c) <b>Medium</b> The Deliverable Failure does not result in a complete system or functional failure, but causes the system to produce incorrect, incomplete, or inconsistent results, or the Deliverable Failure causes degradation of the systems usability; and</li><li>(d) <b>Nominal</b> The Deliverable Failure does not result in a system or functional failure, does not degrade usability, and the desired processing results are easily obtained by working around the Deliverable Failure. However, the Deliverable Failure can result in the confusion of end users;</li></ul>
<b>Deliverable Failure</b>	means, in respect of a Deliverable, an instance where that Deliverable fails: (a) in respect of Type A and B Deliverables, to pass the Acceptance Tests for such Deliverables set out in Paragraph 3.2(b)(i); or (b) in respect of Type C Deliverables, one or more of the Acceptance Criteria;
<b>Deliverable Failure Management Log</b>	means a log for the recording of Deliverable Failure as described further in Paragraph 4.12;
<b>Ready for Service</b>	means in respect of a given Deliverable, that such Deliverable is capable of passing the Acceptance Tests; and
<b>Test Witness</b>	means any person appointed by the Authority pursuant to Paragraph 5.2.

- 1.1 The Parties shall comply with their respective obligations set out or referred to in this Schedule 6.2 (*Testing Procedures*) in relation to the agreement of the relevant Acceptance Criteria and undertaking Acceptance Testing to determine whether a Deliverable has been Accepted as meeting the relevant Deliverable Requirements or Milestone has been Achieved.
- 1.2 The Supplier shall:
- (a) comply with a Project Plan, including the provision of the Deliverables and performance of the Services set out or referred to in the Agreement or SoW (including any activities set out in a Project Plan); and
  - (b) ensure that each Milestone is Achieved on or before its Milestone Date.

## 2 TESTING OVERVIEW

- 2.1 All Acceptance Tests conducted by the Supplier shall be conducted in accordance with the relevant Test Strategy and the relevant Acceptance Testing Plan.
- 2.2 The Supplier shall prepare the Test Strategy, relevant Acceptance Tests and the Acceptance Testing Plan which shall each be agreed between the Parties as Deliverables under the SoW in accordance with the relevant Project Plan.
- 2.3 The Supplier shall not submit any Deliverable for Acceptance Testing:
- (a) unless the Supplier is reasonably confident that it will pass the Acceptance Tests and, for Type C Deliverables, satisfy the relevant Acceptance Criteria; and
  - (b) until the Parties have agreed the Acceptance Testing Plan relating to the relevant Deliverable(s).
- 2.4 The Supplier shall use reasonable endeavours to submit each Deliverable for Acceptance Testing or re-testing by or before the date set out in a Project Plan for the commencement of Acceptance Testing in respect of the relevant Deliverable.
- 2.5 Any Disputes between the Authority and the Supplier regarding Acceptance Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.
- 2.6 The Authority shall provide all reasonable co-operation and information to the Supplier as the Supplier may reasonably require for the purposes of the Test Strategy and Acceptance Testing Plan.

## 3 TEST STRATEGY

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the execution of the Statement of Work, but in any case as set out in the Project Plan (or if no date is set out in the Project Plan, no later than 20 Working Days of the date of the Statement of Work, or such other period as the Parties may agree in writing).
- 3.2 The final Test Strategy shall include:

- (a) the items and types of testing set out in Annex 2 (Scope of Testing) to this Schedule 6.2 (Testing Procedures);
- (b) an overview of how Acceptance Testing will be conducted in accordance with a Project Plan, including:
- (i) the Deliverable Types;
  - (ii) the Acceptance Tests required for each Type C Deliverable (including as set out in sub-Paragraph (k) below), on the basis that for Type A and B Deliverables, no Acceptance Criteria will be set, and the Acceptance Tests will be as follows:
    - for Type A Deliverables, the Acceptance Tests consist of the Authority reviewing such Deliverables provided by the Supplier and confirming in writing that such Deliverable has met the relevant Deliverable Requirements; and
    - for Type B Deliverables, the Acceptance Tests consist of the Authority confirming in writing that such Deliverable is done; and
  - (iii) (subject to the Authority's written agreement) any reasonable responsibilities of the Authority in respect of Acceptance Testing (such responsibilities being treated as Authority Responsibilities for the purposes of the corresponding definition and Clause 5.18 (*Authority Responsibilities*));
- (c) the process to be used to capture and record Acceptance Test results and the categorisation of Deliverable Failures;
- (d) a procedure to be followed for the resolution of Deliverable Failures or if the Deliverable produces unexpected results;
- (e) the process for the production and maintenance of Deliverable Failures and the Deliverable Failure Management Log;
- (f) the names and contact details of the Authority's and the Supplier's Acceptance Test representatives;
- (g) a high level identification of the resources required for Acceptance Testing, including facilities, infrastructure, personnel and Authority and/or third party involvement in the conduct of the Acceptance Tests;
- (h) the technical environments required to support the Acceptance Tests;
- (i) the procedure for managing the configuration of the Acceptance Test environments;
- (j) details of any automation used to support the Acceptance Tests and the percentage of Acceptance Tests which are either partially or fully automated; and
- (k) in respect of Type C Deliverables:

- (i) the Acceptance Criteria and the method for mapping the expected Acceptance Test results to the Acceptance Criteria;
- (ii) in addition to details of the functional and non-functional Acceptance Tests to be undertaken by the Authority, details of all functional and non-functional Acceptance Tests to be undertaken by the Supplier (which the Supplier shall undertake prior to Acceptance Testing by the Authority, and the Supplier shall provide all required evidence of such Acceptance Testing to the Authority promptly on completion of the Supplier-side Acceptance Tests); and
- (iii) the procedure to be followed to sign off each Acceptance Test.

#### 4 DELIVERABLES ACCEPTANCE PROCEDURE

4.1 In addition to the specific acceptance requirements referred to in Paragraph 2.2 of this Schedule 6.2 (Testing Procedures), the following general acceptance requirements shall apply to a Deliverable:

- (a) the Deliverable complies with the Deliverable Requirements;
- (b) the Deliverable performs to the level necessary to ensure that the system or services to which such Deliverable relates do not suffer a reduction in system or service performance when such Deliverable is put into 'live' operation;
- (c) [the Deliverable does not interfere with or adversely impact the provision of services supplied by third parties to the Authority when such Deliverable is put into 'live' operation];
- (d) the Deliverable accords with Good Industry Practice;
- (e) in respect of Type C Deliverables:
  - (i) there are no open defects with a Defect Category of 'Critical' or 'Major'; and
  - (ii) every open defect with a Defect Category of 'Medium' or 'Nominal' has a workaround available that is acceptable to the Authority.

#### ACCEPTANCE TESTING

4.2 The Supplier shall give the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) of all Acceptance Tests to be conducted by the Supplier (including their time and location). The Authority shall have the right to attend (or perform in place of Supplier) any such Acceptance Tests in accordance with Paragraph 5.

4.3 Before submitting any Deliverables for Acceptance Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.

4.4 In respect of those Acceptance Tests to be performed by the Authority, the Supplier will provide the Authority with reasonable assistance and advice in relation to such tests (including granting the Authority the right to use software necessary for performing and analysing the results of any such Acceptance Tests).

- 4.5 In respect of a Type C Deliverable, the Supplier shall notify the Authority that it considers the relevant Deliverable to be Ready for Service, following which the relevant Deliverable shall be subject to Acceptance Testing in accordance with the relevant Acceptance Testing Plan and the agreed Test Strategy (including both Supplier-side and Authority-side Acceptance Testing as described in Paragraph 3.2(k)(ii)).
- 4.6 The Authority shall not unreasonably withhold or delay its Acceptance of a Deliverable, which will occur at the earliest of written confirmation of either:
- (a) Acceptance following successful completion of the relevant Acceptance Testing (or, for a Type C Deliverable, Acceptance Tests by both the Supplier and the Authority); or
  - (b) that testing of the relevant Deliverable is not required and the Deliverable is to the Authority's reasonable satisfaction.

#### CONSEQUENCES OF FAILED ACCEPTANCE TESTING

- 4.7 **In respect of all Deliverable Types:** If Acceptance Testing reveals any Deliverable Failure (which, where the Deliverable Failure is revealed in any Supplier-side Acceptance Testing, shall be notified in writing immediately by the Supplier to the Authority), that Deliverable will have failed Acceptance Testing and the Authority may, at its sole discretion (where the Deliverable Failure arises during Supplier-side Acceptance Testing):
- (a) extend the period within which the Supplier is required to provide the completed Deliverable, and require the Supplier to:
    - (i) rework that Deliverable to correct the relevant Deliverable Failure(s) (at no additional charge or cost to the Authority); and
    - (ii) deliver such reworked Deliverable to the Authority for repeat Acceptance Testing; or
  - (b) accept the Deliverable on the condition the Supplier reworks that Deliverable to correct the relevant Deliverable Failure(s) (at no additional charge or cost to the Authority) by an agreed date and in an agreed manner, and on any other agreed terms (**Conditional Acceptance**) (where failure to meet such terms cancels such Conditional Acceptance); or
  - (c) accept the flawed Deliverable at a reduced payment that fairly reflects its value (or refund a reasonable proportion of any payments already made in respect of such Deliverable having regard to such value).
- 4.8 **In respect of Type C Deliverables:** If a Deliverable fails to meet its Acceptance Criteria: (i) on two or more previous occasions due to the same Deliverable Failure, or (ii) on three or more previous occasions due to any Deliverable Failures (and for this purpose an occasion shall mean where the Authority has issued a written notice to the Supplier confirming that the relevant set of Acceptance Tests has failed), reject that Deliverable (or relevant component of that Deliverable), and, at its sole discretion:

- (a) reject any related Deliverable (or components thereof), from which the Authority either has not derived any material benefit or will not derive any material benefit due to the rejection of that Deliverable (or component), notwithstanding that the Authority may have already accepted such related Deliverables (or components) and/or
  - (b) require a refund of all sums paid for the rejected Deliverables (including any related Deliverables which are rejected pursuant to Paragraph 4.7(a) of this Schedule 6.2 (*Testing Procedures*)).
- 4.9 Where failure to pass the Acceptance Tests results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 27.1 (Rectification Plan Process).
- 4.10 The Authority shall be entitled, without prejudice to any other rights and remedies that it has under this Agreement, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-testing which is required for the Acceptance Tests for that Deliverable to be passed.
- 4.11 The Authority shall not at any time be deemed to Accept any Deliverables (including Deliverables relating to Software).

#### **DELIVERABLE FAILURE MANAGEMENT LOG**

- 4.12 Where a Deliverable Failure is identified, the Deliverable Failure Management Log maintained by the Supplier shall log Deliverable Failure (and in respect of Type C Deliverables, the Parties shall agree the classification of the Deliverable Failure using the Defect Categories and reflect the Defect Category allocated to each Deliverable Failure in the Deliverable Failure Management Log).
- 4.13 The Supplier shall be responsible for maintaining the Deliverable Failure Management Log and for ensuring that its contents accurately represent the current status of each Deliverable Failure at all relevant times. The Supplier shall make the Deliverable Failure Management Log available to the Authority upon request.
- 4.14 In respect of Type C Deliverables, the Authority shall confirm the classification of any Deliverable Failure unresolved at the end of a Acceptance Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Deliverable Failure for Type C Deliverables, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable.

#### **5 TEST WITNESSING**

- 5.1 The Supplier shall notify the Authority at least 10 Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Acceptance Tests and the Authority shall inform the Supplier if Test Witnesses will attend the Acceptance Tests.
- 5.2 The Authority may, in its sole discretion, require the attendance at any Acceptance Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.

5.3 The Supplier shall give the Test Witnesses access to any documentation and Acceptance Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Acceptance Tests.

## 6 MILESTONE ACHIEVEMENT PROCEDURE

6.1 The procedure described in this Paragraph 6 shall apply to the Achievement of each Milestone.

6.2 The Supplier shall ensure it meets the relevant Achievement Criteria for each Milestone as set out in the relevant Project Plan, on or before the corresponding Milestone Date.

6.3 The Supplier shall not less than five (5) Working Days prior to the Milestone Date for each Milestone provide the Authority with a milestone achievement report which (in each case) details the extent of the Supplier's Achievement of the relevant Milestone, including details of all relevant Deliverables and whether such Deliverables have been Accepted or not by the Authority (**Milestone Achievement Report**).

6.4 The Supplier shall ensure that each Milestone Achievement Report contains sufficient evidence to enable the Authority to verify the extent of the claimed Achievement of the relevant Milestone. The Supplier shall provide the Authority with such additional information as the Authority may require in order for the claimed Achievement to be verified.

6.5 The Authority shall, as soon as reasonably practicable, notify the Supplier in writing (including by email) that the Authority considers that the relevant Milestone has or has not been Achieved including any supporting reasons for non-Achievement. Where a Milestone has been Achieved the Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable and in the form as set out in Annex 1 (**Milestone Achievement Certificate**). For the avoidance of doubt, the Authority shall not be entitled to claim that a Milestone has not been Achieved if all Deliverables required to be delivered in respect of that Milestone, as identified in the relevant Project Plan, have been Accepted and the Authority has confirmed in writing that all other Services relating to that Milestone have been performed in accordance with the relevant Project Plan.

6.6 If the Authority notifies the Supplier in accordance with Paragraph 6.5 of this Schedule 6.2 (*Testing Procedures*) that the relevant Milestone has not been Achieved then, without prejudice to the Authority's rights and remedies under this Agreement in relation to the Achievement of Milestones, the Authority:

(a) may require the Supplier to fix any failures to meet the relevant Achievement Criteria notified under Paragraph 6.5 of this Schedule 6.2 (*Testing Procedures*) and set a further date for assessing whether such Achievement Criteria have been met and the Authority has confirmed under Paragraph 6.5 of Schedule 6.2 (*Testing Procedures*) that the Milestone has been Achieved; and

(b) is not required to pay the relevant Milestone Payment until the Supplier's Achievement of the Achievement Criteria for the relevant Milestone.

- 6.7 Where the Authority issues written confirmation that a Milestone has been Achieved, this shall not:
- (a) waive or in any way restrict the Supplier's obligations and/or liabilities under this Agreement;
  - (b) constitute an acknowledgement that the Milestone is otherwise not deficient; nor
  - (c) relieve the Supplier from any responsibility for remedying, at its own expense, any defects or errors subsequently found in Deliverables comprising such Milestone (whether at such time or thereafter).
- 6.8 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 7.1 (Charges and Invoicing).
- 6.9 Without prejudice to the Authority's other remedies where there is one or more designations of a "Critical" Defect Category this shall constitute a Notifiable Default for the purposes of Clause 27.1 (Rectification Plan Process) and the Authority shall refuse to issue a Milestone Achievement Certificate.

## 7 RISK

- 7.1 The issue of a Milestone Achievement Certificate shall not:
- (a) operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority's requirements for that Deliverable or Milestone; or
  - (b) affect the Authority's right subsequently (acting reasonably) to reject any Milestone to which the Milestone Achievement Certificate relates.
- 7.2 Notwithstanding the issuing of any Milestone Achievement Certificate, and without prejudice to Clause 31 (*Authority Cause*), the Supplier shall remain solely responsible for ensuring that:
- (a) the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements; and
  - (b) the Services are implemented in accordance with this Agreement.

ANNEX 1: MILESTONE ACHIEVEMENT CERTIFICATE

To: [NAME OF SUPPLIER]

FROM: [NAME OF AUTHORITY]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [*insert description of Milestone*]

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

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

[We confirm that all the Deliverables relating to Milestone [*number*] have been tested successfully in accordance with the Acceptance Testing relevant to this Milestone and the Milestone has been Achieved]\*

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 6 of Schedule 6.2 (*Testing Procedures*) of the Agreement on the condition that any Deliverable Failures are remedied in accordance with the Rectification Plan attached to this certificate.]\*

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

*\*delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [*Authority*]







































































**SCHEDULE 7.2**

**PAYMENTS ON TERMINATION**

## Payments on Termination

### 1 TERMINATION PAYMENT

1.1 For the purposes of this Paragraph 1:

- (a) **"Fixed Price Charges"** means such charges for Optional Services as are expressed as a fixed price in the Statement of Work for the Optional Services; and
- (b) **"Fixed Price Services"** means Optional Services which are subject to Fixed Price Charges.
- (c) **"Unavoidable Fixed Price Loss Amount"** means:
  - (i) in respect of any Fixed Price Services, the sum of the Supplier's unavoidable Losses in respect of the Fixed Price Services which are reasonable, proven, committed and not capable of recovery by the Supplier; or
  - (ii) in respect of Services which are not Fixed Price Services, £0.

1.2 The Termination Payment payable pursuant to Clause 34.3 (*Payments by the Authority*) shall be a sum which is the aggregate of:

- (a) all unpaid Charges for Services received up until the Termination Date (as such Charges are set out in a Statement of Work or in Annex 2 (Charging Mechanism), Part E (Invoicing and Payment Terms) of Schedule 7.1 (Charges and Invoicing)); and
- (b) the Unavoidable Fixed Price Loss Amount, provided that:
  - (i) the Supplier uses all reasonable endeavours to mitigate and minimise its Losses (including by re-deploying relevant assets, employees and other resources) and provides a fully itemised and costed schedule with evidence; and
  - (ii) the Unavoidable Fixed Price Loss Amount shall not exceed the total sum of the Fixed Price Charges which would have been payable to the Supplier for the Fixed Price Services if the Agreement had not been terminated.

### 2 FULL AND FINAL SETTLEMENT

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

### 3 INVOICING FOR THE PAYMENTS ON TERMINATION

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

### 4 SET OFF

The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any Termination Payment amount payable by it pursuant to this Schedule.

### 5 NO DOUBLE RECOVERY

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

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

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



































## SCHEDULE 7.4

### AUDIT RIGHTS

## Audit Rights

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>Annual Contract Report</b>	means the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>Audit Agents</b>	means: <ul style="list-style-type: none"><li>(a) the Authority's and/or any Authority Service Recipient's internal and external auditors;</li><li>(b) the Authority's and/or any Authority Service Recipient's statutory or regulatory auditors;</li><li>(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;</li><li>(d) HM Treasury or the Cabinet Office;</li><li>(e) any party formally appointed by the Authority to carry out audit or similar review functions; and</li><li>(f) successors or assigns of any of the above;</li></ul>
<b>Cabinet Office and Markets Suppliers Team</b>	means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
<b>Contract Amendment Report</b>	means the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>Contract Inception Report</b>	means the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
<b>Financial Model</b>	means the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
<b>Financial Report(s)</b>	means the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
<b>Financial Representative</b>	means a reasonably skilled and experienced member of the Supplier's staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Relevant Data and Financial Reports;
<b>Final Reconciliation Report</b>	means the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;

<b>Material Change</b>	means a Change which: <ul style="list-style-type: none"> <li>(a) materially changes the profile of the Charges; or</li> <li>(b) [REDACTED]</li> </ul>
<b>Onerous Contract</b>	means a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
<b>Onerous Contract Report</b>	means a report provided by the Supplier pursuant to Paragraph 2 of Part A to this Schedule;
<b>Quarterly Contract Report</b>	means the quarterly contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
<b>Relevant Data</b>	means granular break-downs of the Charges by Deliverable or Service, compute and storage, input costs of infrastructure, hosting and Software, Supplier Personnel and resources, and Reimbursable Expenses; and
<b>Strategic Supplier</b>	means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> .

## PART A: RELEVANT DATA AND ONEROUS CONTRACTS

### 1 RELEVANT DATA

- 1.1 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:
- (a) maintain and retain the Relevant Data; and
  - (b) disclose and allow the Authority and/or the Audit Agents access to the Relevant Data.

### 2 ONEROUS CONTRACTS

- 2.1 If the Supplier publicly designates the Agreement as an Onerous Contract (including where the Supplier has identified the Agreement as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
- (a) an initial root cause analysis of the issues and circumstances which may have contributed to the Agreement being designated as an Onerous Contract;
  - (b) an initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Agreement as an Onerous Contract;
  - (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services; and
  - (d) details of any other options which could be put in place to remove the designation of the Agreement as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 2.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority's and/or any Authority Service Recipient's receipt of the draft Onerous Contract Report.
- 2.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers Team where the Supplier is a Strategic Supplier; representatives from any Services Sub-contractors/Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 2.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any

liability under this Agreement. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

**PART B: FINANCIAL REPORTS**

**1 PROVISION OF THE FINANCIAL REPORTS**

1.1 The Supplier shall provide:

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

Financial Report	When to be provided
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED] [REDACTED]

1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Agreement. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.

1.3 A copy of each Financial Report shall be held by the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's and/or any Authority Service Recipient's copy of the relevant Financial Report shall be authoritative.

1.4 Each Financial Report shall:

- (a) be completed by the Supplier using reasonable skill and care;
- (b) incorporate and use the same defined terms as are used in this Agreement;
- (c) quote all monetary values in pounds sterling;

- (d) quote all costs as exclusive of any VAT; and
  - (e) quote all costs and Charges based on current prices.
- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- (a) being accurate and not misleading;
  - (b) having been prepared in conformity with generally accepted accounting principles within the United Kingdom;
  - (c) being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
  - (d) compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
- (a) prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
  - (b) to the extent permitted by Law, ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the costs incurred by the Supplier;
  - (c) to the extent permitted by Law, ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and
  - (d) not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Relevant Data.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
- (a) the costs incurred (or those forecast to be incurred) by the Supplier; and/or
  - (b) the forecast Charges for the remainder of the Term,
- the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Agreement.
- 2 FINANCIAL MODEL**
- 2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:

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

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

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

### **3 DISCUSSION OF QUARTERLY CONTRACT REPORTS AND FINAL RECONCILIATION REPORT**

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

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

### **4 SUB-CONTRACTORS**

4.1 The Supplier shall, if requested by the Authority and/or any Authority Service Recipient, provide (or procure the provision of) a report or reports including the level

of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Services Sub-contractors.

4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall on written request by the Authority and/or any Authority Service Recipient, provide the Authority or procure that it is provided with:

- (i) full copies of audit reports for the Services Sub-contractors. The Authority shall be entitled to rely on such audit reports; and
- (ii) further explanation of, and supporting information in relation to, any audit reports provided.

## PART C: AUDIT RIGHTS

### 1 AUDIT RIGHTS

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

- (a) to verify the integrity and content of any Financial Report;
- (b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments) including the amounts paid to all Services Sub-contractors and any third party suppliers;
- (c) to verify the Relevant Data;
- (d) to verify the Supplier's and each Services Sub-contractor's compliance with this Agreement and applicable Law;
- (e) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
- (f) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier and/or any Services Sub-contractors or their ability to perform the Services;
- (g) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (h) to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Agreement;
- (i) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
- (j) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
- (k) to verify the accuracy and completeness of any Management Information delivered or required by this Agreement;
- (l) to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;
- (m) to inspect the Supplier System (or any part of it) and the wider service delivery environment (or any part of it);

- (n) to review the accuracy and completeness of the Registers;
- (o) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (p) to review the Supplier's quality management systems (including and any quality manuals and procedures);
- (q) to review the Supplier's compliance with the Standards;
- (r) to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
- (s) to review the integrity, confidentiality and security of the Authority Data.

1.2 Except where:

- (a) an audit is imposed on the Authority or any Authority Service Recipient by a regulatory body;
- (b) an audit is required by the Authority for the purposes of compliance (including assessing Supplier's compliance) with: (i) the Data Protection Legislation; (ii) any data processing, privacy or security requirements under an SoW; (iii) Clauses 20 (Authority Data and Security Requirements) and/or 23 (Protection of Personal Data) of the Agreement; (iv) Schedule 2.4 (Security Management); (v) Schedule 11 (Processing Personal Data); and/or (vi) any Data Processing Agreement; and/or
- (c) where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Agreement,

the Authority may not conduct an audit of the Supplier or of the same Services Sub-contractor more than twice in any Contract Year. Where possible, the Authority will endeavour to combine its auditing activities under this paragraph 1.2 to minimise disruption to Supplier's operations.

1.3 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Sub-contractors for the purposes of and pursuant to applicable Law.

1.4 Where the Audit Agent is an external, statutory or regulatory audit firm the Authority agrees that its appointment may be subject to conflicts of interest checks and agrees to liaise with the Supplier regarding the completion of those checks.

## 2 CONDUCT OF AUDITS

2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.

- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Services Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Authority within the permitted scope of the audit;
  - (b) reasonable access to any Sites (other than any public cloud data centres) and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
  - (c) access to the Supplier System; and
  - (d) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Key Performance Indicators at a level of detail sufficient to verify compliance with the Key Performance Indicators.
- 2.4 The Authority shall provide at least 15 Working Days' written notice (or such other amount of written notice as is reasonable in the circumstances) of its intention to conduct an audit and, where reasonably practicable in the circumstances, the Supplier and the Authority shall use reasonable endeavours to agree the scope and manner of the audit and identity of the auditor
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

### **3 USE OF SUPPLIER'S INTERNAL AUDIT TEAM**

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

### **4 RESPONSE TO AUDITS**

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
- (a) the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to

correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;

- (b) there is an error in a Financial Report, the Supplier shall promptly rectify the error;
- (c) the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
  - (i) the amount overpaid;
  - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
  - (iii) the reasonable costs incurred by the Authority in undertaking the audit,

the Authority may exercise its right to deduct such amount from the Charges if it prefers; and

- (d) the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

























**SCHEDULE 8.2**

**CHANGE CONTROL PROCEDURE**

## Change Control Procedure

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

- Authority Change Manager** means the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
- Change Communication** means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
- Fast-track Change** means any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
- Impact Assessment Estimate** has the meaning given in Paragraph 4.3;
- Receiving Party** means the Party which receives a proposed Contract Change; and
- Supplier Change Manager** means the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

### 2 GENERAL PRINCIPLES OF CHANGE CONTROL PROCEDURE

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
- (a) either Party may request a Contract Change which they shall initiate by issuing a Change Request in accordance with Paragraph 4;
  - (b) unless this Agreement otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;

- (c) the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
  - (d) the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 7;
  - (e) save as otherwise provided in this Agreement, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
  - (f) if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in Schedule 6.2 (*Testing Procedures*), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2, then:
- (a) unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Agreement as if the proposed Contract Change did not apply; and
  - (b) any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Agreement.
- 2.6 The Supplier shall:
- (a) within 10 Working Days of the Authority's signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Agreement updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
  - (b) thereafter provide to the Authority such further copies of the updated Agreement as the Authority may from time to time request.
- 2.7 A Change relating to Standard Platform Terms or an Underlying Sub-contract does not require compliance with this Schedule provided that the Supplier complies with the relevant terms of clause 15.

### 3 COSTS

- 3.1 Subject to Paragraph 3.3:

- (a) the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- (b) the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:
  - (i) [REDACTED]
  - (ii) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
  - (iii) such costs exceed those in the accepted Impact Assessment Estimate.

3.2

[REDACTED]

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

#### 4 CHANGE REQUEST

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

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

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

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

and provided that sufficient information is received by the Authority to fully understand:

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

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

## 5 IMPACT ASSESSMENT

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

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

5.2

[REDACTED]

5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment.

5.4 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.

5.5

[REDACTED]

## 6 AUTHORITY'S RIGHT OF APPROVAL

6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:

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

Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7, then it shall inform the Supplier and the Supplier shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Authority's signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Agreement.
- 6.3 If the Authority does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Authority and if the Authority does not sign the Change Authorisation Note within 5 Working Days of such notification, then the Supplier may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

## **7 SUPPLIER'S RIGHT OF APPROVAL**

Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:
- (i) materially and adversely affect the risks to the health and safety of any person; and/or
  - (ii) require the Services to be performed in a way that infringes any Law; and/or
- (b) the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

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

## **8 FAST-TRACK CHANGES**

- 8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.
- 8.2 If:
- (a) the total number of Contract Changes in relation to which this Fast-track Change procedure has been applied does not exceed 4 in any 12 month period; and

(b)

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

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

## 9 OPERATIONAL CHANGE PROCEDURE

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

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

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

- 9.3 The RFOC shall include the following details:

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

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

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

## 10 COMMUNICATIONS

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

**ANNEX 1: CHANGE REQUEST FORM**

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

**ANNEX 2: CHANGE AUTHORISATION NOTE**

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

**SCHEDULE 8.3**

**DISPUTE RESOLUTION PROCEDURE**

## Dispute Resolution Procedure

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

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

### 2 DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Authority Representative and the Supplier Representative shall attempt in good faith to resolve the Dispute; and

- (b) if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.
- 2.2 A Dispute Notice:
- (a) shall set out:
- (i) the material particulars of the Dispute;
  - (ii) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and
  - (iii) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and
- (b) may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority and/or any Authority Service Recipient) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.
- 2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2(b), then:
- (a) if it is served by the Authority and/or any Authority Service Recipient it shall be treated as a Multi-Party Procedure Initiation Notice; and
  - (b) if it is served by the Supplier it shall be treated as a Supplier Request,
- and in each case the provisions of Paragraph 9 shall apply.
- 2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority and/or any Authority Service Recipient has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:
- (a) first by commercial negotiation (as prescribed in Paragraph 4);
  - (b) then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
  - (c) lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 46 (*Governing Law and Jurisdiction*)).
- 2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Agreement and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of the Dispute

and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (*Urgent Relief*).

### 3 EXPEDITED DISPUTE TIMETABLE

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority and/or any Authority Service Recipient (as applicable).
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Agreement, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- (a) in Paragraph 4.2(c), 10 Working Days;
  - (b) in Paragraph 5.2, 10 Working Days;
  - (c) in Paragraph 6.2, 5 Working Days; and
  - (d) in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority and/or any Authority Service Recipient may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority and/or any Authority Service Recipient fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

### 4 COMMERCIAL NEGOTIATION

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority and/or any Authority Service Recipient has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and/or any Authority Service Recipient and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by [REDACTED]
- 4.2 If:
- (a) either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;

- (b) the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
- (c) the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

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

## 5 **MEDIATION**

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

## 6 **EXPERT DETERMINATION**

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

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

6.3 The Expert shall act on the following basis:

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

## 7 ARBITRATION

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

7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority and/or any Authority Service Recipient of its intentions and the Authority and/or any Authority Service Recipient shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

- 7.3 If the Authority and/or any Authority Service Recipient serves a Counter Notice, then:
- (a) if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
  - (b) if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority and/or any Authority Service Recipient does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- (a) the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“LCIA”) (subject to Paragraphs 7.5(e), (f) and (g));
  - (b) the arbitration shall be administered by the LCIA;
  - (c) the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - (d) if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - (e) the chair of the arbitral tribunal shall be British;
  - (f) the arbitration proceedings shall take place in London and in the English language; and
  - (g) the seat of the arbitration shall be London.

## 8 URGENT RELIEF

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

- (a) for interim or interlocutory remedies in relation to this Agreement or infringement by the other Party of that Party’s Intellectual Property Rights; and/or

- (b) where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

## 9 MULTI-PARTY DISPUTES

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the “**Multi-Party Dispute Resolution Procedure**”).
- 9.2 If at any time following the issue of a Dispute Notice, the Authority and/or any Authority Service Recipient reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority and/or any Authority Service Recipient shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority’s and/or any Authority Service Recipient’s determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a “**Multi-Party Procedure Initiation Notice**”.
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority and/or any Authority Service Recipient.
- 9.4 The Authority and/or any Authority Service Recipient shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
  - (a) a Multi-Party Dispute, in which case the Authority and/or any Authority Service Recipient shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
  - (b) not a Multi-Party Dispute, in which case the Authority and/or any Authority Service Recipient shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority and/or any Authority Service Recipient has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
  - (a) the Authority and/or any Authority Service Recipient;
  - (b) the Supplier;

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

(together “Multi-Party Dispute Representatives”).

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

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

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

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

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

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

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



**SCHEDULE 8.4**

**REPORTS AND RECORDS PROVISIONS**

## Reports and Records Provisions

### 1 TRANSPARENCY REPORTS

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority and/or any Authority Service Recipient for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with ANNEX 1 (once approved, the “Transparency Reports”).
- 1.2 If the Authority and/or any Authority Service Recipient rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority and/or any Authority Service Recipient within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Authority and/or any Authority Service Recipient. If the Parties fail to agree on a draft Transparency Report the Authority and/or any Authority Service Recipient shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority and/or any Authority Service Recipient at the frequency referred to in ANNEX 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Agreement.
- 1.6 The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance and obligations under Procurement Policy Note 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)).

### 2 OTHER REPORTS

The Authority and/or any Authority Service Recipient may require any or all of the following reports:

- (a) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

### 3 RECORDS

3.1 [REDACTED]





























































- 
- (b) where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan.

## SCHEDULE 8.7

### CONDUCT OF CLAIMS

#### 1. INDEMNITIES

1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Agreement (the “Indemnifier”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “Beneficiary”).

1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Agreement (a “Claim”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.

1.3



1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:

- (a) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
- (b) the Indemnifier shall not bring the name of the Beneficiary into disrepute;
- (c) the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
- (d) the Indemnifier shall conduct the Claim with all due diligence.

1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if:

- (a) the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;

- (b) the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
- (c) the Indemnifier fails to comply in any material respect with the provisions of Paragraph 1.4.

## SENSITIVE CLAIMS

- 1.6 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 1.7 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

## 2 RECOVERY OF SUMS

- 2.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
- (a) an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
  - (b) the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

## 3 MITIGATION

- 3.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.



**SCHEDULE 9.1**

**KEY PERSONNEL**

**Key Personnel**

Key role	Name of Key Personnel	Responsibility	Phase of the project during which they will be a member of Key Personnel	Minimum period in key role
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]



**SCHEDULE 9.2**

**STAFF TRANSFER**

## 1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

<b>Former Supplier</b>	a supplier supplying services to the Authority before the Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
<b>Replacement Sub-contractor</b>	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
<b>Relevant Transfer Date</b>	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
<b>Service Transfer</b>	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
<b>Service Transfer Date</b>	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
<b>Supplier's Final Supplier Personnel List</b>	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
<b>Supplier's Provisional Supplier Personnel List</b>	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier; and
<b>Transferring Former Supplier Employees</b>	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date.

## 2. INTERPRETATION

- 2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Replacement Supplier or Replacement Sub-contractor, as the case may be.
- 2.2 This Schedule consists only of Part C and Part E.

## PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

### 1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
- (a) the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
  - (b) the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2(b) is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2(b):
- (a) no such offer of employment has been made;
  - (b) such offer has been made but not accepted; or
  - (c) the situation has not otherwise been resolved,
- the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

### 2. INDEMNITIES

- 2.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:
- (a) indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

- (b) procure that the Former Supplier indemnifies the Supplier and/or any relevant Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, or shall procure that the Sub-contractor shall, comply with such obligations as may be imposed upon it under Law.
- 2.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.
- 2.4 The indemnities in Paragraph 2.1:
- (a) shall not apply to:
- (i) any claim for:
- (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- (C) in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- (D) any claim that the termination of employment was unfair because the Supplier and/or any Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 1.2(a) is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Date.

### **3. PROCUREMENT OBLIGATIONS**

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

## PART E: EMPLOYMENT EXIT PROVISIONS

### 1. PRE-SERVICE TRANSFER OBLIGATIONS

1.1 The Supplier agrees that within 20 Working Days of the earliest of:

- (a) receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
- (b) receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- (c) the date which is 12 months before the end of the Term; and
- (d) receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),

it shall provide in a suitably anonymised format so as to comply with the DPA, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:

- (a) the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
- (b) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.

1.5 From the date of the earliest event referred to in Paragraph 1.1(a), 1.1(b) and 1.1(c), the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Supplier Personnel listed on the Supplier Provisional Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;
- (b) make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);

- (c) increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:

- (a) the numbers of employees engaged in providing the Services;
- (b) the percentage of time spent by each employee engaged in providing the Services; and
- (c) a description of the nature of the work undertaken by each employee by location.

1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate

## **2. EMPLOYMENT REGULATIONS EXIT PROVISIONS**

2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disappplied

through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

- 2.2 The Supplier shall, and shall procure that each Sub-contractor shall, comply with all its obligations in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (and including) the Service Transfer Date and shall perform and discharge, and procure that each Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring Supplier Employees arising in respect of the period up to (and including) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Schemes which in any case are attributable in whole or in part to the period ending on (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Sub-contractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Sub-contractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;
  - (b) the breach or non-observance by the Supplier or any Sub-contractor occurring on or before the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees; and/or
    - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
  - (d) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
    - (i) in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and before the Service Transfer Date; and
    - (ii) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later

alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or before the Service Transfer Date;

- (e) a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (and including) the Service Transfer Date);
- (f) any claim made by or in respect of any person employed or formerly employed by the Supplier or any Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations; and
- (g) any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

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

- (a) arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- (b) arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.

2.5 If any person who is not identified in the Supplier's Final Supplier Personnel list claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel list, that his/her contract of employment has been transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:

- (a) the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
- (b) the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take

such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.

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

2.7 If after the 15 Working Day period specified in Paragraph 2.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.9 The indemnity in Paragraph 2.8:

- (a) shall not apply to:
  - (i) any claim for:
    - (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
    - (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or
  - (ii) any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Sub-contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in Paragraph 2.5(a) is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or

Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

- 2.11 The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Supplier and/or any Sub-contractor; and
  - (b) the Replacement Supplier and/or the Replacement Sub-contractor.
- 2.12 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.13 Subject to Paragraph 2.14, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:
- (a) any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;
  - (b) the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:
    - (i) any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or
    - (ii) any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;
  - (c) any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier

Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

- (d) any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
  - (i) in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date; and
  - (ii) in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or Replacement Sub-contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising after the Service Transfer Date;
- (g) a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and
- (h) any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the

D [REDACTED]

Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

- 2.14 The indemnities in Paragraph 2.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

[Redacted]

[Redacted]















































