



**RM6100 Technology Services 3
Framework Schedule 4 Annex 1
Lot 4 Order Form**

Order Form

This Order Form is issued in accordance with the provisions of the Technology Services 3 Framework Contract RM6100 between the Supplier (as defined below) and the Minister for the Cabinet Office (the "**Framework Contract**") and should be used by Buyers conducting a further competition under the Framework Contract.

The Contract, referred to throughout this Order Form, means the contract between the Supplier and the Buyer (as defined below) (entered into pursuant to the terms of the Framework Contract) consisting of this Order Form and the Call Off Terms. The Call Off Terms are substantially the terms set out in Annex 2 to Schedule 4 to the Framework Contract and copies of which are available from the Crown Commercial Service website [<http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm1234>]. The agreed Call Off Terms for the Contract being set out as the Annex 1 to this Order Form.

The Supplier shall provide the Services and/or Goods specified in this Order Form (including any attachments to this Order Form) to the Buyer on and subject to the terms of the Contract for the duration of the Term.

In this Order Form, capitalised expressions shall have the meanings set out in Schedule 1 (Definitions) of the Call-Off Terms.

This Order Form shall comprise:

1. This document headed "Order Form";
2. The following Attachments with reference to the corresponding Schedule in the Call-Off Terms. Attachments to this Order Form either replaces (i) an Annex to a Schedule in the Call-Off Terms or (ii) a Schedule to the Call-Off Terms in its entirety (for example, Attachment 2.1 (Services Description)):

Attachment to the Order Form	Schedule to the Call-Off Terms
Attachment 2.1 (Services Description)	N/A - As per Attachment 2.1
N/A as per Schedule 2.2	See Schedule 2.2 (Performance Levels)
Attachment 2.3 (Environmental Requirements)	N/A - As per Attachment 2.3
N/A as per Schedule 2.4	See Schedule 2.4 (Security Management)
Attachment 3 (Buyer Responsibilities)	N/A - As per Attachment 3
Attachment 4.1 (Supplier Solution)	N/A - As per Attachment 4.1
Attachment 4.2 (Commercially Sensitive Information)	N/A - as per Attachment 4.2
Attachment 4.3 (Key Sub-Contractors)	N/A - as per Attachment 4.3
Attachment 4.4 (Third Party Contracts)	N/A - as per Attachment 4.4

Attachment 5 (Software)	N/A – as per Attachment 5
Attachment 6.1 (Outline Implementation Plan)	N/A – as per Attachment 6.1
N/A – as per Schedule 6.2	See Schedule 6.2 (Testing Procedures)
N/A – as per Schedule 7.1	See Schedule 7.1 (Charges and Invoicing)
Attachment 7.4 (Financial Distress)	N/A – as per Attachment 7.4
Attachment 8.1 (Representation and Structure of Boards)	N/A – as per Attachment 8.1
N/A – as per Schedule 8.2	Schedule 8.2 (Change Control Procedure)
N/A – as per Schedule 8.3	Schedule 8.3 (Dispute Resolution Procedure)
Attachment 8.4 (Transparency Reports and Records to Upload to Virtual Library)	N/A – as per Attachment 8.4
N/A – as per Schedule 8.5	Schedule 8.5 (Exit Management)
Attachment 8.6 (Business Continuity and Disaster Recovery)	N/A – as per Attachment 8.6
Attachment 9.1 (Notified Sub-Contractors)	See Schedule 9.1 (Staff Transfer)
Attachment 9.2 (Key Personnel)	N/A – as per Attachment 9.2
Attachment 11 (Processing Personal Data)	N/A – as per Attachment 11
N/A – as per Schedule 12	See Schedule 12 (NHS England Additional Provisions)
Attachment 13 – Supplier’s Bid Response	N/A – See Attachment 13

3. Annex 1 – Call-Off Terms and Additional/Alternative Clauses.

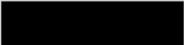
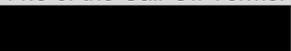
The Order of Precedence shall be as set out in Clause 1.4 of the Call-Off Terms being:

- (a) the Framework, except Framework Schedule 18 (Tender);
- (b) the Order Form and its Attachments (other than Attachment 13 (Supplier’s Bid Response) and its Annexes) and its Annexes;
- (c) the Call-Off Terms (including the Schedules and their Annexes)
- (d) Attachment 13 (Supplier’s Bid Response); and
- (e) Framework Schedule 18 (Tender).

Section A

General Information

Contract Details	
Contract Reference:	C77538
Contract Title:	Test Digital Platform Services
Contract Description:	Services for the ongoing maintenance and continuous development of Test Digital Platform Services in connection with the COVID-19 NHS Test & Trace programme
Contract Anticipated Potential Value: this should set out the total potential value of the Contract	£9,500,000 (excluding VAT)
Estimated Year 1 Charges	 The Charges as set out in Schedule 7.1 are subject to Indexation.

Buyer details
Buyer organisation name NHS Commissioning Board, known as NHS England
Billing address Your organisation's billing address - please ensure you include a postcode The Leeds Government Hub, 7&8 Wellington Place, Leeds, LS1 4AP .
Buyer representative name The name of your point of contact for this Order 
Buyer representative contact details Email and telephone contact details for the Buyer's representative. This must include an email for the purpose of Clause 44.3 of the Call-Off Terms. 
Buyer Project Reference Please provide the customer project reference number. C77538

Supplier details
Supplier name The supplier organisation name, as it appears in the Framework Contract

[REDACTED]

Kainos Software Limited

Supplier address

Supplier's registered address

Kainos House, 4-6 Upper Crescent, Belfast, BT7 1NT, Northern Ireland

Supplier representative name

The name of the Supplier point of contact for this Order. This must include an email for the purpose of Clause 44.3 of the Call-Off Terms.

[REDACTED]

Supplier representative contact details

Email and telephone contact details of the supplier's representative

[REDACTED]

Order reference number

A unique number provided by the supplier at the time of quote

[REDACTED]

Section B

Part 1 – Framework Lots (for multi-Lots only)

Framework Lot under which this Order is being placed

*Guidance Note: where a buyer is conducting a multi-lot procurement and Lot 4 is one of those (which in that case this Order Form and corresponding Call-Off Terms will apply to all Lot(s) under that procurement, tick below which Lot(s) apply in addition to Lot 4. Where this is not a multi-lot procurement and only Lot 4 applies, this Part 1 does **not need** to be completed.*

- | | |
|---|-------------------------------------|
| 1. TECHNOLOGY STRATEGY & SERVICES DESIGN | <input type="checkbox"/> |
| 2. TRANSITION & TRANSFORMATION | <input type="checkbox"/> |
| 3. OPERATIONAL SERVICES | |
| a: End User Services | <input type="checkbox"/> |
| b: Operational Management | <input type="checkbox"/> |
| c: Technical Management | <input type="checkbox"/> |
| d: Application and Data Management | <input type="checkbox"/> |
| 4. MAJOR SERVICES TRANSFORMATION PROGRAMMES | <input checked="" type="checkbox"/> |
| 5. SERVICE INTEGRATION AND MANAGEMENT | <input type="checkbox"/> |

Part 2 – Contract Details

Term

Guidance Note – this should be a period in months from the Effective Date should not exceed the maximum permitted duration for Lot 4 which is 84 months (7 years)

Initial Term

Guidance Note – this should be a period in months from the Effective Date, up to the maximum period set out above

12 months

The Contract commences on 1st April 2023.

Extension Period

Guidance Note – where the initial term above is not for the maximum permitted term and the buyer wants the option to include an extension period then inset the period of the extension in months, noting always that this cannot exceed the maximum permitted duration for Lot 4 (including the initial term) of 84 months (7 years).

Two periods of 12 months each.

Sites for the provision of the Services

Guidance Note - Insert details of the sites at which the Supplier will provide the Services, which shall include details of the Buyer Premises, Supplier premises and any third party premises.

The Supplier shall provide the Services from the following Sites:

Buyer Premises: Leeds and London

Ad hoc as reasonably required to facilitate integration of the Services or fulfil obligations (such as code development, implementation or maintenance)

Supplier Premises:

Kainos House, 4-6 Upper Crescent, Belfast, BT7 1NT, Northern Ireland
Tryton Business House, ul. Jana z Kolna 11, 80-864 Gdansk, Poland

Third Party Premises:

Remote locations within the UK and Poland

Otherwise, other ad hoc Third Party Premises to be confirmed by Buyer in advance, as reasonably required to facilitate integration of the Services or fulfil obligations (such as code development, implementation or maintenance)

Buyer Assets

Guidance Note: see definition of Buyer Assets in Schedule 1 of the Contract.

Code in the Test Digital Platform (object code and source code) subject to the licence terms of this Contract

Insurance

Guidance Note: if this Contract requires a higher level of insurance cover than the £1m default in Framework Agreement or the Buyer requires any additional insurances please specify the details below.

Third Party Public Liability Insurance (£) - minimum limit of £10 million for each individual claim

Professional Indemnity Insurance (£) - minimum limit of £10 million for each individual claim

Employers' liability insurance – minimum limit of £10 million indemnity

Product liability insurance – minimum limit of £10 million for each individual claim

Goods

Guidance Note: list any Goods and their prices.

Not applicable

Security Management – Option Part A or Part B

Guidance Note: Schedule 2.4 (Security Management) of the Call-Off Terms has two options in respect of Security Management. Refer to Schedule 2.4 (Security Management) for detailed guidance on which Part to select.

Security Management Schedule	Tick as applicable
Part A – Security Assurance	<input checked="" type="checkbox"/>
Part B – Security Accreditation	<input type="checkbox"/>

The Part selected above shall apply this Contract.

Section C

Part 1 – Additional and Alternative Buyer Terms

Alternative Clauses and Additional Clauses (see Annex 3 of Framework Schedule 4)

This Annex can be found on the RM6100 CCS webpage. The document is titled RM6100 Alternative and Additional Terms and Conditions Lot 4

Part A – Additional Clauses

Guidance Note: Tick any applicable boxes below

Additional Clauses	Tick as applicable
C1: Collaboration Agreement	<input type="checkbox"/>
C2: MOD Clauses	<input type="checkbox"/>

Where selected above the Additional Schedules and/or Clauses set out in document RM6100 Alternative and Additional Terms and Conditions Lot 4 shall be incorporated into this Contract.

Part B - Alternative Clauses

Guidance Note: Tick any applicable boxes below

The following Alternative Clauses will apply:

Alternative Clauses	Tick as applicable
Scots Law	<input type="checkbox"/>
Northern Ireland Law	<input type="checkbox"/>

Where selected above the Alternative Clauses set out in document RM6100 Alternative and Additional Terms and Conditions Lot 4 shall be incorporated into this Contract.

Part 2 - Additional Information Required for Additional Clauses Selected in Part 1

Additional Clause C1 (Collaboration Agreement)

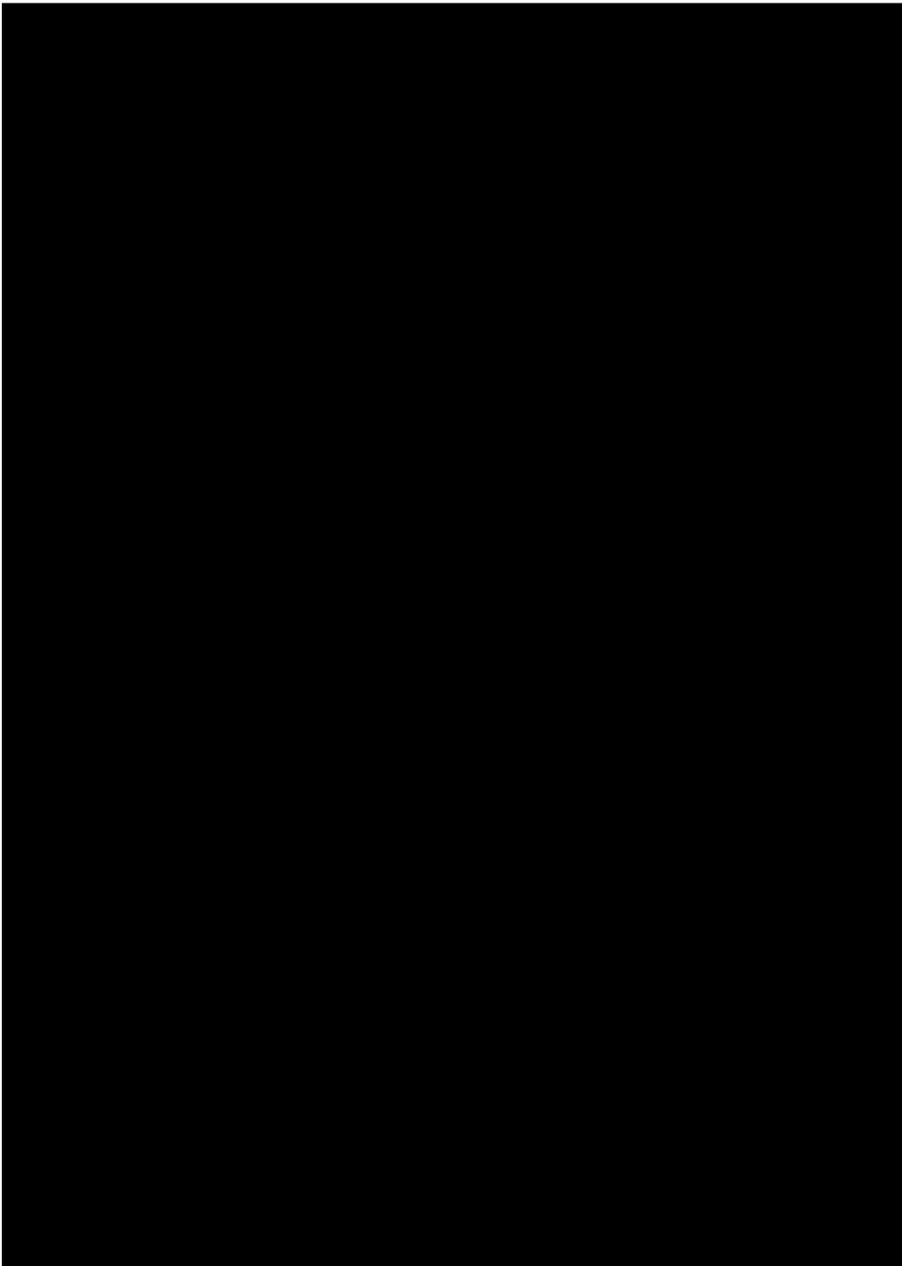
Guidance Note: where Clause C1 (Collaboration Agreement) has been selected in Part 1 of Section C above, include details of organisation(s) required to collaborate immediately below.

Not Applicable

Section D
Contract award

This Contract is awarded in accordance with the provisions of the Technology Services 3 Framework Contract RM6100.

SIGNATURES





Attachments to this Order Form



Annex 1 – Call Off Terms and Additional/Alternative Clauses

Note that Additional/Alternative Clauses have been set out in and incorporated as Schedule 12

FRAMEWORK SCHEDULE 4 – ANNEX 2

RM6100 TECHNOLOGY SERVICES 3

LOT 4 CALL OFF TERMS

Where an Order Form is issued by the Buyer that refers to the Framework and this Contract, this Contract is made between the Buyer and the Supplier on the date specified on that Order Form. This Contract is subject to the terms set out below.

The Buyer and the Supplier undertake to comply with the provisions of the Schedules and Attachments to the Order Form in the performance of this Contract.

The Supplier shall supply to the Buyer, and the Buyer shall receive and pay for, the Goods and/or Services on the terms of this Contract.

For the avoidance of doubt, any actions or work undertaken by the Supplier prior to the receipt of an Order Form covering the relevant Services and/or Goods shall be undertaken at the Supplier's risk and expense and the Supplier shall only be entitled to invoice for Services and/or Goods covered by a valid Order Form.

The Definitions in Schedule 1 shall apply to the use of all capitalised terms in this Contract.

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1. **Definitions**
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 - 2.1 Services Description
 - 2.2 Performance Levels
 - 2.3 Standards
 - 2.4 Security Management
 - 2.5 NOT USED
3. **Buyer Responsibilities**
4. **Supplier Matters**
 - 4.1 NOT USED
 - 4.2 NOT USED
 - 4.3 NOT USED
 - 4.4 NOT USED
5. **Software**
6. **Implementation and Testing**
 - 6.1 Implementation Plan
 - 6.2 Testing Procedures
7. **Financial Matters**
 - 7.1 Charges and Invoicing
 - 7.2 NOT USED
 - 7.3 NOT USED
 - 7.4 Financial Distress
 - 7.5 Financial Reports and Audit Rights
 - 7.6 NOT USED
- 8 **Governance**
 - 8.1 Governance
 - 8.2 Change Control Procedure
 - 8.3 Dispute Resolution Procedure
 - 8.4 Reports and Records Provisions
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 - 8.6 Service Continuity Plan and Corporate Resolution Planning
 - 8.7 Conduct of Claims
- 9 **Employment**
 - 9.1 Staff Transfer
 - 9.2 Key Personnel
- 10 **NOT USED**
- 11 **Processing Personal Data (Joint Controllers) – NOT USED**



12 NHS Provisions

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Contract, unless the context otherwise requires:
- (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;
 - (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) any reference in this Contract which immediately before Exit Day was a reference to (as it has effect from time to time):
 - (i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and
 - (ii) any EU institution or EU authority or other such EU body shall be read on and after Exit Day as a reference to the UK institution, authority or body to which its functions were transferred;
 - (f) the words "**including**", "**other**", "**in particular**", "**for example**" and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words "without limitation";
 - (g) references to "**writing**" include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (h) the headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
 - (i) unless otherwise provided and save for references in Annexes 1 to 2 of Schedule 5 (*Software*) and in Schedule 10 (*Guarantee*), references to Clauses and Schedules are references to the clauses and schedules of this Contract and references in any Schedule or Attachment to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or

Attachment or the Part of the Schedule or Attachment in which the references appear;
and

(j) references to this Contract are references to this Contract as amended from time to time.

1.3 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Buyer and the Parties shall update this Contract with a reference to the replacement hyperlink.

1.4 If there is any conflict between the Order Form (including Attachments and any Annexes), these Call Off Terms (including Schedules and its Annexes) and the provisions of the Framework, the conflict shall be resolved in accordance with the following order of precedence:

(a) the Framework, except Framework Schedule 18 (Tender);

(b) the Order Form and its Attachments (other than Attachment 4.1 (Supplier Solution) and its Annexes) and Schedule 2.2 (Performance Levels) and its Annexes;

(c) these Call-Off Terms (including the Schedules and their Annexes) (other than Schedule 2.2 (Performance Levels) and its Annexes which is dealt with above in (b));

(d) Attachment 4.1 (*Supplier Solution*) and its Annexes (if any); and

(e) Framework Schedule 18 (Tender).

1.5 The Schedules and their Annexes and Order Form (including Attachments and their Annexes) form part of this Contract.

1.6 In entering into this Contract the Buyer is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:

(a) the Buyer has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;

(b) it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;

(c) it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Buyer before the Effective Date) of all relevant details relating to:

(i) the Buyer Requirements;

(ii) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;

(iii) the operating processes and procedures and the working methods of the

Buyer;

- (iv) the ownership, functionality, capacity, condition and suitability for use in the Services of the Buyer Assets; and
 - (v) the existing contracts (including any licences, support, maintenance and other agreements relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Services; and
- (d) it has advised the Buyer in writing of:
- (i) each aspect, if any, of the Operating Environment that is not suitable for the provision of the Services;
 - (ii) the actions needed to remedy each such unsuitable aspect; and
 - (iii) a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,

and such actions, timetable and costs are fully reflected in this Contract, including the Services Description and/or Buyer Responsibilities as applicable.

2.2 The Supplier shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor, subject to Clause 2.3, shall the Supplier be entitled to recover any additional costs or charges, arising as a result of:

- (a) any unsuitable aspects of the Operating Environment;
- (b) any misinterpretation of the Buyer Requirements; and/or
- (c) any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 7.1 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 WARRANTIES

3.1 The Buyer represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Contract;
- (b) this Contract is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and
- (d) its obligations under this Contract constitute its legal, valid and binding obligations,

enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Contract;
- (c) this Contract is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Contract;
- (e) it has notified the Buyer in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Contract;
- (f) its execution, delivery and performance of its obligations under this Contract will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Supplier as part of the procurement process, including without limitation its response to the selection questionnaire and ITT (if applicable), its tender and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Contract or to the extent that the Supplier has otherwise disclosed to the Buyer in writing prior to the date of this Contract;
- (i) it has notified the Buyer in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it has all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;

- (k) the Contract Inception Report is a true and accurate reflection of the Costs and Supplier Profit Margin forecast by the Supplier and the Supplier does not have any other internal financial model in relation to the Services inconsistent with the Financial Model;
 - (l) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
 - (m) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
 - (n) within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.
- 3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Buyer may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 TERM

4.1 This Contract shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Contract*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 33 (*Termination Rights*), terminate:
 - (i) at the end of the Initial Term; or
 - (ii) if the Buyer elects to extend the Initial Term by giving the Supplier at least 90 days' notice before the end of the Initial Term, at the end of the Extension Period.

Condition Precedent

- 4.2 Save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 21 (*Confidentiality*), 22 (*Transparency and Freedom of Information*), 24 (*Publicity and Branding*), 25 (*Limitations on Liability*), 37 (*Waiver and Cumulative Remedies*), 38 (*Relationship of the Parties*), 40 (*Severance*), 42 (*Entire Contract*), 43 (*Third Party Rights*), 44 (*Notices*), 45 (*Disputes*) and 46 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Buyer of the Guarantee (the "**Condition Precedent**"). The Buyer may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Contract then, unless the Condition Precedent is waived by the Buyer in accordance with Clause 4.2:
- (a) this Contract shall automatically cease and shall not come into effect; and
 - (b) neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.4 The Supplier shall consult with the Buyer in relation to the steps it takes to satisfy the condition set out in Clause 4.2 and shall keep the Buyer fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause 4.3.

5 SERVICES

Standard of Services

5.1 The Supplier shall provide:

- (a) the Implementation Services from (and including) the Implementation Services Commencement Date; and
- (b) the Operational Services in each case from (and including) the relevant Operational Service Commencement Date.

5.2 The Supplier shall ensure that:

- (a) the Services:
 - (i) comply in all respects with the Services Description; and
 - (ii) are supplied in accordance with the Supplier Solution and the provisions of this Contract; and
- (b) where:
 - (i) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Buyer was receiving immediately prior to that Operational Service Commencement Date (such similar services being "**Preceding Services**"); and
 - (ii) the standard and level of service received by the Buyer in respect of any of the Preceding Services in the 12 month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being "**Relevant Preceding Services**"),

the Operational Services to be provided from the relevant Operational Service Commencement Date that are similar to the Relevant Preceding Services are in each case provided to a standard and level of service which is at least as good as the standard and level of service received by the Buyer in respect of the Relevant Preceding Services in the 12 month period immediately prior to the relevant Operational Service Commencement Date.

5.3 The Supplier shall:

- (a) perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Standards;
 - (iv) the Baseline Security Requirements;

- (v) the Quality Plans;
 - (vi) the Buyer IT Strategy; and
 - (vii) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi); and
- (b) deliver the Services using efficient business processes and ways of working having regard to the Buyer's obligation to ensure value for money.

5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses 5.3(a)(i) to 5.3(a)(vi), the Supplier shall immediately notify the Buyer Representative in writing of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

5.5 The Supplier shall:

- (a) at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- (b) save to the extent that obtaining and maintaining the same are Buyer Responsibilities and subject to Clause 13 (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that:
 - (i) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Buyer;
 - (ii) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 2.4 (*Security Management*)) shall notify the Buyer 3 months before the release of any new Software or Upgrade;
 - (iii) all Software including Upgrades, Updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;
 - (iv) any products or services recommended or otherwise specified by the Supplier for use by the Buyer in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Buyer Requirements; and

- (v) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Buyer) and will be Euro Compliant;
- (d) minimise any disruption to the Services, the IT Environment and/or the Buyer's operations when carrying out its obligations under this Contract;
- (e) ensure that any Documentation and training provided by the Supplier to the Buyer are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (f) co-operate with the Other Suppliers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Buyer and/or to any Replacement Supplier;
- (g) to the extent it is legally able to do so, hold on trust for the sole benefit of the Buyer, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Buyer may notify from time to time to the Supplier;
- (h) unless it is unable to do so, assign to the Buyer on the Buyer's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause 5.5(g);
- (i) provide the Buyer with such assistance as the Buyer may reasonably require during the Term in respect of the supply of the Services;
- (j) gather, collate and provide such information and co-operation as the Buyer may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
- (k) notify the Buyer in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (l) notify the Buyer in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
- (m) ensure that neither it, nor any of its Affiliates, embarrasses the Buyer or otherwise brings the Buyer into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Buyer; and
- (n) manage closure or termination of Services and end of life of Goods to take account of the Buyer's disposal requirements, including recycling and scope for re-use, and all applicable Standards.

5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also

do, or refrain from doing, such act or thing.

5.7 Without prejudice to Clauses 19.2 and 19.3 (*IPRs Indemnity*) and any other rights and remedies of the Buyer howsoever arising, the Supplier shall:

(a) remedy any breach of its obligations in Clauses 5.5(b) to 5.5(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Buyer where practicable or within such other time period as may be agreed with the Buyer (taking into account the nature of the breach that has occurred);

(b) remedy any breach of its obligations in Clause 5.5(a) and Clauses 5.5(e) to 5.5(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Buyer; and

(c) meet all the costs of, and incidental to, the performance of such remedial work, and any failure of the Supplier to comply with its obligations under Clause 5.7(a) or Clause 5.7(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

5.8 Without prejudice to Clauses 5.5 (*Supplier Covenants*) and 5.7 (*Services*) and any other rights and remedies of the Buyer howsoever arising, the Supplier warrants to the Buyer that all components of the Specially Written Software shall:

(a) be free from material design and programming errors;

(b) perform in all material respects in accordance with the relevant specifications contained in the Supplier Solution and Documentation; and

(c) not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

5.9 The Supplier shall continue to perform all of its obligations under this Contract and shall not suspend the supply of the Services, notwithstanding:

(a) any withholding of the Service Charges by the Buyer pursuant to Clause 7.2(d)(ii) (*Performance Failures*);

(b) the existence of an unresolved Dispute; and/or

(c) any failure by the Buyer to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause 33.3(a) (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

5.10 The Buyer may require the Supplier to provide any or all of the Optional Services at any time by giving notice to the Supplier in writing. The Supplier acknowledges that the Buyer is not obliged to take any Optional Services from the Supplier and that nothing shall prevent the Buyer from receiving services that are the same as or similar to the Optional Services from any third party.

- 5.11 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.
- 5.12 Following receipt of the Buyer's notice pursuant to Clause 5.10:
- (a) the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;
 - (b) the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;
 - (c) any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 7.1 (*Charges and Invoicing*); and
 - (d) the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Paragraphs 3 and 4 of Attachment 2.2 (*Key Performance Indicators and Subsidiary Performance Indicators Tables*) of the Order Form.

Power of attorney

- 5.13 By way of security for the performance of its obligations under Clauses 5.5(g) and 5.5(h) (*Supplier covenants*) the Supplier hereby irrevocably appoints the Buyer as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause 5.13 (other than the power to delegate) to officer(s) appointed for that purpose by the Buyer and may vary or revoke such delegation at any time.

Buyer Responsibilities

- 5.14 The Buyer shall comply with its responsibilities set out in Schedule 3 (*Buyer Responsibilities*).

6 IMPLEMENTATION

Quality Plans

- 6.1 The Supplier shall develop, within 20 Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall obtain the Buyer Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Buyer's approval shall not act as an

endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.

- 6.3 Following the approval by the Buyer of the Quality Plans:
- (a) the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - (b) any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 6.1 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- (a) comply with the Implementation Plan; and
 - (b) ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- (a) it shall:
 - (i) notify the Buyer in accordance with Clause 27.1 (*Rectification Plan Process*); and
 - (ii) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (iii) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - (b) if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause 28 (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 6.2 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 PERFORMANCE INDICATORS

- 7.1 The Supplier shall:
- (a) provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and
 - (b) comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

7.2 If in any Service Period:

- (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 7.1 (*Charges and Invoicing*);
- (b) a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a));
- (c) a PI Failure occurs, the Supplier shall notify the Buyer of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- (d) a Material PI Failure occurs:
 - (i) the Supplier shall comply with the Rectification Plan Process; and
 - (ii) the Buyer may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 10.7 (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Buyer, at which point the Buyer shall pay the amount withheld.

7.3 Service Credits shall be the Buyer's exclusive financial remedy for a KPI Failure except where:

- (a) the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;
- (b) the KPI Failure:
 - (i) breaches the relevant KPI Service Threshold;
 - (ii) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
 - (iii) results in:
 - (A) the corruption or loss of any Buyer Data (in which case the remedies under Clause 20.7 (*Buyer Data and Security Requirements*) shall also be available); and/or
 - (B) the Buyer being required to make a compensation payment to one or more third parties;
- (c) the Supplier has fraudulently misrepresented its performance against any Performance Indicator; and/or
- (d) the Buyer is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*).

Unacceptable KPI Failure

7.4 If in any Service Period an Unacceptable KPI Failure occurs:

- (a) the Buyer shall (subject to the Service Credit Cap set out in Clause 25.4(b) (*Financial*

and other limits) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being “**Compensation for Unacceptable KPI Failure**”); and

- (b) if the Buyer withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

provided that the operation of this Clause 7.4 shall be without prejudice to any right which the Buyer may have to terminate this Contract and/or to claim damages from the Supplier as a result of such Unacceptable KPI Failure.

7.5 The Supplier:

- (a) agrees that the application of Clause 7.4 is commercially justifiable where an Unacceptable KPI Failure occurs; and
- (b) acknowledges that it has taken legal advice on the application of Clause 7.4 and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

7.6 If a Critical Performance Failure occurs, the Buyer may exercise its rights to terminate this Contract in whole or in part pursuant to Clause 33.1 or 33.2 (*Termination by the Buyer*).

Changes to Performance Indicators and Service Credits

7.7 Not more than once in each Contract Year the Buyer may, on giving the Supplier at least 3 months’ notice:

- (a) change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or
- (b) convert one or more:
 - (i) Key Performance Indicators into a Subsidiary Performance Indicator; and/or
 - (ii) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Buyer shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).

7.8 The Supplier shall not be entitled to object to any changes made by the Buyer under Clause 7.7, or increase the Service Charges as a result of such changes provided that:

- (a) the total number of Key Performance Indicators does not exceed 20;
- (b) the principal purpose of the change is to reflect changes in the Buyer’s business requirements and/or priorities or to reflect changing industry standards; and
- (c) there is no change to the Service Credit Cap.

8 SERVICES IMPROVEMENT

- 8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Programme Board once every 12 months on:
- (a) the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Buyer which the Parties may wish to adopt;
 - (b) new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;
 - (c) new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Buyer which might result in efficiency or productivity gains or in reduction of operational risk;
 - (d) changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Buyer; and/or
 - (e) changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.
- 8.2 The Supplier shall ensure that the information that it provides to the Buyer shall be sufficient for the Buyer to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Buyer requests.
- 8.3 If the Buyer wishes to incorporate any improvement identified by the Supplier the Buyer shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 EQUIPMENT AND MAINTENANCE

Supplier Equipment

- 9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Buyer Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Buyer Premises, including the cost of packing, carriage and making good the Sites and/or the Buyer Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.
- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Buyer shall be liable for loss of or damage to any of the Supplier's property located on Buyer Premises which is due to the negligent act or omission of the Buyer.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.

Maintenance

- 9.4 The Supplier shall create and maintain a rolling schedule of planned maintenance to the IT Environment (the “**Maintenance Schedule**”) which shall be agreed with the Buyer. Once the Maintenance Schedule has been agreed with the Buyer Representative, the Supplier shall only undertake such planned maintenance (which shall be known as “**Permitted Maintenance**”) in accordance with the Maintenance Schedule.
- 9.5 The Supplier shall give as much notice as is reasonably practicable to the Buyer Representative prior to carrying out any Emergency Maintenance.
- 9.6 The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the IT Environment or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible so as to minimise) disruption to the IT Environment and the Services.

Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment (“**Goods**”) to the Buyer:
- (a) the relevant Goods and their prices shall be as set out in the Order Form;
 - (b) the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
 - (c) the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for 12 months after delivery;
 - (d) if following inspection or testing the Buyer considers that the Goods do not conform with the relevant specification, the Buyer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; and
 - (e) without prejudice to any other rights or remedies of the Buyer:
 - (i) risk in the Goods shall pass to the Buyer at the time of delivery; and
 - (ii) ownership of the Goods shall pass to the Buyer at the time of payment.

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

10 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Buyer shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 7.1 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 22 (*Transparency and Freedom of Information*), 23 (*Protection of Personal Data*) and, to the extent specified therein, Clause 29 (*Remedial Adviser*) and Clause 30 (*Step-In Rights*).
- 10.3 If the Buyer fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 10.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Buyer following delivery of a valid VAT invoice.
- 10.5 The Supplier shall indemnify the Buyer on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Buyer at any time in respect of the Supplier's failure to account for or to pay any VAT relating to payments made to the Supplier under this Contract. Any amounts due under this Clause 10.5 shall be paid in cleared funds by the Supplier to the Buyer not less than five Working Days before the date upon which the tax or other liability is payable by the Buyer.

Set-off and Withholding

- 10.6 The Buyer may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Buyer) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Buyer.
- 10.7 If the Buyer wishes to:
- (a) set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Buyer) against any amount due to the Supplier pursuant to Clause 10.6; or
 - (b) exercise its right pursuant to Clause 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,
- it shall give notice to the Supplier within thirty (30) days of receipt of the relevant invoice, setting out the Buyer's reasons for withholding or retaining the relevant Charges.

Benchmarking

10.8 The Parties shall comply with the provisions of Schedule 7.3 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

Financial Distress

10.9 The Parties shall comply with the provisions of Schedule 7.4 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

10.10 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- (a) notify the Buyer in writing of such fact within 5 Working Days of its occurrence; and
- (b) promptly provide to the Buyer:
 - (i) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Buyer may reasonably require.

SECTION D - CONTRACT GOVERNANCE

11 GOVERNANCE

11.1 The Parties shall comply with the provisions of Schedule 8.1 (*Governance*) in relation to the management and governance of this Contract.

Representatives

11.2 Each Party shall have a representative for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.

11.3 The initial Supplier Representative shall be the person named as such in the Order Form. Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

11.4 The initial Buyer Representative shall be the person named as such in the Order Form. The Buyer may, by written notice to the Supplier, revoke or amend the authority of the Buyer Representative or appoint a new Buyer Representative.

12 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

12.1 The Supplier shall comply with the provisions of:

- (a) Schedule 8.4 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and
- (b) Part A of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

- (a) Part B of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and
- (b) Part C of Schedule 7.5 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Buyer or any Audit Agents.

13 CHANGE

Change Control Procedure

13.1 Any requirement for a Change shall be subject to the Change Control Procedure.

Change in Law

13.2 The Supplier shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Charges as the result of:

- (a) a General Change in Law; or
- (b) a Specific Change in Law where the effect of that Specific Change in Law on the

Services is reasonably foreseeable at the Effective Date.

- 13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2(b)), the Supplier shall:
- (a) notify the Buyer as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Contract; and
 - (ii) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
 - (b) provide the Buyer with evidence:
 - (i) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – SUPPLIER PERSONNEL AND SUPPLY CHAIN

14 SUPPLIER PERSONNEL

14.1 The Supplier shall:

- (a) Provide in advance of any admission to Buyer Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Buyer may reasonably require;
- (b) ensure that all Supplier Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Attachment 2.1 (*Services Description*) of the Order Form and Schedule 2.4 (*Security Management*); and
 - (iii) comply with all reasonable requirements of the Buyer concerning conduct at the Buyer Premises, including the security requirements as set out in Schedule 2.4 (*Security Management*);
- (c) subject to Schedule 9.1 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Buyer;
- (d) be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;
- (e) use all reasonable endeavours to minimise the number of changes in Supplier Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and
- (h) procure that the Supplier Personnel shall vacate the Buyer Premises immediately upon the termination or expiry of this Contract.

14.2 If the Buyer reasonably believes that any of the Supplier Personnel are unsuitable to undertake work in respect of this Contract, it may:

- (a) refuse admission to the relevant person(s) to the Buyer Premises; and/or
- (b) direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Attachment 9.2 (*Key Personnel*) of the Order Form lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the Effective Date.
- 14.4 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Buyer;
 - (b) the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Supplier obtains the Buyer's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- (a) notify the Buyer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - (b) ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

- 14.7 The Parties agree that:

- (a) the Supplier shall both during and after the Term indemnify the Buyer against all Employee Liabilities that may arise as a result of any claims brought against the Buyer by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel; and
- (b) the Buyer shall both during and after the Term indemnify the Supplier against all Employee Liabilities that may arise as a result of any claims brought against the Supplier by any person where such claim arises from any act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

Income Tax and National Insurance Contributions

14.8 Where the Supplier or any Supplier Personnel are liable to be taxed in the UK or to pay national insurance contributions in respect of consideration received under this Contract, the Supplier shall:

- (a) at all times comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, and the Social Security Contributions and Benefits Act 1992 and all other statutes and regulations relating to national insurance contributions, in respect of that consideration; and
- (b) indemnify the Buyer against any income tax, national insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the Services by the Supplier or any Supplier Personnel.

Staff Transfer

14.9 The Parties agree that:

- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 9.1 (*Staff Transfer*) shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Buyer Employees, Part A and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 9.1 (*Staff Transfer*) shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Buyer Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 9.1 (*Staff Transfer*) shall apply; and
 - (iv) Part C of Schedule 9.1 (*Staff Transfer*) shall not apply;
- (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 9.1 (*Staff Transfer*) shall apply, Part D of Schedule 9.1 may apply and Parts A and B of Schedule 9.1 (*Staff Transfer*) shall not apply; and

- (c) Part E of Schedule 9.1 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

- (a) subject to Clauses 15.3 and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- (b) within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- (c) monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- (d) provide reports on the information at Clause 15.1(c) to the Buyer in the format and frequency as reasonably specified by the Buyer; and
- (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

15.2 Each advert referred to in Clause 15.1 above shall provide a full and detailed description of the Sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.

15.3 The obligation at Clause 15.1 shall only apply in respect of Sub-contract opportunities arising after the Effective Date.

15.4 Notwithstanding Clause 15.1 the Buyer may, by giving its prior written approval, agree that a Sub-contract opportunity is not required to be advertised on Contracts Finder.

Appointment of Sub-contractors

15.5 The Supplier shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Supplier is able to:

- (a) manage any Sub-contractors in accordance with Good Industry Practice;
- (b) comply with its obligations under this Contract in the delivery of the Services; and
- (c) assign, novate or otherwise transfer to the Buyer or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.

15.6 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Buyer in writing of:

- (a) the proposed Sub-contractor's name, registered office and company registration

number;

- (b) the scope of any Services to be provided by the proposed Sub-contractor; and
- (c) where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Buyer that the proposed Sub-contract has been agreed on “arm’s-length” terms.

15.7 If requested by the Buyer within 10 Working Days of receipt of the Supplier’s notice issued pursuant to Clause 15.6, the Supplier shall also provide:

- (a) a copy of the proposed Sub-contract; and
- (b) any further information reasonably requested by the Buyer.

15.8 The Buyer may, within 10 Working Days of receipt of the Supplier’s notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:

- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Buyer;
- (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- (c) the proposed Sub-contractor employs unfit persons; and/or
- (d) the proposed Sub-contractor should be excluded in accordance with Clause 15.22 (*Termination of sub-contracts*);

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

15.9 If:

- (a) the Buyer has not notified the Supplier that it objects to the proposed Sub-contractor’s appointment by the later of 10 Working Days of receipt of:
 - (i) the Supplier’s notice issued pursuant to Clause 15.6; and
 - (ii) any further information requested by the Buyer pursuant to Clause 15.7; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of CCS and the Buyer in accordance with Clause 10.10 (*Appointment of Key Sub-contractors*),

the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Buyer that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Attachment 4.4 (*Third Party Contracts*) of the Order Form.

Appointment of Key Sub-contractors

- 15.10A The Supplier shall only be entitled to sub-contract its obligations to the Key Sub-contractors listed in Framework Schedule 7 (Key Sub-Contractors) where such Key Sub-contractors are set out in the Order Form.
- 15.10 Where during the Term the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of CCS and the Buyer, such consent not to be unreasonably withheld or delayed. For these purposes, CCS and/or the Buyer may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Buyer;
 - (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - (c) the proposed Key Sub-contractor employs unfit persons; and/or
 - (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 15.22 (*Termination of sub-contracts*).
- 15.11 The Buyer consents to the appointment of the Key Sub-contractors listed in Attachment 4.3 (*Notified Key Sub-contractors*).
- 15.12 Except where the Buyer has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- (a) provisions which will enable the Supplier to discharge its obligations under this Contract;
 - (b) a right under CRTPA for the Buyer to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Buyer;
 - (c) a provision enabling the Buyer to enforce the Key Sub-contract as if it were the Supplier;
 - (d) a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Buyer or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Buyer;
 - (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
 - (i) data protection requirements set out in Clauses 20 (*Buyer Data and Security Requirements*) and 23 (*Protection of Personal Data*);
 - (ii) FOIA requirements set out in Clause 22 (*Transparency and Freedom of Information*);
 - (iii) the obligation not to embarrass the Buyer or otherwise bring the Buyer into disrepute set out in Clause 5.5(m) (*Services*);

- (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
- (v) the conduct of Audits set out in Part C of Schedule 7.5 (*Financial Reports and Audit Rights*);
- (f) provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Buyer under Clauses 33.1(a) (*Termination by the Buyer*) and 34.4 (*Payments by the Buyer*) and Schedule 7.2 (*Payments on Termination*) of this Contract;
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Buyer;
- (h) a provision enabling the Supplier or the Buyer to appoint a Remedial Adviser on substantially the same terms as are set out in Clause 29 (*Remedial Adviser*);
- (i) a provision enabling the Supplier, the Buyer or any other person on behalf of the Buyer to step-in on substantially the same terms as are set out in Clause 30 (*Step-in Rights*);
- (j) a provision requiring the Key Sub-contractor to participate in, and if required by the Buyer in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (k) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Supplier and the Buyer in writing of any of the following of which it is, or ought to be, aware:
 - (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (ii) co-operate with the Supplier and the Buyer in order to give full effect to the provisions of Schedule 7.4 (*Financial Distress*), including meeting with the Supplier and the Buyer to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at paragraph 4.3(b)(ii) of Schedule 7.4 (*Financial Distress*).

15.13 The Supplier shall not terminate or materially amend the terms of any Key Sub-contract without the Buyer's prior written consent, which shall not be unreasonably withheld or delayed.

Supply chain protection

15.14 The Supplier shall ensure that all Sub-contracts (which in this sub-clause includes any contract in the Supplier's supply chain made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract) contain provisions:

- (a) giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Supplier or other party fails to consider and verify an invoice in accordance with sub-paragraph (b), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (d) after a reasonable time has passed;
- (d) requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- (e) giving the Buyer a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this Clause 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

15.15 The Supplier shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.15(a), such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

15.16 Without prejudice to Clause 15.15(a), the Supplier shall:

- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
- (b) include within the Balanced Scorecard Report produced by it pursuant to Schedule 2.2 (*Performance Levels*) a summary of its compliance with Clause 15.16(a), such data to

be certified every six months by a director of the Supplier as being accurate and not misleading.

- 15.17 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within 15 Working Days of submission of the latest Balanced Scorecard Report an action plan (the "Action Plan") for improvement. The Action Plan shall include, but not be limited to, the following:
- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
 - (b) actions to address each of the causes set out in sub-paragraph (a); and
 - (c) mechanism for and commitment to regular reporting on progress to the Supplier's Board.
- 15.18 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier's website within 10 Working Days of the date on which the Action Plan is uploaded to the Virtual Library.
- 15.19 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 15.20 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Buyer as part of the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).
- 15.21 Notwithstanding any provision of Clauses 21 (*Confidentiality*) and 24 (*Publicity and Branding*), if the Supplier notifies the Buyer (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor's undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

- 15.22 The Buyer may require the Supplier to terminate:
- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Buyer's right of termination pursuant to Clause 33.1(b) (*Termination by the Buyer*);

- (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Buyer or otherwise brought the Buyer into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Buyer, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Buyer has found grounds for exclusion of the Sub-contractor in accordance with Clause 15.27; and
- (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
- (i) the Buyer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Buyer has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Buyer was given notice of the Change of Control.

Competitive Terms

- 15.23 If the Buyer is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Buyer may:
- (a) require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Buyer in respect of the relevant item; or
 - (b) enter into a direct agreement with that Sub-contractor or third party in respect of the relevant item.
- 15.24 If the Buyer exercises either of its options pursuant to Clause 15.23, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.
- 15.25 The Buyer's right to enter into a direct agreement for the supply of the relevant items is subject to:
- (a) the Buyer making the relevant item available to the Supplier where this is necessary for the Supplier to provide the Services; and
 - (b) any reduction in the Charges taking into account any unavoidable costs payable by the Supplier in respect of the substituted item, including in respect of any licence fees or early termination charges.

Retention of Legal Obligations

15.26 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

15.27 Where the Buyer considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

- (a) if the Buyer finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;
- (b) if the Buyer finds there are non-compulsory grounds for exclusion, the Buyer may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

15.28 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Information Reports to the Buyer thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 8.4 (Reports and Records Provisions) Annex 4 and in accordance with any guidance issued by the Buyer from time to time.

15.29 The Buyer may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

16.1 Except as expressly set out in this Contract:

- (a) the Buyer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
 - (i) the Supplier Software;
 - (ii) the Third Party Software;
 - (iii) the Third Party IPRs; and
 - (iv) the Supplier Background IPRs;
- (b) the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Buyer or its licensors, including:
 - (i) the Buyer Software;
 - (ii) the Buyer Data; and
 - (iii) the Buyer Background IPRs;
- (c) Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Buyer.

16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

16.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

16.4 Unless the Buyer otherwise agrees in advance in writing:

- (a) all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Buyer as open source software; and
- (b) where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Buyer.

16.5 Where the Buyer agrees that any Specially Written Software and/or any software element of Project Specific IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written details of the impact that such exclusion will have on the Buyer's ability to publish other Open Source software under Clause 19A (*Open Source Publication*).

17 TRANSFER AND LICENCES GRANTED BY THE SUPPLIER

Specially Written Software and Project Specific IPRs

17.1 Subject to Clause 17.17 (*Patents*) the Supplier hereby agrees to transfer to the Buyer, or shall procure the transfer to the Buyer of, all rights (subject to Clause 16.1(a) (*Intellectual Property Rights*)) in the Specially Written Software and the Project Specific IPRs including (without limitation):

- (a) the Documentation, Source Code and the Object Code of the Specially Written Software; and
- (b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the “**Software Supporting Materials**”);

but not including any Know-How, trade secrets or Confidential Information.

17.2 The Supplier:

- (a) shall:
 - (i) inform the Buyer of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and
 - (ii) deliver to the Buyer the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer; and
 - (iii) without prejudice to Clause 17.11 (*Third Party Software and Third Party IPRs*), provide full details to the Buyer of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;
- (b) acknowledges and agrees that the ownership of the media referred to in Clause 17.2(a)(ii) shall vest in the Buyer upon their receipt by the Buyer; and
- (c) shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Buyer.

Supplier Software and Supplier Background IPRs

17.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Attachment 5 (*Software*) of the Order Form or sent to the Technical Board for review and approval granted by the Buyer.

17.4 The Supplier hereby grants to the Buyer:

- (a) subject to the provisions of Clause 17.17 (*Patents*) and Clause 34.11(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):
 - (i) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Buyer for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
 - (ii) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function;
- (b) a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Buyer and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 5 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Buyer shall remain entitled to sub-licence and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Clauses 17.7 (*Buyer's right to sub-licence*) and 17.8 (*Buyer's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and
- (c) a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.

17.5 At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Clause 17.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Clause 17.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Buyer or any person to whom the Buyer grants a sub-licence pursuant to Clause 17.7 (*Buyer's right to sub-licence*) commits any material breach of the terms of Clause 17.4(a)(i) or 17.4(a)(ii) or 17.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.

17.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Clause 17.5, the Buyer shall:

- (a) immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);
- (b) at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Buyer may

destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and

- (c) ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Buyer) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.

Buyer's right to sub-license

17.7 Subject to Clause 17.17 (*Patents*) the Buyer may sub-license:

- (a) the rights granted under Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Buyer;
 - (ii) the sub-licence authorises the third party to use the rights licensed in Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Buyer's (or any other Central Government Body's) business or function; and
 - (iii) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*); and
- (b) the rights granted under Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:
 - (i) the sub-licence is on terms no broader than those granted to the Buyer; and
 - (ii) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Approved Sub-Licensee.

Buyer's right to assign/novate licences

17.8 The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Clause 17.4(a) (*Supplier Software and Supplier Background IPRs*)

to:

- (a) a Central Government Body; or
- (b) to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.

17.9 Any change in the legal status of the Buyer which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*). If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*).

17.10 If a licence granted in Clause 17.4 (*Supplier Software and Supplier Background IPRs*) is novated under Clause 17.8 (*Buyer's right to assign/novate licences*) or there is a change of the Buyer's status pursuant to Clause 17.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Buyer.

Third Party Software and Third Party IPRs

17.11 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Attachment 5 (*Software*) of the Order Form or approval is granted by the Buyer following a review by the Technical Board and has in each case either:

- (a) first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Buyer on a royalty-free basis to the Buyer and on terms no less favourable to the Buyer than those set out in Clauses 17.4(a) and 17.5 (*Supplier Software and Supplier Background IPRs*) and Clause 17.8 (*Buyer's right to assign/novate licences*); or
- (b) complied with the provisions of Clause 17.12.

17.12 If the Supplier cannot obtain for the Buyer a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Clause 17.11(a), the Supplier shall:

- (a) notify the Buyer in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and
- (b) use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Buyer has first approved in writing the terms of the licence from the relevant third party.

17.13 The Supplier shall:

- (a) notify the Buyer in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and

- (b) unless instructed otherwise in writing by the Buyer in any case within 20 Working Days of notification pursuant to Clause 17.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Buyer on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

17.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Buyer does not have a suitable licence, then the Supplier must notify the Buyer within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.

Termination and Replacement Suppliers

17.15 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Clause 17.

17.16 The Supplier shall, if requested by the Buyer in accordance with Schedule 8.5 (*Exit Management*) and at the Supplier's cost:

- (a) grant (or procure the grant) to any Replacement Supplier of:
 - (i) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier and on terms no less favourable than those granted to the Buyer in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Clause 17 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 5 (*Software*) duly executed by the Replacement Supplier;
 - (ii) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or
- (b) use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

Patents

17.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.

18 LICENCES GRANTED BY THE BUYER

- 18.1. The Buyer hereby grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Term to use the Buyer Software, the Buyer Background IPRs, the Specially Written Software, the Project Specific IPRs and the Buyer Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:
- (a) any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 21 (*Confidentiality*); and
 - (b) the Supplier shall not, without the Buyer's prior written consent, use the licensed materials for any other purpose or for the benefit of any person other than the Buyer.
- 18.2. In the event of the termination or expiry of this Contract, the licence granted pursuant to Clause 18.1 and any sub-licence granted by the Supplier in accordance with Clause 18.1 shall terminate automatically on the date of such termination or expiry and the Supplier shall:
- (a) immediately cease all use of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be);
 - (b) at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data, provided that if the Buyer has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Software, the Buyer Background IPRs and the Buyer Data (as the case may be); and
 - (c) ensure, so far as reasonably practicable, that any Buyer Software, Buyer Background IPRs and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Buyer Software, Buyer Background IPRs and/or Buyer Data.

19 IPRs INDEMNITY

- 19.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Buyer and each other Indemnified Person, and keep the Buyer and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 19.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:
- (a) procure for the Buyer or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or
 - (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

- (ii) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;
- (iii) there is no additional cost to the Buyer or relevant Indemnified Person (as the case may be); and
- (iv) the terms and conditions of this Contract shall apply to the replaced or modified Services.

19.3 If the Supplier elects to procure a licence in accordance with Clause 19.2(a) or to modify or replace an item pursuant to Clause 19.2(b), but this has not avoided or resolved the IPRs Claim, then:

- (a) the Buyer may terminate this Contract (if subsisting) with immediate effect by written notice to the Supplier; and
- (b) without prejudice to the indemnity set out in Clause 19.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

19A OPEN SOURCE PUBLICATION

19A.1 The Supplier agrees that the Buyer may at its sole discretion publish as Open Source Software all or part of the Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.

19A.2 The Supplier hereby warrants that the Specially Written Software and any software element of the Project Specific IPRs:

- (a) are suitable for release as Open Source and that any release will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs or the Buyer System;
- (b) shall not cause any harm or damage to any party using anything published as Open Source and that the Specially Written Software and the Project Specific IPRs do not contain any Malicious Software;
- (c) do not contain any material which would bring the Buyer into disrepute upon publication as Open Source;
- (d) do not contain any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs ("**Non-Party IPRs**"); and
- (e) will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the Operational Service Commencement Date.

19A.3 The Supplier shall ensure that the Open Source Publication Material provided to the Buyer does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs

will become Open Source and will be licensed and treated as such following publication by the Buyer and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Buyer when publishing as Open Source.

- 19A.4 The Supplier hereby indemnifies the Buyer against all claims in which the Buyer is, or is threatened to be, a party for any alleged infringement of any Non-Party IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under sub-clause 19A.1.

20 BUYER DATA AND SECURITY REQUIREMENTS

- 20.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Buyer Data.
- 20.2 The Supplier shall not store, copy, disclose, or use the Buyer Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Buyer.
- 20.3 To the extent that Buyer Data is held and/or processed by the Supplier, the Supplier shall supply that Buyer Data to the Buyer as requested by the Buyer in the format specified in Attachment 2.1 (*Services Description*) of the Order Form.
- 20.4 The Supplier shall preserve the integrity of Buyer Data and prevent the corruption or loss of Buyer Data at all times that the relevant Buyer Data is under its control or the control of any Sub-contractor.
- 20.5 The Supplier shall perform secure back-ups of all Buyer Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Buyer (or to such other person as the Buyer may direct) at all times upon request and are delivered to the Buyer at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 20.6 The Supplier shall ensure that any system on which the Supplier holds any Buyer Data, including back-up data, is a secure system that complies with the Security Requirements.
- 20.7 If the Buyer Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Buyer may:
- (c) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Buyer Data to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Buyer's notice; and/or
 - (d) itself restore or procure the restoration of Buyer Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 8.6 (*Service Continuity Plan and Corporate Resolution Planning*).
- 20.8 If at any time the Supplier suspects or has reason to believe that Buyer Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier

shall notify the Buyer immediately and inform the Buyer of the remedial action the Supplier proposes to take.

- 20.9 The Supplier shall comply with the requirements of Schedule 2.4 (*Security Management*).
- 20.10 The Buyer shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 20.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.
- 20.12 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to Clause 20.11 the Supplier shall continue to perform the Services in accordance with its existing obligations.
- 20.13 Where a Buyer has notified the Supplier that the award of this Contract by the Buyer shall be conditional upon the Supplier having an accredited security facility and a number of UK national security cleared personnel, the Supplier shall have:
- (a) (or be willing obtain within such period as agreed between the Parties) an accredited secure facility environment in accordance with HMG Security Policy Framework May 2018 and/or any future variations to the policy, (commonly referred to as List X). Further information on List X accreditation can be found at: <https://www.gov.uk/government/publications/security-policy-framework>; and
 - (b) a number of UK national security cleared personnel prior to the Effective Date.
- 20.14 If the Supplier fails to comply with Clause 20.13 above, then without prejudice to the Buyer's other rights and remedies (if any), the Buyer shall be entitled to terminate this Contract for material Default in accordance with Clause 33.1.

21 CONFIDENTIALITY

- 21.1 For the purposes of this Clause 21, the term "**Disclosing Party**" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 21.2 Except to the extent set out in this Clause 21 or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:
- (c) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
 - (d) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;

- (e) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Contract; and
 - (f) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.
- 21.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 22 (Transparency and *Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Buyer arising out of or in connection with this Contract;
 - (ii) the examination and certification of the Buyer's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer is making use of any Services provided under this Contract; or
 - (iii) the conduct of a Central Government Body review in respect of this Contract; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 21.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 21.5 The Supplier may disclose the Confidential Information of the Buyer on a confidential basis only to:
- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Buyer pursuant to this Clause 21.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

21.6 The Buyer may disclose the Confidential Information of the Supplier:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Buyer or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Buyer (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 21.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause 30 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 29 (*Remedial Adviser*) and Exit Management rights; or
- (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Buyer under this Clause 21.

21.7 Nothing in this Clause 21 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

22 TRANSPARENCY AND FREEDOM OF INFORMATION

22.1 The Parties acknowledge that

- (a) the Transparency Reports;
- (b) the content of this Contract, including any changes to this Contract agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and
 - (ii) Commercially Sensitive Information; and
- (c) the Publishable Performance Information

(together the "**Transparency Information**") are not Confidential Information.

22.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for

- the Buyer to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Buyer shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 22.3 The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 8.4 (Reports and Records Provisions).
- 22.4 If the Buyer believes that publication of any element of the Transparency Information would be contrary to the public interest, the Buyer shall be entitled to exclude such information from publication. The Buyer acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Buyer acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.
- 22.5 The Buyer shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.
- 22.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Buyer on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Buyer may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 21.6(c)) and Open Book Data) publish such Information. The Supplier shall provide to the Buyer within five (5) Working Days (or such other period as the Buyer may reasonably specify) any such Information requested by the Buyer.
- 22.7 The Supplier acknowledges that the Buyer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Buyer to enable the Buyer to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Buyer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Buyer with a copy of all Information held on behalf of the Buyer which is requested in a Request For Information and which is in its possession or control in the form that the Buyer requires within 5 Working Days (or such other period as the Buyer may reasonably specify) of the Buyer's request for such Information; and
 - (d) not respond directly to a Request For Information addressed to the Buyer unless authorised in writing to do so by the Buyer.
- 22.8 The Supplier acknowledges that the Buyer may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Buyer shall take reasonable steps to notify the Supplier of a

Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Buyer shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

23 PROTECTION OF PERSONAL DATA

Status of the Controller

23.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

- (e) **"Controller"** (where the other Party acts as the **"Processor"**);
- (f) **"Processor"** (where the other Party acts as the **"Controller"**);
- (g) **"Joint Controller"** (where both Parties are considered to jointly control the same Personal Data);
- (h) **"Independent Controller"** of the Personal Data where the other Party is also **"Controller"** of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Attachment 11 (*Processing Personal Data*) of the Order Form which scenario or scenarios are intended to apply under this Contract.

23.1A The Parties acknowledge that:

(a) the Buyer is the Processor and the Supplier is the Subprocessor of the Personal Data set out in this Attachment 11 (*Processing Personal Data*) (in respect of which the Department of Health and Social Care is the Controller); and

(b) in relation to this Clause 23 (*Protection of Personal Data*) and for the purposes of the Data Protection Legislation, references to the Controller shall be interpreted as references to the Buyer as Processor, and references to Processor shall be interpreted as references to the Supplier as Subprocessor. References to a Sub-processor shall refer to any sub-processor appointed by the Supplier.

Where one Party is Controller and the other Party its Processor

23.2 Where a Party is a Processor, the only processing that it is authorised to do is listed in Attachment 11 (*Processing Personal Data*) of the Order Form by the Controller.

23.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

23.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of

any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

23.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

- (a) process that Personal Data only in accordance with Attachment 11 (*Processing Personal Data*) of the Order Form, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Buyer before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in Clause 20 (*Buyer Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (c) ensure that :
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Attachment 11 (*Processing Personal Data*));
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Processor's duties under this Clause, Clauses 21 (*Confidentiality*) and 20 (*Buyer Data and Security Requirements*);
 - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and

- (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
 - (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
 - (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 23.6 Subject to Clause 23.7, the Processor shall notify the Controller immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 23.7 The Processor's obligation to notify under Clause 23.6 shall include the provision of further information to the Controller in phases, as details become available.
- 23.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 23.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

- (d) assistance as requested by the Controller following any Data Loss Event; and/or
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 23.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
 - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 23.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 23.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 23.12 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:
- (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 23 such that they apply to the Sub-processor; and
 - (d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 23.13 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
- 23.14 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 23.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Where the Parties are Joint Controllers of Personal Data

- 23.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with GDPR Article

26 based on the terms set out in Schedule 11 (Processing Personal Data).

Where the Parties are Independent Controllers of Personal Data

- 23.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.
- 23.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 23.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 23.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 23.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 GDPR in respect of the processing of Personal Data for the purposes of this Contract.
- 23.21 The Parties shall only provide Personal Data to each other:
- (a) to the extent necessary to perform the respective obligations under this Contract;
 - (b) in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects); and
 - (c) where it has recorded it in Attachment 11 (*Processing Personal Data*) of the Order Form.
- 23.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the GDPR.
- 23.23 A Party processing Personal Data for the purposes of this Contract shall maintain a record of its processing activities in accordance with Article 30 GDPR and shall make the record available to the other Party upon reasonable request.
- 23.24 Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to this Contract ("the Request Recipient"):
- (a) the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

- (b) where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:
 - (i) promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other party that it has received the same and shall forward such request or correspondence to the other party; and
 - (ii) provide any information and/or assistance as reasonably requested by the other party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.
- 23.25 Each party shall promptly notify the other Party upon it becoming aware of any Personal Data Breach relating to Personal Data provided by the other party pursuant to this Contract and shall:
- (a) do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;
 - (b) implement any measures necessary to restore the security of any compromised Personal Data;
 - (c) work with the other Party to make any required notifications to the Information Commissioner's Office and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
 - (d) not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 23.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Attachment 11 (Processing Personal Data).
- 23.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Attachment 11 (Processing Personal Data) of the Order Form.
- 23.28 Notwithstanding the general application of Clauses 23.2 to 23.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause 23.16 to 23.27.

Data Protection Indemnity

- 23.29 In accordance with Attachment 11 (Processing Personal Data) the Supplier shall indemnify the Buyer (as Processor) and the Department of Health and Social Care (as Controller), and keep them indemnified, against damages, compensation, costs, claims, demands, expenses, professional costs, and/or charges arising from enforcement action by the Information Commissioner or any regulatory authority and/or assertion of rights by Data Subjects, arising from a breach by the Supplier of the Data Protection Legislation and/or the data processing

conditions set out in this Contract.

24 PUBLICITY AND BRANDING

24.1 The Supplier shall not:

- (a) make any press announcements or publicise this Contract or its contents in any way;
or
- (b) use the Buyer's name or brand in any promotion or marketing or announcement of orders;

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

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

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

25 LIMITATIONS ON LIABILITY

Unlimited liability

- 25.1 Neither Party limits its liability for:
- (a) death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);
 - (b) fraud or fraudulent misrepresentation by it or its employees;
 - (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any liability to the extent it cannot be limited or excluded by Law.
- 25.2 The Supplier's liability in respect of the indemnities in Clause 10.5 (VAT), Clause 14.7 (*Employment Indemnity*), Clause 14.8 (*Income Tax and National Insurance Contributions*), Clause 19.1 (*IPRs Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.
- 25.3 The Buyer's liability in respect of the indemnities in Clause 14.7 (*Employment Indemnity*), Schedule 9.1 (*Staff Transfer*) and the Annexes to Schedule 9.1 (*Staff Transfer*) shall be unlimited.

Financial and other limits

- 25.4 Subject to Clauses 25.1 and 25.2 (*Unlimited Liability*) and Clauses 25.7 (*Consequential losses*):
- (a) the Supplier's aggregate liability in respect of loss of or damage to the Buyer Premises or other property or assets of the Buyer (including technical infrastructure, assets or equipment but excluding any loss or damage to the Buyer's Data or any other data) that is caused by Defaults of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
 - (b) the Supplier's aggregate liability in respect of loss of or damage to Buyer Data or breach of the Data Protection Legislation that is caused by Default of the Supplier occurring in each and any Contract Year shall in no event exceed £10 million;
 - (c) the Supplier's aggregate liability in respect of all:
 - (i) Service Credits; and
 - (ii) Compensation for Unacceptable KPI Failure;incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and

- (d) the Supplier's aggregate liability in respect of all other Losses incurred by the Buyer under or in connection with this Contract as a result of Defaults by the Supplier shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
 - (iii) in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to this Clause 25.4(d) have been incurred by the Buyer as a result of the Supplier's abandonment of this Contract or the Supplier's wilful default, wilful breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, the references in such Clause to 150% shall be deemed to be references to 200%.

25.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause 25.4(c).

25.6 Subject to Clauses 25.1 and 25.3 (*Unlimited Liability*) and Clause 25.7(*Consequential Losses*) and without prejudice to the Buyer's obligation to pay the Charges as and when they fall due for payment:

- (a) the Buyer's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of early termination of this Contract by the Buyer pursuant to Clause 33.1(a) (*Termination by the Buyer*) or by the Supplier pursuant to Clause 33.3(a) (*Termination by the Supplier*) shall in no event exceed the following amounts:
 - (i) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 7.2 (*Payments on Termination*);
 - (ii) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 7.2 (*Payments on Termination*); and
 - (iii) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 7.2 (*Payments on Termination*); and
- (b) the Buyer's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Buyer shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this

Contract in the Contract Year immediately preceding the occurrence of the Default; and

- (iii) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

25.7 Subject to Clauses 25.1, 25.2 and 25.3 (*Unlimited Liability*) and Clause 25.8, neither Party shall be liable to the other Party for:

- (a) any indirect, special or consequential Loss; or
- (b) any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).

25.8 Notwithstanding Clause 25.7 but subject to Clause 25.4, the Supplier acknowledges that the Buyer may, amongst other things, recover from the Supplier the following Losses incurred by the Buyer to the extent that they arise as a result of a Default by the Supplier:

- (a) any additional operational and/or administrative costs and expenses incurred by the Buyer, including costs relating to time spent by or on behalf of the Buyer in dealing with the consequences of the Default;
- (b) any wasted expenditure or charges;
- (c) the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
- (d) any compensation or interest paid to a third party by the Buyer;
- (e) any fine or penalty incurred by the Buyer pursuant to Law and any costs incurred by the Buyer in defending any proceedings which result in such fine or penalty; and
- (f) any anticipated savings identified in Attachment 7.6 (*Anticipated Savings*) of the Order Form.

Conduct of indemnity claims

25.9 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 8.7 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

25.10 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

26 **INSURANCE**

- 26.1 Without limitation to the generality of Clause 26.2, the Supplier shall ensure that it maintains the policy or policies of insurance referred to in the Order Form.

- 26.2 Notwithstanding the benefit to the Buyer of the policy or policies of insurance referred to in Framework Schedule 14 (Insurance Requirements), the Supplier shall effect and maintain any such further policy or policies of insurance or extensions to such existing policy or policies of insurance procured by under the Framework in respect of all risks which may be incurred by the Supplier arising out of its performance of its obligations under this Contract.

SECTION H – REMEDIES AND RELIEF

27 RECTIFICATION PLAN PROCESS

27.1 In the event that:

- (a) there is, or is reasonably likely to be, a Delay; and/or
- (b) in any Service Period there has been:
 - (i) a Material KPI Failure; and/or
 - (ii) a Material PI Failure; and/or
- (c) the Supplier commits a material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default),

(each a “**Notifiable Default**”), the Supplier shall notify the Buyer of the Notifiable Default as soon as practicable but in any event within 3 Working Days of becoming aware of the Notifiable Default, detailing the actual or anticipated effect of the Notifiable Default and, unless the Notifiable Default also constitutes a Rectification Plan Failure or other Supplier Termination Event, the Buyer may not terminate this Contract in whole or in part on the grounds of the Notifiable Default without first following the Rectification Plan Process.

Notification

27.2 If:

- (a) the Supplier notifies the Buyer pursuant to Clause 27.1 that a Notifiable Default has occurred; or
- (b) the Buyer notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

then, unless the Notifiable Default also constitutes a Supplier Termination Event and the Buyer serves a Termination Notice, the Supplier shall comply with the Rectification Plan Process.

27.3 The “**Rectification Plan Process**” shall be as set out in Clauses 27.4 (*Submission of the draft Rectification Plan*) to 27.9 (*Contract of the Rectification Plan*).

Submission of the draft Rectification Plan

27.4 The Supplier shall submit a draft Rectification Plan to the Buyer for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 27.2 (*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

27.5 The draft Rectification Plan shall set out:

- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
- (b) the actual or anticipated effect of the Notifiable Default; and
- (c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).

27.6 The Supplier shall promptly provide to the Buyer any further documentation that the Buyer reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 8.3 (*Dispute Resolution Procedure*).

Contract of the Rectification Plan

27.7 The Buyer may reject the draft Rectification Plan by notice to the Supplier if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:

- (a) is insufficiently detailed to be capable of proper evaluation;
- (b) will take too long to complete;
- (c) will not prevent reoccurrence of the Notifiable Default; and/or
- (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Buyer.

27.8 The Buyer shall notify the Supplier whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Buyer rejects the draft Rectification Plan, the Buyer shall give reasons for its decision and the Supplier shall take the reasons into account in the preparation of a revised Rectification Plan. The Supplier shall submit the revised draft of the Rectification Plan to the Buyer for review within 5 Working Days (or such other period as agreed between the Parties) of the Buyer's notice rejecting the first draft.

27.9 If the Buyer consents to the Rectification Plan:

- (a) the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- (b) the Buyer may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default;

save in the event of a Rectification Plan Failure or other Supplier Termination Event.

28 DELAY PAYMENTS

28.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 7.1 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.

28.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:

- (e) the Buyer is entitled to or does terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*); or
- (f) the Delay exceeds the Delay Deduction Period.

29 REMEDIAL ADVISER

29.1 If:

- (a) any of the Intervention Trigger Events occur; or
- (b) the Buyer reasonably believes that any of the Intervention Trigger Events are likely to occur,

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

- (i) a meeting between the Buyer Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- (ii) the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 29.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Buyer has no obligation to exercise its rights under this Clause 29.1 prior to or instead of exercising its right to terminate this Contract.

29.2 If the Buyer gives notice that it requires the appointment of a Remedial Adviser:

- (a) the Remedial Adviser shall be:
 - (i) a person selected by the Supplier and approved by the Buyer; or
 - (ii) if none of the persons selected by the Supplier have been approved by the Buyer (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Buyer;
- (b) the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Buyer; and
- (c) any right of the Buyer to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the "**Intervention Period**").

29.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing

the Supplier's responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:

- (a) observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
- (b) gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
- (c) write reports and provide information to the Buyer in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
- (d) make recommendations to the Buyer and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
- (e) take any other steps that the Buyer and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.

29.4 The Supplier shall:

- (a) work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
- (b) ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
- (c) submit to such monitoring as the Buyer and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
- (d) implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Buyer within the timescales given by the Remedial Adviser; and
- (e) not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Buyer (such consent not to be unreasonably withheld).

29.5 The Supplier shall be responsible for:

- (a) the costs of appointing, and the fees charged by, the Remedial Adviser; and
- (b) its own costs in connection with any action required by the Buyer and/or the Remedial Adviser pursuant to this Clause 29.

29.6 If:

- (a) the Supplier:
 - (i) fails to perform any of the steps required by the Buyer in an Intervention Notice; and/or

- (ii) is in Default of any of its obligations under Clause 29.4; and/or
- (b) the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Buyer shall be entitled to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*).

30 STEP-IN RIGHTS

30.1 On the occurrence of a Step-In Trigger Event, the Buyer may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause 30 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause 21 (*Confidentiality*)). The Step-In Notice shall set out the following:

- (a) the action the Buyer wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);
- (b) the Step-In Trigger Event that has occurred and whether the Buyer believes that the Required Action is due to the Supplier's Default;
- (c) the date on which it wishes to commence the Required Action;
- (d) the time period which it believes will be necessary for the Required Action;
- (e) whether the Buyer will require access to the Supplier's premises and/or the Sites; and
- (f) to the extent practicable, the impact that the Buyer anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

30.2 Following service of a Step-In Notice, the Buyer shall:

- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
- (b) keep records of the Required Action taken and provide information about the Required Action to the Supplier;
- (c) co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Buyer is not assuming control; and
- (d) act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Buyer's rights under this Clause 30.

30.3 For so long as and to the extent that the Required Action is continuing, then:

- (a) the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;

- (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 30.4 shall apply to Deductions from Charges in respect of other Services; and
 - (c) the Buyer shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 30.4 If the Supplier demonstrates to the reasonable satisfaction of the Buyer that the Required Action has resulted in:
- (a) the degradation of any Services not subject to the Required Action; or
 - (b) the non-Achievement of a Milestone,
- beyond that which would have been the case had the Buyer not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 30.5 Before ceasing to exercise its step in rights under this Clause 30 the Buyer shall deliver a written notice to the Supplier (a **"Step-Out Notice"**), specifying:
- (a) the Required Action it has actually taken; and
 - (b) the date on which the Buyer plans to end the Required Action (the **"Step-Out Date"**) subject to the Buyer being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 30.6.
- 30.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Buyer's approval a draft plan (a **"Step-Out Plan"**) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
- 30.7 If the Buyer does not approve the draft Step-Out Plan, the Buyer shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Buyer for the Buyer's approval. The Buyer shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 30.8 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this Clause 30, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
- (c) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (d) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving the Step-In Notice is identified as not being the result of the Supplier's Default).

31 BUYER CAUSE

- 31.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:
- (a) Achieve a Milestone by its Milestone Date;

- (b) provide the Operational Services in accordance with the Target Performance Levels; and/or
- (c) comply with its obligations under this Contract,

(each a “**Supplier Non-Performance**”),

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Buyer Cause, then (subject to the Supplier fulfilling its obligations in this Clause 31):

- (i) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Buyer Cause;
- (ii) the Buyer shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (A) to terminate this Contract pursuant to Clause 33.1(b) (*Termination by the Buyer*); or
 - (B) to take action pursuant to Clauses 29 (*Remedial Adviser*) or 30 (*Step-In*);
- (iii) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (A) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Buyer Cause;
 - (B) if the Buyer, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Buyer Cause;
 - (C) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Buyer Cause; and
 - (D) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 7.1 (*Charges and Invoicing*); and/or
- (iv) where the Supplier Non-Performance constitutes a Performance Failure:
 - (A) the Supplier shall not be liable to accrue Service Credits;
 - (B) the Buyer shall not be entitled to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*);

(C) the Buyer shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*); and

(D) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Buyer Cause,

in each case, to the extent that the Supplier can demonstrate that the Performance Failure was caused by the Buyer Cause.

31.2 In order to claim any of the rights and/or relief referred to in Clause 31.1, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Buyer Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Buyer notice (a "**Relief Notice**") setting out details of:

(d) the Supplier Non-Performance;

(e) the Buyer Cause and its effect, or likely effect, on the Supplier's ability to meet its obligations under this Contract;

(f) any steps which the Buyer can take to eliminate or mitigate the consequences and impact of such Buyer Cause; and

(g) the relief and/or compensation claimed by the Supplier.

31.3 Following the receipt of a Relief Notice, the Buyer shall as soon as reasonably practicable consider the nature of the Supplier Non-Performance and the alleged Buyer Cause and whether it agrees with the Supplier's assessment set out in the Relief Notice as to the effect of the relevant Buyer Cause and its entitlement to relief and/or compensation, consulting with the Supplier where necessary.

31.4 The Supplier shall use all reasonable endeavours to eliminate or mitigate the consequences and impact of an Buyer Cause, including any Losses that the Supplier may incur and the duration and consequences of any Delay or anticipated Delay.

31.5 Without prejudice to Clause 5.9 (*Continuing obligation to provide the Services*), if a Dispute arises as to:

(a) whether a Supplier Non-Performance would not have occurred but for an Buyer Cause; and/or

(b) the nature and/or extent of the relief and/or compensation claimed by the Supplier,

either Party may refer the Dispute to the Dispute Resolution Procedure. Pending the resolution of the Dispute, both Parties shall continue to resolve the causes of, and mitigate the effects of, the Supplier Non-Performance.

31.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause 31 shall be implemented in accordance with the Change Control Procedure.

32 FORCE MAJEURE

32.1 Subject to the remaining provisions of this Clause 32 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning)), a Party may claim relief under this Clause 32 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

32.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.

32.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause 32 to the extent that consequences of the relevant Force Majeure Event:

- (a) are capable of being mitigated, but the Supplier has failed to do so;
- (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or
- (c) are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).

32.4 Subject to Clause 32.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

32.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Supplier is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.

32.6 Where, as a result of a Force Majeure Event:

- (a) an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than pursuant to

Clause 33.1(c) (*Termination by the Buyer*) or Clause 33.3(b) (*Termination by the Supplier*); and

- (ii) neither Party shall be liable for any Default arising as a result of such failure;
- (b) the Supplier fails to perform its obligations in accordance with this Contract:
- (i) the Buyer shall not be entitled:
 - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 29 (*Remedial Adviser*) and/or Clause 30 (*Step-in Rights*) as a result of such failure;
 - (B) to receive Delay Payments pursuant to Clause 28 (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (C) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
 - (ii) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.
- 32.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.
- 32.8 Relief from liability for the Affected Party under this Clause 32 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause 32.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

33 TERMINATION RIGHTS

Termination by the Buyer

- 33.1 The Buyer may terminate this Contract by issuing a Termination Notice to the Supplier:
- (a) for convenience at any time by giving no less than 90 days' written notice;
 - (b) if a Supplier Termination Event occurs;
 - (c) if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or
 - (d) if the Contract has been substantially amended to the extent that, the Public Contracts Regulations 2015 require a new procurement procedure,

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

- 33.2 Where the Buyer:

- (a) is terminating this Contract under Clause 33.1(b) due to the occurrence of either limb (b) and/or (g) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Contract under Clause 33.1, it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract.

Termination by the Supplier

- 33.3 The Supplier may, by issuing a Termination Notice to the Buyer, terminate:

- (a) this Contract if the Buyer fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds **£350,000** and such amount remains outstanding 40 Working Days after the receipt by the Buyer of a notice of non-payment from the Supplier; or
- (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 33.3(b) would result in a Partial Termination, the provisions of Clause 33.4 (*Partial Termination*) shall apply.

Partial Termination

- 33.4 If the Supplier notifies the Buyer pursuant to Clause 33.3(b) (Termination by the Supplier) that it intends to terminate this Contract in part and the Buyer, acting reasonably, believes that the

effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Buyer Requirements, then the Buyer shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause 33.4, in assessing the significance of any part of the Buyer Requirements, regard shall be had not only to the proportion of that part to the Buyer Requirements as a whole, but also to the importance of the relevant part to the Buyer.

33.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:

- (a) the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- (b) any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- (c) the Supplier shall not be entitled to reject the Change.

34 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

34.1 The provisions of Clauses 5.8 (Specially Written Software warranty), 10.4 and 10.5 (VAT), 10.6 and 10.7 (Set-off and Withholding), 12 (Records, Reports, Audits and Open Book Data), 14.7 (Employment Indemnity), 14.8 (Income Tax and National Insurance Contributions), 16 (Intellectual Property Rights), 17 (Licences Granted by the Supplier), 19.1 (IPRs Indemnity), 21 (Confidentiality), 22 (Transparency and Freedom of Information), 23 (Protection of Personal Data), 25 (Limitations on Liability), 34 (Consequences of Expiry or Termination), 40 (Severance), 42 (Entire Contract), 43 (Third Party Rights), 45 (Disputes) and 46 (Governing Law and Jurisdiction), and the provisions of Schedules 1 (Definitions), 7.1 (Charges and Invoicing), 7.2 (Payments on Termination), 7.5 (Financial Reports and Audit Rights), 8.3 (Dispute Resolution Procedure), 8.4 (Reports and Records Provisions), 8.5 (Exit Management), and 9.1 (Staff Transfer), shall survive the termination or expiry of this Contract.

Exit Management

34.2 The Parties shall comply with the provisions of Schedule 8.5 (Exit Management) and any current Exit Plan in relation to orderly transition of the Services to the Buyer or a Replacement Supplier.

Payments by the Buyer

34.3 If this Contract is terminated by the Buyer pursuant to Clause 33.1(a) (Termination by the Buyer) or by the Supplier pursuant to Clause 33.3(a) (Termination by the Supplier), the Buyer shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Contract):

- (a) the Termination Payment; and

- (b) the Compensation Payment,

subject to the conditions set out in Schedule 7.2 (*Payments on Termination*) and provided that no Compensation Payment shall become payable if this Contract is terminated during any Extension Period.

34.4 If this Contract is terminated (in part or in whole) by the Buyer pursuant to Clauses 33.1(b), 33.1(c) and/or 33.2 (Termination by the Buyer), or the Term expires, the only payments that the Buyer shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

- (a) payments in respect of any Assets or apportionments in accordance with Schedule 8.5 (*Exit Management*); and
- (b) payments in respect of unpaid Charges for Services received up until the Termination Date.

34.5 The costs of termination incurred by the Parties shall lie where they fall if:

- (a) either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses 33.1(c) or 33.2(b) (*Termination by the Buyer*) or 33.3(b) (*Termination by the Supplier*); or
- (b) the Buyer terminates this Contract under Clause 33.1(d) (*Termination by the Buyer*).

Payments by the Supplier

34.6 In the event of termination or expiry of this Contract, the Supplier shall repay to the Buyer all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

34.7 If this Contract is terminated (in whole or in part) by the Buyer pursuant to Clause 33.1(b) (Termination by the Buyer) prior to Achievement of one or more CPP Milestones, the Buyer may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a "Milestone Adjustment Payment Notice") require the Supplier to repay to the Buyer an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

34.8 A Milestone Adjustment Payment Notice shall specify:

- (a) each CPP Milestone to which it relates;
- (b) in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Buyer wishes to retain, if any (each such Deliverable being a "**Retained Deliverable**"); and
- (c) those Retained Deliverables, if any, the Allowable Price for which the Buyer considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an "**Allowable Price Adjustment**"),

and may form part of a Termination Notice.

34.9 The Supplier shall within 10 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

- (a) notify the Buyer whether it agrees that the Retained Deliverables which the Buyer considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and
- (b) in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Buyer of the Supplier's proposed amount of the Allowable Price Adjustment and the basis for its approval;
- (c) provide the Buyer with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:
 - (i) all relevant Milestone Payments; and
 - (ii) the Allowable Price of each Retained Deliverable; and
- (d) provide the Buyer with such supporting information as the Buyer may require.

34.10 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 20 Working Days of the Supplier's receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

34.11 If the Buyer issues a Milestone Adjustment Payment Notice pursuant to Clause 34.7:

- (a) the Buyer shall:
 - (i) securely destroy or return to the Supplier all Non-retained Deliverables that are in tangible form; and
 - (ii) ensure that all Non-retained Deliverables that are held in electronic, digital or other machine-readable form cease to be readily accessible (other than by the information technology staff of the Buyer) from any computer, word processor, voicemail system or any other device containing such all Non-retained Deliverables,

in each case as soon as reasonably practicable after repayment of the aggregate Milestone Adjustment Payment Amounts repayable pursuant to that Milestone Adjustment Payment Notice; and

- (b) all licences granted pursuant to Clause 17 (*Licences granted by the Supplier*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

35 COMPLIANCE

Health and Safety

35.1 The Supplier shall perform its obligations under this Contract (including those in relation to the Services) in accordance with:

- (a) all applicable Law regarding health and safety; and
- (b) the Health and Safety Policy whilst at the Buyer Premises.

35.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the Buyer Premises of which it becomes aware and which relate to or arise in connection with the performance of this Contract. The Supplier shall instruct the Supplier Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

35.3 The Supplier shall:

- (a) perform its obligations under this Contract (including those in relation to the Services) in accordance with:
 - (i) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (ii) the Buyer's equality and diversity policy as provided to the Supplier from time to time; and
 - (iii) any other requirements and instructions which the Buyer reasonably imposes in connection with any equality obligations imposed on the Buyer at any time under applicable equality Law; and
- (b) take all necessary steps, and inform the Buyer of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

35.4 The Supplier shall comply with the provisions of:

- (a) the Official Secrets Acts 1911 to 1989; and
- (b) section 182 of the Finance Act 1989.

36 ASSIGNMENT AND NOVATION

- 36.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.
- 36.2 The Buyer may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:
- (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Buyer,
- and the Supplier shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer shall reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 36.2.
- 36.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not (subject to Clause 36.4) affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.
- 36.4 If the Buyer assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Buyer (any such body a "Successor Body"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Buyer under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body).

37 WAIVER AND CUMULATIVE REMEDIES

- 37.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 37.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

38 RELATIONSHIP OF THE PARTIES

Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.

39 PREVENTION OF FRAUD AND BRIBERY

- 39.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 39.2 The Supplier shall not during the term of this Contract:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Buyer or any of the Buyer's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 39.3 The Supplier shall during the term of this Contract:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
 - (b) have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;
 - (c) keep appropriate records of its compliance with its obligations under Clause 39.3(a) and make such records available to the Buyer on request; and
 - (d) take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.
- 39.4 The Supplier shall immediately notify the Buyer in writing if it becomes aware of any breach of Clause 39.1 and/or 39.2, or has reason to believe that it has or any of the Supplier Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind

in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

- 39.5 If the Supplier makes a notification to the Buyer pursuant to Clause 39.4, the Supplier shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Buyer to Audit any books, Records and/or any other relevant documentation in accordance with Clause 12 (Records, Reports, Audits and Open Book Data).
- 39.6 If the Supplier is in Default under Clauses 39.1 and/or 39.2, the Buyer may by notice:
- (a) require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Contract.
- 39.7 Any notice served by the Buyer under Clause 39.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Buyer believes has committed the Prohibited Act and the action that the Buyer has elected to take (including, where relevant, the date on which this Contract shall terminate).

40 SEVERANCE

- 40.1 If any provision of this Contract (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Contract shall not be affected.
- 40.2 In the event that any deemed deletion under Clause 40.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 40.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 40.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 8.3 (Dispute Resolution Procedure) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 40.3.

41 FURTHER ASSURANCES

Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be reasonably necessary to give effect to the meaning of this Contract.

42 ENTIRE AGREEMENT

- 42.1 This Contract constitutes the entire agreement between the Parties in respect of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.
- 42.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.
- 42.3 Nothing in this Clause 42 shall exclude any liability in respect of misrepresentations made fraudulently.

43 THIRD PARTY RIGHTS

- 43.1 The provisions of Clause 19.1 (IPRs Indemnity), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 9.1 (Staff Transfer) and the provisions of Paragraph 6.9 of Schedule 8.5 (Exit Management) (together “Third Party Provisions”) confer benefits on persons named or identified in such provisions other than the Parties (each such person a “Third Party Beneficiary”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 43.2 Subject to Clause 43.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 43.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.
- 43.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 43.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

44 NOTICES

- 44.1 Any notices sent under this Contract must be in writing.
- 44.2 Subject to Clause 44.4, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.

Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

- 44.3 Notices For the purposes of this Clause 44, the address and email address of each Party shall be the address and email address set out in the Order Form.
- 44.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 44.2:
- (c) Step-In Notices;
 - (d) Force Majeure Notices;
 - (e) notices issued by the Supplier pursuant to Clause 33.3 (*Termination by the Supplier*);
 - (f) Termination Notices; and
 - (g) Dispute Notices.
- 44.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 44.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 44.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 44.6 This Clause 44 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 8.3 (Dispute Resolution Procedure)).

45 DISPUTES

- 45.1 The Parties shall resolve Disputes arising out of or in connection with this Contract in accordance with the Dispute Resolution Procedure.
- 45.2 The Supplier shall continue to provide the Services in accordance with the terms of this Contract until a Dispute has been resolved.

46 GOVERNING LAW AND JURISDICTION

- 46.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 46.2 Subject to Clause 45 (Disputes) and Schedule 8.3 (Dispute Resolution Procedure) (including the Buyer's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

SCHEDULE 1

Definitions

Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

<p>“Accounting Reference Date”</p>	<p>means in each year the date to which the Supplier prepares its annual audited financial statements;</p>
<p>“Achieve”</p>	<p>(a) in respect of a Test, to successfully pass a Test without any Test Issues; and</p> <p>(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of Schedule 6.2 (<i>Testing Procedures</i>),</p> <p>and “Achieved” and “Achievement” shall be construed accordingly;</p>
<p>“Acquired Rights Directive”</p>	<p>the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time;</p>
<p>“Affected Party”</p>	<p>the Party seeking to claim relief in respect of a Force Majeure Event;</p>
<p>“Affiliate”</p>	<p>in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;</p>
<p>“Allowable Assumptions”</p>	<p>the assumptions set out in Part D of Attachment 7.1 (<i>Charges and Invoicing</i>) of the Order Form;</p>
<p>“Allowable Price”</p>	<p>in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <p>(a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and</p> <p>(b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,</p>

	provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;
“Allowable Price Adjustment”	has the meaning given in Clause 34.8(c) (<i>Payments by the Supplier</i>);
“Annual Contract Report”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Annual Revenue”	means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology: (a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
“Anticipated Contract Life Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Approved Sub-Licensee”	any of the following: (a) a Central Government Body; (b) any third party providing services to a Central Government Body; and/or (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer;
“Attachment”	an attachment to the Order Form;
“Assets”	all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Buyer Assets;
“Associated Person”	has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;

“Associates”	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
“Assurance”	means written confirmation from a Relevant Buyer to the Supplier that the CRP Information is approved by the Relevant Buyer;
“ATP Milestone”	the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;
“Audit”	any exercise by the Buyer of its Audit Rights pursuant to Clause 12 (<i>Records, Reports, Audit and Open Book Data</i>) and Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Audit Agents”	<ul style="list-style-type: none"> (a) the Buyer’s internal and external auditors; (b) the Buyer’s statutory or regulatory auditors; (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office; (d) HM Treasury or the Cabinet Office; (e) any party formally appointed by the Buyer to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Audit Rights”	the audit and access rights referred to in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Buyer, provided by the Buyer in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Balanced Scorecard Report”	has the meaning given in Paragraph 1.1(b) of Part B of Schedule 2.2 (<i>Performance Levels</i>);
“Baseline Security Requirements”	the Buyer's baseline security requirements, the current copy of which is contained in Annex 1 of Schedule 2.4 (<i>Security Management</i>), as updated from time to time by the Buyer and notified to the Supplier;
“Board”	means the Supplier’s board of directors;

“Board Confirmation”	means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 7.4 (Financial Distress);
“Breakage Costs Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Buyer”	means the entity identified as such in the Order Form;
“Buyer Assets”	the Buyer Materials, the Buyer infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Buyer and which is or may be used in connection with the provision or receipt of the Services, details of which are set out in the Order Form;
“Buyer Background IPRs”	<p>(a) IPRs owned by the Buyer before the Effective Date, including IPRs contained in any of the Buyer's Know-How, documentation, processes and procedures;</p> <p>(b) IPRs created by the Buyer independently of this Contract; and/or</p> <p>(c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;</p> <p>but excluding IPRs owned by the Buyer subsisting in the Buyer Software;</p>
“Buyer Cause”	<p>any material breach by the Buyer of any of the Buyer Responsibilities, except to the extent that such breach is:</p> <p>(a) the result of any act or omission by the Buyer to which the Supplier has given its prior consent; or</p> <p>caused by the Supplier, any Sub-contractor or any Supplier Personnel;</p>
“Buyer Data”	<p>(a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <p>(i) supplied to the Supplier by or on behalf of the Buyer; and/or</p> <p>(ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or</p> <p>any Personal Data for which the Buyer is the Data Controller;</p>
“Buyer IT Strategy”	the Buyer's IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Change Control Procedure;

<p>“Buyer Materials”</p>	<p>the Buyer Data together with any materials, documentation, information, programs and codes supplied by the Buyer to the Supplier, the IPRs in which:</p> <ul style="list-style-type: none"> (a) are owned or used by or on behalf of the Buyer; and (b) are or may be used in connection with the provision or receipt of the Services, <p>but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;</p>
<p>“Buyer Premises”</p>	<p>premises owned, controlled or occupied by the Buyer and/or any Central Government Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);</p>
<p>“Buyer Representative”</p>	<p>the representative appointed by the Buyer (as may be changed from time to time in accordance with Clause 11.4, the details of which as at the Effective Date are set out in the Order Form;</p>
<p>“Buyer Requirements”</p>	<p>the requirements of the Buyer set out in Attachment 2.1 (<i>Services Description</i>), Schedule 2.2 (<i>Performance Indicators</i>), Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>), Schedule 2.3 (<i>Standards</i>), Attachment 2.3 (<i>Environmental Requirements</i>), Schedule 2.4 (<i>Security Management</i>), the Order Form in respect of insurance, Schedule 6.1 (<i>Implementation Plan</i>), Attachment 6.1 (<i>Outline Implementation Plan</i>), Schedule 8.4 (<i>Reports and Records Provisions</i>), Attachment 8.4 (<i>Transparency Reports and Records to Upload to Virtual Library</i>), Schedule 8.5 (<i>Exit Management</i>) and Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);</p>
<p>“Buyer Responsibilities”</p>	<p>the responsibilities of the Buyer specified in Attachment 3 (Specific Obligations) of the Order Form;</p>
<p>“Buyer Software”</p>	<p>software which is owned by or licensed to the Buyer (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;</p>
<p>“Buyer System”</p>	<p>the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by the Buyer or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Services;</p>

“Cabinet Office Markets and Suppliers Team”	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;
“Call Off Terms”	means these terms and conditions;
“CCS”	means Crown Commercial Service, the authority to the Framework;
“Central Government Body”	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>(a) Government Department;</p> <p>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>(c) Non-Ministerial Department; or</p> <p>(d) Executive Agency;</p>
“Certificate of Costs”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Change”	any change to this Contract;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Change Control Procedure”	the procedure for changing this Contract set out in Schedule 8.2 (<i>Change Control Procedure</i>);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	a written request for a Contract Change substantially in the form of Annex 1 of Schedule 8.2 (<i>Change Control Procedure</i>);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) and Attachment 7.1 (<i>Pricing Mechanism, Charging Mechanism, Adjustments, Risk Register and Allowable Assumptions</i>) of the Order Form, including any Milestone Payment or Service Charge;
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Buyer;

“CNI”	means Critical National Infrastructure;
“Commercially Sensitive Information”	<p>the information listed in Attachment 4.2 (<i>Commercially Sensitive Information</i>) of the Order Form comprising the information of a commercially sensitive nature relating to –</p> <p>(a) the pricing of the Services;</p> <p>(b) details of the Supplier’s IPRs; and</p> <p>(c) the Supplier’s business and investment plans;</p> <p>which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;</p>
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;
“Compensation for Unacceptable KPI Failure”	has the meaning given in Clause 7.4(a) (<i>Unacceptable KPI Failure</i>);
“Compensation Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Condition Precedent”	has the meaning given in Clause 4.2 (<i>Condition Precedent</i>);
“Confidential Information”	<p>(a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to:</p> <p>(i) the Disclosing Party Group; or</p> <p>(ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;</p> <p>(b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Contract;</p> <p>(c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its</p>

	<p>directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and</p> <p>(d) Information derived from any of the above,</p> <p>but not including any Information which:</p> <p>(i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;</p> <p>(ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;</p> <p>(iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;</p> <p>(iv) was independently developed without access to the Confidential Information; or</p> <p>(v) relates to the Supplier’s:</p> <ol style="list-style-type: none"> 1. performance under this Contract; or 2. failure to pay any Sub-contractor as required pursuant to Clause 15.15(a) (<i>Supply Chain Protection</i>);
“Contract”	<p>the contract between the Buyer and the Supplier (entered into pursuant to the terms of the Framework) consisting of:</p> <p>(a) the Order Form; and</p> <p>(b) the Call Off Terms;</p>
“Contract Change”	<p>any change to this Contract other than an Operational Change;</p>
“Contract Inception Report”	<p>the initial financial model in a form agreed by the Supplier and the Buyer in writing on or before the Effective Date;</p>
“Contract Finder”	<p>the online government portal which allows suppliers to search for information about contracts worth over £10,000 (excluding VAT) as prescribed by Part 4 of the Public Contract Regulations 2015;</p>
“Contract Year”	<p>(a) a period of 12 months commencing on the Effective Date; or</p> <p>(b) thereafter a period of 12 months commencing on each anniversary of the Effective Date;</p> <p>provided that the final Contract Year shall end on the expiry or termination</p>

	of the Term;
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”	has the meaning given in the GDPR;
“Corporate Change Event”	<p>means:</p> <p>(a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;</p> <p>(b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;</p> <p>(c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;</p> <p>(d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;</p> <p>(e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;</p> <p>(f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 12 month period;</p> <p>(g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;</p> <p>(h) any member of the Supplier Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;</p> <p>(i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or</p> <p>(j) any process or events with an effect analogous to those in</p>

	paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;
“Corporate Resolution Planning Information”	means, together, the: a) Group Structure Information and Resolution Commentary; and b) UK Public Sector and CNI Contract Information;
“Costs”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“CPP Milestone”	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 6.2 (<i>Testing Procedures</i>) and Paragraph 2 of Attachment 2 (<i>Test Success Criteria</i>) of the Order Form;
“Critical National Infrastructure”	means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in: a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or b) significant impact on the national security, national defence, or the functioning of the UK;
“Critical Performance Failure”	(a) 2 or more Services/components suffering a ‘Service Availability ‘performance failure in any measurement period. (b) Breach of the ‘Change Management - Time to Execute Changes’ Key Performance Indicator for 2 concurrent months or a total of 4 months in any 12-month period. (c) Breach of the ‘Fix Times’ Key Performance Indicator for 2 concurrent months or a total of 4 months in any 12-month period.
“Critical Service Contract”	means the overall status of the Services provided under this Contract as determined by the Buyer and specified in Paragraph 10.1 of Part 2 to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“CRP Information”	means the Corporate Resolution Planning Information;
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;

“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;
“Data Protection Impact Assessment”	an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;
“Data Protection Legislation”	<ul style="list-style-type: none"> a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time b) the DPA 2018 to the extent that it relates to processing of personal data and privacy; c) all applicable Law about the processing of personal data and privacy;
“Data Subject”	has the meaning given in the DPA;
“Data Subject Request”	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
“Deductions”	all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Buyer under this Contract;
“Default”	<p>any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:</p> <ul style="list-style-type: none"> (a) in the case of the Buyer, of its employees, servants, agents; or (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel, <p>in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;</p>
“Defect”	<ul style="list-style-type: none"> (a) any error, damage or defect in the manufacturing of a Deliverable; or (b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or (c) any failure of any Deliverable to provide the performance, features and functionality specified in the Buyer Requirements or the

	<p>Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or</p> <p>(d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the Buyer Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;</p>
“Delay”	<p>(a) a delay in the Achievement of a Milestone by its Milestone Date; or</p> <p>(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;</p>
“Delay Deduction Period”	the period of one hundred (100) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts payable by the Supplier to the Buyer in respect of a Delay in Achieving a Key Milestone as specified in Table 1 of Part B of Attachment 7.1 (<i>Pricing Mechanism, Charging Mechanism, Adjustments, Risk Register and Allowable Assumptions</i>) of the Order Form;
“Deliverable”	an item or feature delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract;
“Dependent Parent Undertaking”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
“Detailed Implementation Plan”	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 6.1 (<i>Implementation Plan</i>);
“Disclosing Party”	has the meaning given in Clause 21.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and

	(b) where the Disclosing Party is the Buyer, the Buyer and any Central Government Body with which the Buyer or the Supplier interacts in connection with this Contract;
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Documentation”	<p>descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <p>(a) is required to be supplied by the Supplier to the Buyer under this Contract;</p> <p>(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;</p> <p>(c) is required by the Supplier in order to provide the Services; and/or</p> <p>(d) has been or shall be generated for the purpose of providing the Services;</p>
“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part

	7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
“DPA”	the Data Protection Act 2018 ;
“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Buyer prior to the Effective Date;
“Effective Date”	the later of: (a) the date on which the Order Form is signed by both Parties; and (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (Condition Precedent);
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government Body in relation to such Regulations;
“Emergency Maintenance”	ad hoc and unplanned maintenance provided by the Supplier where: (a) the Buyer reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following: (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees;

	<p>(e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;</p> <p>(f) employment claims whether in tort, contract or statute or otherwise;</p> <p>(g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;</p>
“Employment Regulations”	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the Acquired Rights Directive;
“Estimated Year 1 Charges”	the estimated Charges payable by the Buyer during the first Contract Year, as set out in the Financial Model;
“Estimated Initial Service Charges”	the estimated Service Charges payable by the Buyer during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model;
“Euro Compliant”	<p>means that: (i) the introduction of the euro within any part(s) of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Buyer’s business; (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):</p> <p>(a) be able to perform all such functions in any number of currencies and/or in euros;</p> <p>(b) during any transition phase applicable to the relevant part(s) of the UK, be able to deal with multiple currencies and, in relation to the euro and the national currency of the relevant part(s) of the UK, dual denominations;</p> <p>(c) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;</p> <p>(d) incorporate protocols for dealing with rounding and currency conversion;</p> <p>(e) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the relevant part(s) of the UK and/or the euro; and</p>

	(f) permit the input of data in euro and display an outcome in euro where such data, supporting the Buyer's normal business practices, operates in euro and/or the national currency of the relevant part(s) of the UK;
"Exit Day"	shall have the meaning in the European Union (Withdrawal) Act 2018;
"Exit Management"	services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Buyer and/or a Replacement Supplier, as set out or referred to in Schedule 8.5 (<i>Exit Management</i>);
"Exit Plan"	the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of Schedule 8.5 (<i>Exit Management</i>);
"Expedited Dispute Timetable"	the reduced timetable for the resolution of Disputes set out in Paragraph 3 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Expert"	has the meaning given in Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Expert Determination"	the process described in Paragraph 6 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
"Extension Period"	a period set out in the Order Form (in years) from the end of the Initial Term;
"Financial Distress Event"	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 7.4 (<i>Financial Distress</i>);
"Financial Distress Remediation Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs;
"Financial Model"	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
"Financial Reports"	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
"Financial Transparency Objectives"	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>);
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Act;

“Force Event”	Majeure	any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
“Force Notice”	Majeure	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;
“Former Supplier”		has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Framework”		the framework agreement reference RM6100 between the Supplier and CCS
“GDPR”		The General Data Protection Regulation (EU) 2016/679
“General Anti-Abuse Rule”		(a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“General Change in Law”		a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
“Good Practice”	Industry	at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Buyer, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
“Goods”		has the meaning given in Clause 9.7 (<i>Supply of Goods</i>);
“Group Information Resolution Commentary”	Structure and	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix 1 of Part 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Guarantee”		the deed of guarantee in favour of the Buyer entered into by the Guarantor on or about the date of this Contract (which is in the form set out in Schedule 10 (<i>Guarantee</i>)), or any guarantee acceptable to the Buyer that replaces it from time to time;

“Guarantor”	Not used.
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Buyer and/or other relevant Central Government Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 8.2 (<i>Change Control Procedure</i>);
“Implementation Plan”	the Outline Implementation Plan or (if and when approved by the Buyer pursuant to Paragraph 3 of Schedule 6.1 (<i>Implementation Plan</i>)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 6.1 (<i>Implementation Plan</i>) from time to time;
“Implementation Services”	the implementation services described as such in the Services Description;
“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Services;;
“Indemnified Person”	the Buyer and each and every person to whom the Buyer (or any direct or indirect sub-licensee of the Buyer) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with this Contract;
“Independent Control”	where a Controller has provided Personal Data to another Party which is neither a Processor or Joint Controller because the recipient itself determines the purposes and means of processing but does so separately from the Controller providing it with Personal Data;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);
“Initial Term”	the period set out in the Order Form from and including the Effective Date;

<p>“Initial Upload Date”</p>	<p>means the occurrence of an event detailed in Part B of Attachment 8.4 (<i>Transparency Reports and Records to Upload to the Virtual Library</i>) of the Order Form which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;</p>
<p>“Insolvency Event”</p>	<p>with respect to any person, means:</p> <ul style="list-style-type: none"> (a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or: <ul style="list-style-type: none"> (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986; (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person; (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person; (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person’s assets and such attachment or process is not discharged within fourteen (14) days; (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; (f) where that person is a company, a LLP or a partnership: <ul style="list-style-type: none"> (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent

	<p>reconstruction of that person;</p> <p>(ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;</p> <p>(iii) (being a company or a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or</p> <p>(g) any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;</p>
“Intellectual Property Rights” or “IPRs”	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semiconductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
“Intervention Cause”	has the meaning given in Clause 29.1 (Remedial Adviser);
“Intervention Notice”	has the meaning given in Clause 29.1 (<i>Remedial Adviser</i>);
“Intervention Period”	has the meaning given in Clause 29.2(c) (<i>Remedial Adviser</i>);
“Intervention Trigger Event”	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) a single Service/component suffering a ‘Service Availability’ performance failure in any measurement period.</p>

	<p>(d) Breach of the 'Change Management - Time to Execute Changes' Key Performance Indicator for a total of 3 months in any 12-month period.</p> <p>(e) Breach of the 'Fix Times' Key Performance Indicator for a total of 3 months in any 12-month period.</p> <p>(f) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or</p> <p>(g) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;</p>
"IPRs Claim"	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Buyer Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;
"IT"	information and communications technology;
"IT Environment"	the Buyer System and the Supplier System;
"Joint Controllers"	where two or more Controllers jointly determine the purposes and means of processing;
"Key Milestone"	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;
"Key Performance Indicator"	the key performance indicators set out in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
"Key Personnel"	those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Attachment 9.2 (<i>Key Personnel</i>) of the Order Form against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (<i>Key Personnel</i>);
"Key Roles"	a role described as a Key Role in Attachment 9.2 (<i>Key Personnel</i>) of the Order Form and any additional roles added from time to time in accordance with Clause 14.4 (<i>Key Personnel</i>);

“Key Sub-contract”	each Sub-contract with a Key Sub-contractor;
“Key Sub-contractor”	any Sub-contractor: (a) which, in the opinion of CCS or the Buyer, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or (b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract (as set out in the Financial Model);
“Know-How”	all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Contract;
“KPI Failure”	a failure to meet the Target Performance Level in respect of a Key Performance Indicator;
“KPI Service Threshold”	shall be as set out against the relevant Key Performance Indicator in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Law”	any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
“LED”	Law Enforcement Directive (<i>Directive (EU) 2016/680</i>);
“Licensed Software”	all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;
“Losses”	losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

“Maintenance Schedule”	shall have the meaning set out in Clause 9.4 (<i>Maintenance</i>);
“Malicious Software”	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
“Management Information”	the management information specified in Schedule 2.2 (<i>Performance Levels</i>), Schedule 7.1 (<i>Charges and Invoicing</i>) and Schedule 8.1 (<i>Governance</i>) to be provided by the Supplier to the Buyer;
“Material KPI Failure”	(a) a Serious KPI Failure; (b) a Severe KPI Failure; or (c) a failure by the Supplier to meet a KPI Service Threshold;
“Material PI Failure”	(a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or (b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;
“Measurement Period”	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Buyer when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 6.2 (<i>Testing Procedures</i>);
“Milestone Adjustment Payment Amount”	in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula: A – B where: (a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the

	<p>case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and</p> <p>(b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;</p>
“Milestone Adjustment Payment Notice”	has the meaning given in Clause 34.7 (<i>Payments by the Supplier</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Table 1 of Part B of Attachment 7.1 (<i>Pricing Mechanism, Charging Mechanism, Adjustments, Risk Register and Allowable Assumptions</i>) of the Order Form to be made following the issue of a Milestone Achievement Certificate;
“Milestone Retention”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“month”	a calendar month and “monthly” shall be interpreted accordingly;
“Multi-Party Dispute Resolution Procedure”	has the meaning given in Paragraph 9.1 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“Multi-Party Procedure Initiation Notice”	has the meaning given in Paragraph 9.2 of Schedule 8.3 (<i>Dispute Resolution Procedure</i>);
“NCSC”	the National Cyber Security Centre or any replacement or successor body carrying out the same function;
“New Releases”	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

“Non-trivial Customer Base”	a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;
“Non-retained Deliverables”	in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Buyer which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;
“Notifiable Default”	shall have the meaning given in Clause 27.1 (<i>Rectification Plan Process</i>);
“Object Code”	software and/or data in machine-readable, compiled object code form;
“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Buyer on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none"> (i) a Relevant Tax Buyer successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Buyer under the DOTAS or any equivalent or similar regime; and/or <p>(b) any tax return of the Supplier submitted to a Relevant Tax Buyer on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Open Book Data”	has the meaning given in Schedule 7.5 (<i>Financial Reports and Audit Rights</i>)
“Open Source”	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
“Operating Environment”	the Buyer System and the Sites;
“Operational Change”	<p>any change in the Supplier's operational procedures which in all respects, when implemented:</p> <ul style="list-style-type: none"> (a) will not affect the Charges and will not result in any other costs to the Buyer;

	<p>(b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;</p> <p>(c) will not adversely affect the interfaces or interoperability of the Services with any of the Buyer's IT infrastructure; and</p> <p>(d) will not require a change to this Contract;</p>
“Operational Service Commencement Date”	<p>in relation to an Operational Service, the later of:</p> <p>(a) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and</p> <p>(b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;</p>
“Operational Services”	the operational services described as such in the Services Description;
“Optional Services”	the services described as such in Attachment 2.1 (<i>Services Description</i>) of the Order Form which are to be provided by the Supplier if required by the Buyer in accordance with Clause 5.10 (<i>Optional Services</i>);
“Optional Services Implementation Plan”	the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Buyer;
“Order”	means the order placed by the Buyer with the Supplier for the provision of the Services in accordance with the Framework and under the terms of this Contract
“Order Form”	the form (based on the template included at Annex 1 to Framework Schedule 4 (Template Order Form and Template Call Off Terms)) together with any Attachments, as completed and forming part of this Contract, which contains details of an Order together with other information in relation to such Order, including the description of the Services to be provided;
“Other Supplier”	any supplier to the Buyer (other than the Supplier) which is notified to the Supplier from time to time and/or of which the Supplier should have been aware;
“Outline Implementation Plan”	the outline plan set out in Attachment 6.1 (<i>Outline Implementation Plan</i>) of the Order Form;

“Parent Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Partial Termination”	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 33.2(b) (<i>Termination by the Buyer</i>) or 33.3(b) (<i>Termination by the Supplier</i>) or otherwise by mutual agreement by the Parties;
“Parties” and “Party”	have the meanings respectively given on page 1 of this Contract;
“Performance Failure”	a KPI Failure or a PI Failure;
“Performance Indicators”	the Key Performance Indicators and the Subsidiary Performance Indicators;
“Permitted Maintenance”	has the meaning given in Clause 9.4 (<i>Maintenance</i>);
“Performance Monitoring Report”	has the meaning given in Schedule 2.2 (<i>Performance Levels</i>);
“Personal Data”	has the meaning given in the GDPR;
“Personal Data Breach”	has the meaning given in the GDPR;
“PI Failure”	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
“PI Service Threshold”	shall be as set out against the relevant Subsidiary Performance Indicator in Paragraph 2 and/or Paragraph 4 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Processor”	has the meaning given to it under the GDPR;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Contract;

“Programme Board”	the body described in Paragraph 5 of Schedule 8.1 (<i>Governance</i>);
“Prohibited Act”	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer a financial or other advantage to:</p> <p>(i) induce that person to perform improperly a relevant function or activity; or</p> <p>(ii) reward that person for improper performance of a relevant function or activity;</p> <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;</p> <p>(c) an offence:</p> <p>(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);</p> <p>(ii) under legislation or common law concerning fraudulent acts; or</p> <p>(iii) defrauding, attempting to defraud or conspiring to defraud the Buyer (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or</p> <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
“Protective Measures:	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Project Specific IPRs”	<p>(a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or</p> <p>(b) Intellectual Property Rights arising as a result of the performance of the Supplier's obligations under this Contract;</p> <p>but shall not include the Supplier Background IPRs or the Specially Written Software;</p>

“Public Sector Dependent Supplier”	means a supplier where that supplier, or that supplier’s group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;
“Public Sector and CNI Contract Information”	means the information requirements set out in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“Publishable Performance Information”	means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the tables in Attachment 2.2 (Key Performance Indicators and Subsidiary Performance Indicators Tables) of the Order Form which shall not constitute Commercially Sensitive Information;
“Quality Plans”	has the meaning given in Clause 6.1 (<i>Quality Plans</i>);
“Quarter”	the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract);
“Recipient”	has the meaning given in Clause 21.1 (<i>Confidentiality</i>);
“Records”	has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“Rectification Plan”	a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;
“Rectification Plan Failure”	<ul style="list-style-type: none"> (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Buyer within the timescales specified in Clauses 27.4 (<i>Submission of the draft Rectification Plan</i>) or 27.8 (<i>Contract of the Rectification Plan</i>); (b) the Buyer, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier pursuant to Clause 27.7 (<i>Contract of the Rectification Plan</i>); (c) the Supplier failing to rectify a material Default within the later of: <ul style="list-style-type: none"> (i) 30 Working Days of a notification made pursuant to Clause 27.2 (<i>Notification</i>); and (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;

	<p>(d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;</p> <p>(e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or</p> <p>(f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;</p>
“Rectification Plan Process”	the process set out in Clauses 27.4 (<i>Submission of the draft Rectification Plan</i>) to 27.9 (<i>Contract of the Rectification Plan</i>);
“Registers”	has the meaning given in Schedule 8.5 (<i>Exit Management</i>);
“Reimbursable Expenses”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Relevant Buyer” or “Relevant Authorities”	means the Buyer and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
“Relevant IPRs”	IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer or a third party in the fulfilment of the Supplier’s obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Buyer Software, the Buyer Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;
“Relevant Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Relevant Requirements”	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Buyer”	HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;

“Relief Notice”	has the meaning given in Clause 31.2 (<i>Buyer Cause</i>);
“Remedial Adviser”	the person appointed pursuant to Clause 29.2 (<i>Remedial Adviser</i>);
“Remedial Adviser Failure”	has the meaning given in Clause 29.6 (<i>Remedial Adviser</i>);
“Replacement Services”	any services which are the same as or substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Buyer internally and/or by any third party;
“Replacement Supplier”	any third party service provider of Replacement Services appointed by the Buyer from time to time (or where the Buyer is providing replacement Services for its own account, the Buyer);
“Request For Information”	a Request for Information under the FOIA or the EIRs;
“Required Action”	has the meaning given in Clause 30.1(a) (<i>Step-In Rights</i>);
“Retained Deliverables”	has the meaning given in Clause 34.8(b) (<i>Payments by the Supplier</i>);
“Risk Register”	the register of risks and contingencies that have been factored into any Costs due under this Contract, a copy of which is set out in Part C of Attachment 7.1 (<i>Charges and Invoicing</i>) of the Order Form;
“Security Management Plan”	has the meaning given to it in Schedule 2.4 (<i>Security Management</i>);
“Serious KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Service Charges”	the periodic payments made in accordance with Schedule 7.1 (<i>Charges and Invoicing</i>) in respect of the supply of the Operational Services;
“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>) as may be amended from time to time;

“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Service Credit Cap”	(a) in the period of 12 months from the first Operational Service Commencement Date to occur after the Effective Date, 15% of the Estimated Initial Service Charges; and (b) during the remainder of the Term, 15% of the Service Charges paid and/or due to be paid to the Supplier under this Contract in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;
“Service Credits”	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 7.1 (<i>Charges and Invoicing</i>);
“Service Period”	a calendar month, save that: (a) the first service period shall begin on the first Operational Service Commencement Date and shall expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;
“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Services”	any and all of the services to be provided by the Supplier under this Contract, including those set out in Attachment 2.1 (<i>Services Description</i>) of the Order Form;
“Service Transfer Date”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Services Description”	the services description set out in Attachment 2.1 (<i>Services Description</i>) of the Order Form;
“Severe KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Paragraph 1 and/or Paragraph 3 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;

“Sites”	<p>any premises (including the Buyer Premises, the Supplier’s premises or third party premises):</p> <p>(a) from, to or at which:</p> <ul style="list-style-type: none"> (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or <p>(b) where:</p> <ul style="list-style-type: none"> (i) any part of the Supplier System is situated; or (ii) any physical interface with the Buyer System takes place; <p>details of which are set out in the Order Form.</p>
“SME”	<p>an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;</p>
“Social Value”	<p>the social, economic or environmental benefits set out in the Buyer’s Requirements;</p>
“Software”	<p>Specially Written Software, Supplier Software and Third Party Software;</p>
“Software Supporting Materials”	<p>has the meaning given in Clause 17.1(b) (<i>Specially Written Software and Project Specific IPRs</i>);</p>
“Source Code”	<p>computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;</p>
“Specially Written Software”	<p>any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to Supplier Software or Third Party Software created specifically for the purposes of this Contract;</p>
“Specific Change in Law”	<p>a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply;</p>

“Staffing Information”	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Standards”	the standards, policies and/or procedures identified in Schedule 2.3 (<i>Standards</i>);
“Step-In Notice”	has the meaning given in Clause 30.1 (<i>Step-In Rights</i>);
“Step-In Trigger Event”	<ul style="list-style-type: none"> (a) any event falling within the definition of a Supplier Termination Event; (b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services; (c) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract; (d) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 30 (<i>Step-In Rights</i>) is necessary; (e) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or (f) a need by the Buyer to take action to discharge a statutory duty;
“Step-Out Date”	has the meaning given in Clause 30.5(b) (<i>Step-In Rights</i>);
“Step-Out Notice”	has the meaning given in Clause 30.5 (<i>Step-In Rights</i>);
“Step-Out Plan”	has the meaning given in Clause 30.6 (<i>Step-In Rights</i>);
“Strategic Supplier”	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
“Sub-contract”	any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
“Sub-contractor”	any third party with whom: <ul style="list-style-type: none"> (a) the Supplier enters into a Sub-contract; or

	(b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;
“Sub-processor”	any third party appointed to process Personal Data on behalf of the Supplier related to this Contract;
“Subsidiary Performance Indicator”	the performance indicators set out in Paragraph 2 and/or Paragraph 4 of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	has the meaning given in Clause 36.4 (<i>Assignment and Novation</i>);
“Supplier”	means the entity identified as such in the Order Form;
“Supplier Background IPRs”	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Contract,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
“Supplier Background IPRs” COTS	<p>any embodiments of Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
“Supplier Software” COTS	<p>Supplier Software (including open source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p>

	(b) has a Non-trivial Customer Base;
“Supplier Equipment”	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Buyer) for the provision of the Services;
“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Non-COTS Background IPRs”	any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Buyer and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS Software”	Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 31.1 (<i>Buyer Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Contract;
“Supplier Profit”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Profit Margin”	has the meaning given in Schedule 7.1 (<i>Charges and Invoicing</i>);
“Supplier Representative”	the representative appointed by the Supplier (as may be changed from time to time in accordance with Clause 11.3, the details of which as at the Effective Date are set out in the Order Form
“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Software</i>);
“Supplier Solution”	the Supplier's solution for the Services set out in Attachment 4.1 (<i>Supplier Solution</i>) of the Order Form including any Annexes of that Attachment;
“Supplier System”	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);

<p>“Supplier Termination Event”</p>	<ul style="list-style-type: none"> (a) the Supplier’s level of performance constituting a Critical Performance Failure; (b) the Supplier committing a material Default which is irremediable; (c) as a result of the Supplier's Default, the Buyer incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 25.6(a) (<i>Financial and other Limits</i>); (d) a Remedial Adviser Failure; (e) a Rectification Plan Failure; (f) where a right of termination is expressly reserved in this Contract, including pursuant to: <ul style="list-style-type: none"> 1. Clause 19 (<i>IPRs Indemnity</i>); 2. Clause 39.6(b) (<i>Prevention of Fraud and Bribery</i>); and/or 3. Paragraph 6 of Schedule 7.4 (<i>Financial Distress</i>); 4. Paragraph 12 of Part 2 to Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>); (g) the representation and warranty given by the Supplier pursuant to Clause 3.2(i) (<i>Warranties</i>) being materially untrue or misleading; (h) the Supplier committing a material Default under Clause 10.10 (<i>Promoting Tax Compliance</i>) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (<i>Promoting Tax Compliance</i>) which in the reasonable opinion of the Buyer are acceptable; (i) the Supplier committing a material Default under any of the following Clauses: <ul style="list-style-type: none"> 1. Clause 5.5(j) (<i>Services</i>); 2. Clause 23 (<i>Protection of Personal Data</i>); 3. Clause 22 (<i>Transparency and Freedom of Information</i>); 4. Clause 21 (<i>Confidentiality</i>); and 5. Clause 35 (<i>Compliance</i>); and/or <p>in respect of any security requirements set out in Attachment 2.1 (<i>Services Description</i>) of the Order Form, Schedule 2.4 (<i>Security Management</i>) or the Baseline Security Requirements; and/or</p>
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	<p>in respect of any requirements set out in Schedule 9.1 (<i>Staff Transfer</i>);</p> <p>(j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of Schedule 7.3 (<i>Benchmarking</i>);</p> <p>(k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;</p> <p>(l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Buyer with the Guarantor or with another guarantor which is acceptable to the Buyer);</p> <p>(m) a change of Control of the Supplier or a Guarantor unless:</p> <ol style="list-style-type: none"> 1. the Buyer has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or 2. the Buyer has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Buyer was given notice of the Change of Control; <p>(n) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Buyer that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Buyer pursuant to Clause 15.10 (<i>Appointment of Key Sub-contractors</i>);</p> <p>(o) any failure by the Supplier to enter into or to comply with an Admission Contract under the Annex to either Part A or Part B of Schedule 9.1 (<i>Staff Transfer</i>);</p> <p>(p) the Buyer has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;</p> <p>(q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; or</p> <p>(r) in relation to Schedule 2.4 (Security Requirements):</p> <ol style="list-style-type: none"> a. the Buyer has issued two rejection notices in respect of the Risk Management Document Set under Paragraph 4.5.2 (Part A) or Paragraph 6.8.2 (Part B), as the case may be;
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	<ul style="list-style-type: none"> b. the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register; c. Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Buyer has agreed in writing; d. the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or, e. the Supplier fails to comply with the Incident Management Process;
“Supply Chain Transparency Report”	means the report provided by the Supplier to the Buyer in the form set out in Annex 4 of Schedule 8.4 (Reports and Records Provisions);
“Target Performance Level”	the minimum level of performance for a Performance Indicator which is required by the Buyer, as set out against the relevant Performance Indicator in the tables in Paragraphs 1 – 4 (inclusive) of Attachment 2.2 (<i>Key Performance Indicators and Subsidiary Performance Indicators Tables</i>) of the Order Form;
“Term”	the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Contract;
“Termination Assistance Notice”	has the meaning given in Paragraph 5.1 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Assistance Period”	in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of Schedule 8.5 (<i>Exit Management</i>);
“Termination Date”	the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;
“Termination Notice”	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination;
“Termination Payment”	the payment determined in accordance with Schedule 7.2 (<i>Payments on Termination</i>);
“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 8.5 (<i>Exit</i>

	<i>Management</i>), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“Tests” and “Testing”	any tests required to be carried out under this Contract, as further described in Schedule 6.2 (<i>Testing Procedure</i>) and “Tested” shall be construed accordingly;
“Test Success Criteria”	has the meaning given in Schedule 6.2 (<i>Testing Procedures</i>);
“Third Party Auditor”	an independent third party auditor as appointed by the Buyer from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 8.4 (Reports and Records Provisions);
“Third Party Beneficiary”	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
“Third Party COTS IPRs”	Third Party IPRs that: <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer Base;
“Third Party COTS Software”	Third Party Software (including open source software) that: <ul style="list-style-type: none"> (a) the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; and (b) has a Non-trivial Customer base;
“Third Party IPRs”	Intellectual Property Rights owned by a third party but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software;
“Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs;
“Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software;

“Third Provisions”	Party	has the meaning given in Clause 43.1 (<i>Third Party Rights</i>);
“Third Software”	Party	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5 (<i>Software</i>);
“Transferring Assets”		has the meaning given in Paragraph 6.2(a) of Schedule 8.5 (<i>Exit Management</i>);
“Transferring Buyer Employees”	Buyer	has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transferring Former Supplier Employees”		has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transferring Supplier Employees”		has the meaning given in Schedule 9.1 (<i>Staff Transfer</i>);
“Transparency Information”		has the meaning given in Clause 22.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”		has the meaning given in Schedule 8.4 (<i>Reports and Records Provisions</i>);
“UK”		the United Kingdom;
“UK Public Sector Business”		means any goods, service or works provision to UK public sector bodies, including Central Government Departments and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
“UK Public Sector / CNI Contract Information”	Contract	means the information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs 11 to 13 and Appendix II of Part 2 of Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>);
“Unacceptable KPI Failure”	KPI	the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;
“Unconnected Sub-contract”	Sub-contract	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a

	qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;
“Unconnected Sub-contractor”	any third party with whom the Supplier enters into an Unconnected Sub-contract;
“Unrecovered Payment”	has the meaning given in Schedule 7.2 (<i>Payments on Termination</i>);
“Updates”	in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;
“Update Requirement”	means the occurrence of an event detailed in Part B of Attachment 8.4 (Transparency Reports and Records to Upload to the Virtual Library) which requires the Supplier to update the relevant information hosted on the Virtual Library;
“Upgrades”	any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;
“Valid”	in respect of an Assurance, has the meaning given to it in Paragraph 11.7 of Part 2 to Schedule 8.6 (Service Continuity Plan and Corporate Resolution Planning);
“VAT”	value added tax as provided for in the Value Added Tax Act 1994;
“VCSE”	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
“Virtual Library”	means the data repository hosted by the Supplier containing the information about this Contract and the Services provided under it in accordance with Schedule 8.4 (Reports and Records Provisions) and Part B of Attachment 8.4 (<i>Transparency Reports and Records to Upload to the Virtual Library</i>) of the Order Form; and
“Working Day”	any day other than a Saturday, Sunday or public holiday in England and Wales.



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**RM6100 Technology Services 3
Lot 4 Order Form Attachments**

GUIDANCE – ABOUT THIS DOCUMENT

The Buyer under this Contract will need to review the Attachments set out in this document carefully and complete the information required for each Attachment.



Attachment 2.1 – Services Description

1. INTRODUCTION

1.1 The Buyer is responsible for the delivery and operation of the Covid-19 National Testing Platform (NTP), which comprises a range of front-end and back-end digital services, as well as integrations to other systems and services outside the scope of the NTP. The Buyer has selected the Supplier to deliver and operate a subset of these front-end and back-end services against requirements developed by Buyer. The Buyer has adopted an agile methodology to deliver and maintain the NTP in line with UK Government Covid-19 testing policy, which remains fluid throughout the Covid-19 pandemic.

1.2 This Attachment 2.1 sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

2. SERVICES DESCRIPTION

Services outlined by the Buyer as value Streams in scope are:

- **Home Ordering**

The home ordering service processes individual and bulk orders for covid-19 test kits to be taken by individuals at home. This includes citizen facing services to order PCR and LFD test kits for individual use, orders from NHS trusts for tests for patients who are booked for a procedure/surgery, orders for international arrivals (including MoD) to the UK and bulk orders for other UKHSA approved use cases. A single generic API has been built to accept and process requests for each of these types of orders, from various consumers. Orders are submitted to our fulfilment partners for example Royal Mail for PCR and LFD test kits.

- **Results Service**

The Results Service is responsible for receiving test results from laboratories and self-reported LFD's and making these results available to downstream consumers of the data. The service is the primary link between labs and the Results Matching Service. The Results Service is also integrated with COVID Pass, the national "covid passport" indicating a person's vaccination and COVID test status.

- **Results Matching Service**

The Results Matching service matches test results, PCR via Labs and LFD via self-report with test subject (registration) data. It then makes this data available to a number of downstream systems - including DPS for distribution to UKHSA systems and BSA for results notification messages to citizens.

Other Services

Product and delivery management and architectural leadership capability for updates to the portfolio of Test Digital Services. This includes ownership of the roadmap and



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backlog, as well as dependencies, assumptions, risks, issues and wider governance; providing input to and ensuring alignment with Test Digital strategies for architectural delivery and integration with Test's Digital and Platform Services where required and agreed between the parties.

Buyer's Requirements Catalogue.



Platform%20Services
_Requirements%20Cæ



Attachment 2.2 – Key Performance Indicators and Subsidiary Performance Indicators Tables

Not Applicable.



Attachment 2.3 – Environmental Requirements

TABLE A – Prohibited Items

<p>The following consumer single use plastics are Prohibited Items:</p>	<p>Catering</p> <ul style="list-style-type: none"> • Single use sachets e.g. coffee pods, sauce sachets, milk sachets • Take away cutlery • Take away boxes and plates • Cups made wholly or partially of plastic • Straws • Stirrers • Water bottles
	<p>Facilities</p> <ul style="list-style-type: none"> • Single use containers e.g. hand soap, cleaning products • Wipes containing plastic
	<p>Office Supplies</p> <ul style="list-style-type: none"> • Plastic envelopes • Plastic wrapping for brochures • Paper or card which is bleached with chlorine
	<p>Packaging</p> <ul style="list-style-type: none"> • Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products. • Single use carrier bags
<p>Buyer specific Prohibitions</p>	
<p>Project specific Prohibitions</p>	



TABLE B – Permitted Items

Buyer Permitted Items	
Project Specific Permitted Items	

TABLE C – Sustainability Reports

Report Name	Content of Report	Frequency of Report
Sustainability Impact	<p>a. the key sustainability impacts identified;</p> <p>b. sustainability improvements made;</p> <p>c. actions underway or planned to reduce sustainability impacts;</p> <p>d. contributions made to the Buyer’s sustainability policies and objectives;</p> <p>e. sustainability policies, standards, targets and practices that have been adopted to reduce the environmental impact of the Supplier’s operations and evidence of these being actively pursued, indicating arrangements for engagement and achievements. This can also include where positive sustainability impacts have been delivered; and</p> <p>f. risks to the Service and Subcontractors of climate change and severe weather events such as flooding and extreme temperatures including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks.</p>	On the anniversary of the Effective Date
Waste created	By type of material the weight of waste categories by each means of disposal in the Waste Hierachy with separate figures for disposal by incineration and landfill.	Before contract award and on the anniversary of the Effective Date.
Waste permits	Copies of relevant permits and exemptions for waste, handling, storage and disposal.	Before the Effective Date, on the anniversary of the Effective Date and within ten (10) Working Days of there is any change or renewal to license or exemption to carry, store or dispose waste



Greenhouse Gas Emissions	Indicate greenhouse gas emissions making use of the use of the most recent conversion guidance set out in 'Greenhouse gas reporting – Conversion factors' available online at https://www.gov.uk/guidance/measuring-and-reporting-environmental-impacts-guidance-for-businesses	On the anniversary of the Effective Date
Water Use	Volume in metres cubed.	On the anniversary of the Effective Date
Energy Use	Separate energy consumption figures for: a. assets deployed on the Supplier's site; b. assets deployed on the Buyer's site; c. assets deployed off-site; and d. energy consumed by IT assets and by any cooling devices deployed. Power Usage Effectiveness (PUE) rating for each data centre/server room in accordance with ISO/IEC 31034-2/EN 50600-4-2.	On the anniversary of the Effective Date
Transport Use	a. miles travelled by transport and fuel type, for goods delivered to the Buyer's sites; b. miles travelled by staff when visiting the Buyer's sites from the Supplier's sites or home; c. resulting Green House Gas (GHG) emissions using agreed Conversion Factors; and d. the number of multi-lateral e-meetings i.e. with more than two attendees, held by type (audio, webinar, v/conferencing) their length and number of attendees	on the anniversary of the Effective Date
Materials	Materials usage, including: • type of material used; • quantity or volume of material used; and • amount of recycled/recovered material used	

Table D – Social Value Commitments

The Supplier shall perform the following social value commitments during the life of the Contract, and shall:

- i. work with the Buyer to complete and agree the 'Social Values KPI Return' template;
- ii. provide an updated version of the Social Values KPI Return on a regular basis (at least once a month); and
- iii. attend quarterly meetings with the Buyer to discuss approaches and progress made against each social value commitment.
- iv. any changes to the Supplier's approach to meet the commitments will be agreed and documented within the Social Value KPI Return.



<p>Understanding of employment and skills issues: During delivery of the programme, we will proactively build an understanding of digital skills shortages in the area and work with you and local partners to improve our understanding of local employment issues</p>	
<p>Our Test Digital Commitments: We will...</p>	<p>Success Metrics: We will have...</p>
<p>Identify and partner with social mobility organisations in the Leeds area that can help us enhance our understanding of digital skills shortages and local employment issues</p>	<ul style="list-style-type: none"> Established at least 1 new partnership with social mobility organisations in the Leeds area within 6 months
<p>Establish a regular cadence for sharing knowledge of recruitment practices and issues between Kainos and NHS England</p>	<ul style="list-style-type: none"> Introduced a new agenda item in NHSD / Kainos Executive Steering Group meetings to share recruitment knowledge
<p>Recruitment practices and employment conditions: We will operate targeted recruitment campaigns in low-income areas guided by labour market analysis and are firmly committed to the 5 principles of the Good Work Plan</p>	
<p>Our Test Digital Commitments: We will...</p>	<p>Success Metrics: We will have...</p>
<p>Offer our delivery team flexible working from day 1 and be accommodating of your staff who work flexibly.</p>	<ul style="list-style-type: none"> Established flexible working from contract start for at least 60% of days worked by Kainos staff, reporting on progress at account reviews.
<p>Survey our team to collect feedback on their job satisfaction</p>	<ul style="list-style-type: none"> Conducted a 6 monthly team satisfaction survey, with a target satisfaction rating of 80%.
<p>Creation of employment opportunities: We will attract and employ people in socially deprived areas and those facing barriers to employment</p>	
<p>Our Test Digital Commitments: We will...</p>	<p>Success Metrics: We will have...</p>
<p>Provide employment opportunities through this contract that attract entrants from socially deprived areas.</p>	<ul style="list-style-type: none"> Identified at least 1 Earn As You Learn apprenticeship staff and employed them on the programme within 6 months
<p>Create employment opportunities on the programme for people with learning disabilities.</p>	<ul style="list-style-type: none"> Hired at least 1 person from NOW Group Digital Skills Academy (or equiv.) and deployed them on the programme within 6 months
<p>Promotion of awareness of careers and recruitment opportunities: Kainos will promote and raise the level of public awareness of STEM careers and recruitment opportunities by taking part in technology skills outreach programmes.</p>	
<p>Our Test Digital Commitments: We will...</p>	<p>Success Metrics: We will have...</p>
<p>Provide careers talks to inspire young people to pursue IT through our partnership with Speakers for Schools</p>	<ul style="list-style-type: none"> Invested 10 days from Kainos staff on the programme to run schools' outreach in areas of deprivation within 12 months
<p>In partnership with a local charity, create new software skills development events in the Leeds area to promote career opportunities</p>	<ul style="list-style-type: none"> Delivered a local coding skills event focused on technical skills relevant to Test Digital (React, Next.js, Node) within 12 months
<p>Our delivery team will run virtual sessions for work experience students to build</p>	<ul style="list-style-type: none"> Hosted a 'Healthcare Technology' webinar, led by our delivery team,



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awareness and interest of healthcare software careers	for Kainos work experience students within 12 months
Support for the contract workforce: Kainos will invest heavily in staff training and certifications, providing places for 280+ staff at training academies (██████████ spent in 2021)	
Our Test Digital Commitments: We will... Success Metrics: We will have...	
Support our staff on the programme to get (or update) qualifications in an area of skills shortage relevant to Test Digital	<ul style="list-style-type: none"> Supported at least 2 of our staff working on the programme to achieve AWS Certified Developer certification within 12 months
Ensure our team members complete regular 1-2-1's with their People Manager & will each be appointed an independent career coach.	<ul style="list-style-type: none"> Assigned a career coach for all delivery staff, with career dev. plans updated quarterly. Our team will have 125 training days available to further their skills each year.
Provide our development staff with training on technical standards relevant to Test Digital to increase skills in this high growth technology area within our workforce.	<ul style="list-style-type: none"> Ran a training course in healthcare technical standards for our staff and supported 2 of our staff to achieve an HL7 FHIR Proficient qualification within 12 months
Work experience: Kainos will invest in outreach programmes that provide work experience for young people looking to start their career or retrain. In promoting these opportunities, we will target individuals from low socio-economic backgrounds by working with local charities to target schools that offer a high proportion of free school meals (██████████ spent to date)	
Our Test Digital Commitments: We will... Success Metrics: We will have...	
Provide our work experience placements hands-on project experience that improves their technical skills and employability	<ul style="list-style-type: none"> Placed at least 1 work experience candidates on the programme during the first year of the contract
Host a hackathon with Speakers for Schools in a socially deprived area (hands-on coding experience using a real Healthcare system)	<ul style="list-style-type: none"> Hosted at least 1 hackathon for students using a Test Digital sandpit environment with mocked endpoints within 6 months



Attachment 2.4 – Information Management System

Not Applicable.



Attachment 3 – Buyer Responsibilities

The Buyer shall, in relation to this Contract perform the Buyer's responsibilities identified as such in this Contract the details of which include but are not limited to the following:

1. Performing (or procuring that one or more third parties perform), the Service Integrator Role and the Systems Integrator Role;
2. Defining all Solution requirements including the Cyber Security Requirements;
3. Participating in all Governance forums as detailed in Schedule 8.1 (*Governance*);
4. Policy decisions - for example, decisions on which organisations or subjects are eligible for testing, or the volume of test kits that care homes should receive;
5. Providing high level requirements and responsibility for ensuring the requirements meet the needs of the user;
6. Operational processes - for example, defining and setting up an effective organisation, people and processes to use the Solution;
7. Demand planning and forecasting of volumes that the Solution needs to support - for example volume forecasting for expected numbers of subjects per channel or region;
8. The accuracy, appropriateness and legality of all forms, text, copy, guidance and other content. The Supplier will rely upon the Buyer's designated Product Owner/Manager(s) and delivery leadership to provide guidance;
9. Agreeing appropriate data processing agreements (and the Supplier will support the Buyer in preparing its DPIA and Transparency Notice). The Supplier will comply with all reasonable requests for information;
10. Defining the business and technical architecture within which the Solution is delivered, working in collaboration with the Supplier and taking the Supplier's expertise and advice into reasonable consideration when making architectural choices;
11. Ensuring that Deliverables that are delivered by the Supplier in a timely manner are reviewed and approved by the Buyer in a timely manner;
12. Managing its own staff and its own third party suppliers effectively and in accordance with the provisions of this Call-Off Contract;
13. Ensuring the Supplier is made aware of the Solution non-functional requirements (NFRs) so that the Supplier test approach and execution are appropriate for the expected demand on the Solution in live operation;



14. Any, further Buyer Responsibilities which as identified in Attachment 4.1 (Supplier Solution) (including the assumptions and dependencies), and within Attachment 6.1 (Outline Implementation Plan);
15. Any Buyer Responsibilities agreed between the Parties (for example, as set out within Jira, Confluence, project plans etc) that are required to facilitate the undertaking and completion of any Embedded Change Services.



Attachment 4.1 – Supplier Solution

1. INTRODUCTION

- 1.1 The Buyer has selected the Supplier to support and maintain (known as the “Run” requirements) as well as provide a resourcing framework for ongoing future development (known as the “Embedded Change” requirements) for the services outlined in Attachment 2.1.
- 1.2 The Supplier has provided details on how they intend to meet the Platform Services Requirements and Service Level Requirements outlined by the Buyer in the attached Platform Services Requirements Catalogue - Kainos Response.



- 1.3 The Supplier will follow delivery approach based on the methodologies, frameworks and standards outlined below:

Methodologies, Frameworks & Standards	Rationale for use on this solution considering the commercial model
Capacity-based resourcing	Cost-efficient approach to managing capacity, aligning to the Change Capacity Model in the ITT. Provides flexibility to scale teams up or down within a value stream to meet demand and move resources across value streams.
NHS and GDS Service Standards	Best practice for delivering high-quality digital services and ensuring Test Digital services are consistent with wider NHS services.
Scrum Agile approach for Embedded Change	Incremental delivery using 2-week Sprints provides flexibility to adapt to changing priorities. Ability to pivot to Kanban if requirements become volatile and it is not possible to plan 2-week increments.
Kanban approach for Run and Support	Facilitates the immediate re-prioritisation of work in an unpredictable environment where incidents and service requests arrive ad-hoc.
ITILv4 aligned standards and practices	Operating the live Test Digital services effectively to maintain a high-quality service, following industry best practices.
Lean management principles	Focussing on delivering value and eliminating waste to drive continuous efficiency improvements in service delivery.
Clinical Safety Standards	Robust clinical risk management process underpinning delivery, ensuring Test Digital services are compliant with DCB0129.
NHS England Engineering Framework	Developing software following best engineering practices, delivering high-quality Test Digital services at pace.
User Centred Design	Creating coherent user experiences and solutions that meet user needs for user-facing Test Digital services.
Secure by design	Designing services with security built in at the outset to deliver highly secure Test Digital services at pace. Aligned to NCSC security and NIST cybersecurity standard recommendations.



Automation-first and 'shift-left' testing	Embedding a DevOps culture with automation and integration to facilitate continuous delivery of Test Digital services at pace.
Self-documenting coding practices	Developing readable application code over brevity with up-to-date readme files to facilitate swift on-boarding of new team members.

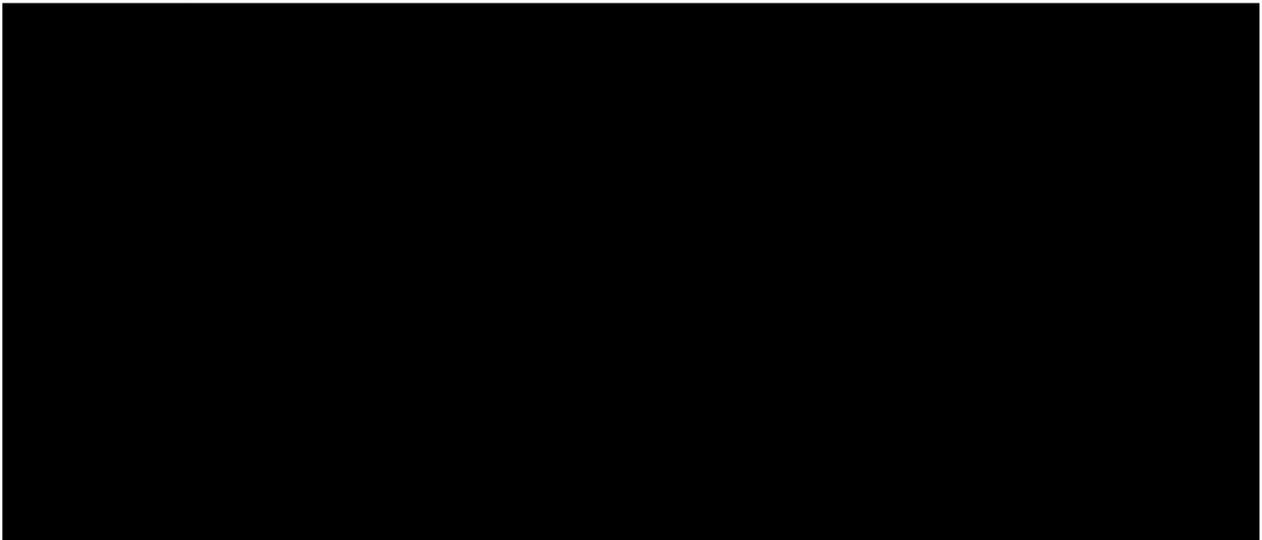
1.4 The Supplier will collaborate with the Buyer to align on planning, managing, and delivery of enhancements when delivering Support-Run and Embedded Change Services.

2. SUPPORT-RUN SERVICES

The Supplier will provide the capabilities to support best practice Service Management (ITIL-V3/4) processes, including but not limited to Incident Management, Event Management, Problem Management, Request Fulfilment and Change and Release Management covering the support hours defined in Schedule 2.2 for the services outlined in Attachment 2.1.

2.1 The scope of Support-run Services

- The Live Support Team provided by the Supplier will provide services as per requirements defined in Schedule 2.2 covering the service support hours, including 24x7 for critical incidents.
- Out of hours support will be provided by an on-call team that has application and platform capability.
- The Supplier will identify incidents through monitoring tools or via the Service Desk (see diagram below).



- In the event of a security incident, the Supplier will invoke the Security Incident Management Process as defined in the SDP, and will engage both their Cyber Security Specialists and the Buyer's SOC.
- The Supplier will maintain a Safety Incident Management Log in compliance with DCB0129.
- When potential clinical risks are detected, the Supplier will engage their Clinical Safety Officer and invoke the Safety Incident Management Process. This will include updating the Hazard Log and reviewing the Clinical Safety Case, as appropriate.



- In the event of a suspected multi-supplier incident, the Supplier's Service Support Lead will notify the Buyer's Live Services Team and commence parallel investigations across relevant suppliers.
- The Supplier will provide monthly service reporting as per agreement with the Buyer.

2.2 Assumptions

- The Buyer shall provide Level 1 and Level 2 service desk.
- The Buyer shall be responsible for managing monitoring and support for any additional services beyond those listed in Attachment 2.1.
- The Buyer and the Supplier will collaborate on prioritising the backlog.
- The Supplier will use cloud environments provided by the Buyer via the HALO platform.

3. EMBEDDED CHANGE SERVICES

The Supplier will provide a baseline of resource to underpin the change roadmap for Test Digital services outlined in Attachment 2.1, ensuring that work is collectively prioritised with the Buyer and scheduled against functional priorities in the overall Product Roadmap.

The Supplier will take a product-centric approach to delivering the requirements stipulated in the requirements catalogue, including the overall plan, release roadmap and associated deliverables. To achieve this, the Supplier will:

- Agree new features with service stakeholders and develop a feature-based Product Roadmap with Buyer's Product Owners. This roadmap will be used as the basis for detailed release scheduling. Features will be translated into Epics and User Stories, focussing on defining requirements for upcoming Sprints. This avoids requirements becoming out of date and requiring re-work.
- Use Backlog Review sessions to prioritise scope with Buyer's Product Owners. Supplier will focus on value realisation, devising a Value Framework to support prioritisation where appropriate.
- Take a user-centred design approach and collaborate with Buyer's Design Team to understand user needs. Supplier will support prototypes designs to confirm the solution addresses user needs and remains technically feasible.
- Agree the required set of deliverables for each sprint, using regular feedback loops to provide progress updates and confirm alignment.
- Collaborate on releases where there are dependencies on other systems to deliver a service change. Supplier will create joint delivery plans, a release roadmap and dependencies as well as hold regular sessions to check progress and pace of delivery across all parties.

The Buyer shall not reduce the Embedded Change team size below 18 FTEs; any request to do so must be mutually agreed via Change Control Procedure.



Commercially Sensitive Information

No.	Date	Item(s)	Duration of Confidentiality
1.		Personnel CVs included with Supplier's Response	Term of contract (including any extension(s)) plus 3 years.
2.		Supplier's Rate Card	Term of contract (including any extension(s)) plus 3 years.
3.		Supplier's Tender Response	Term of contract (including any extension(s)) plus 3 years.



Attachment 4.3 – Notified Key Sub-Contractors

- 1 In accordance with Clause 15.10A (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-contractors listed in the table below.
- 2 The Parties agree that they will update this Attachment periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Buyer after the Effective Date for the purposes of the delivery of the Services.

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



Attachment 4.4 – Third Party Contracts

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

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



Attachment 5 – Software

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

The Parties agree that they will update this Attachment 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.

1 SUPPLIER SOFTWARE

The Supplier Software includes the following items:

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

2 THIRD PARTY SOFTWARE

The Third Party Software shall include the following items:

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



Attachment 6.1 – Outline Implementation Plan

The Supplier will plan on using an agile process, starting with user needs. Waterfall methodology will only be used in exceptional circumstances, and where it can be shown to best meet user needs. Projects may need a combination of both waterfall and agile methods, playing to their respective strengths.

The Supplier will collaborate with the Buyer's teams to align on planning, managing, and delivery of enhancements:

- **Product Team:** The Supplier will engage regularly with the Buyer's Product Team to agree product roadmap, product backlog and delivery priorities. This will include sign-off from the Buyer's Product Owners on sprint plans and User Stories to confirm the scope and solutions meet the expected quality.
- **Architecture Team:** The Supplier will join TDA forums to discuss solution designs and technical approaches, using Open Design Proposals to get feedback and sign-off.
- **Delivery Team:** The Supplier will work with the Buyer's Delivery Team to define the overall delivery plan and dependencies and track. The Supplier will engage the Delivery Team in reviewing risks and issues proactively, collectively agreeing appropriate mitigations and action plans.
- **Design Team:** To ensure the end-to-end service design alignment, the Supplier will work collaboratively with the Buyer's Design Team. This will include adopting a 'dual-track' delivery model that enables them to work at least one sprint ahead of our delivery. The Supplier will support them in validating proposed designs by providing input from a technical and usability perspective. The Supplier will then translate confirmed designs into User Stories, so they are ready for development in line with the agreed prioritisation.
- **Assurance Teams:** The Supplier will take a 'shift-left' approach to assurance with early and collaborative engagement with the Buyer's Assurance Teams (clinical, IG, cyber etc.). This will help to embed assurance into design and delivery, allowing working at pace and reducing release lead times.

The Supplier shall produce the following Deliverables:

#	Deliverable
1	Technical Specification
2	Architecture Diagrams
3	Implementation Plan (this is a singular deliverable covering transition and delivery)
4	Process Interface Manual



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5	Transition Status Report template
6	KT repository (using Confluence)
7	RAID
8	Release documentation

The Buyer and the Supplier will collaborate following agile processes on agreeing the detailed scope for each deliverable, as well as its review and acceptance process (including timelines). The exact scope, timeline, frequency and acceptance criteria for deliverables listed above will be agreed by the Buyer and the Supplier on an ongoing basis.



Attachment 6.2 – Test Success Criteria

Not applicable as Service Take On Deliverables will be Achieved in accordance with Schedule 6.2. Where Test Success Criteria is applicable for Embedded Change Services the Parties will agree on a case-by-case basis in accordance with the Embedded Change Demand Management.



Attachment 7.1 – Charges

Not Applicable – Please refer to Schedule 7.1 Charges and Invoicing.



**Attachment 7.2 – Maximum Payments on Termination
Not Applicable**



Attachment 7.3 – Approved Benchmarks

Not applicable



Attachment 7.4 – Financial Distress

Entity	Credit Rating (long term) <i>(insert credit rating issued for the entity at the Effective Date)</i>	Credit Rating Threshold <i>(insert the actual rating (e.g AA-) or the Credit Rating Level (e.g Credit Rating Level 3))</i>



Attachment 7.6 – Anticipated Savings

Not Applicable



Service Management Board

Buyer Members of Service Management Board	Buyer Service Management [Chairperson] Buyer Supplier Management Lead
Supplier Members of Service Management Board	Delivery Lead Service Manager
Start Date for Service Management Board meetings	Week following Service Take-On Complete date
Frequency of Service Management Board meetings	Monthly
Location of Service Management Board meetings	Virtual (Teams)

Commercial Board

Buyer members of Commercial Board	Buyer Supplier Management Lead [Chairperson] Contract Manager
Supplier members of Commercial Board	Account/Engagement Lead Contract Manager/Finance Representative as appropriate.
Start date for Commercial Board meetings	Month 2, post Commencement Date
Frequency of Commercial Board meetings	Monthly
Location of Commercial Board meetings	Virtual (Teams)

Test Digital Governance Board

Buyer members of Governance Board	Buyer Supplier Management Lead [Chairperson] Test Digital Programme Director Delivery Lead
Supplier members of Programme Board	Account Lead Delivery Lead
Start date for Programme Board meetings	Month 2, post Commencement Date
Frequency of Programme Board meetings	Monthly
Location of Programme Board meetings	Virtual (Teams)



Service Take-On Steering Board

Buyer Members of Service Take-On Steering Board	Buyer Transition Delivery Lead [Chairperson] Delivery Lead
Supplier Memembers of Service Take-On Steering Board	Account Lead Delivery Lead
Start Date for Service Take-On Steering Board Meetings	Week 2 from Commencement Date
Frequency of Service Take-On Steering Board meetings	Fortnightly or more often as mutually agreed
Location of Service Take-On Steering Board meetings	Virtual (Teams)

The Supplier shall present at Buyer existing forums and shall adopt Buyer existing governance protocols (for example, operational change management boards, technical design boards, emergency change advisory boards.)

It is acknowledged the Supplier shall adopt agile delivery methodologies, which shall be supported by agile governance. The set up of these forums shall be initiated by the Supplier Scrum Masters, and shall typically include:

- Sprint Planning Meeting
- Daily Progress Meeting (Stand-Up)
- Sprint Show and Tell
- Sprint Retrospective

Additionally, there shall be a fortnightly resource demand management meeting for the Embedded Change team, which shall be established by Week 2 of Call Off Commencement by the Supplier Engagement Lead



Attachment 8.4 – Transparency Reports and Records to Upload to Virtual Library

Part A - Transparency Reports

Title	Content	Format	Frequency
Performance Monitoring Service Report	Service performance details	As per agreement with the Buyer	Monthly
Timesheet report	Broken down charges	As per agreement with the Buyer	Monthly
Contract review reports	Progress against delivery milestones.	As per agreement with the Buyer	Monthly
Technical documentation	Technical Documentation	As per agreement with the Buyer	As required
Security Report	As agreed with the Buyer based on Schedule 2.4	As per agreement with the Buyer	Monthly



Part B - Records to Upload to Virtual Library

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl.5.5 (e), (f) 17.1(a), 17.2(a)(ii)	Documentation	As appropriate and agreed by the Buyer	Within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Buyer
Cl 14.3	Key Personnel	Attachment 9.2	Effective Date	On replacement of Key Personnel	Buyer
Sch 2.2,Part B Para 2.3	Performance Monitoring Report and the Balanced Scorecard Report	Sch 2.2, Part B	Service Commencement	Within ten (10) Working Days of the end of each Service Period	Buyer
Sch 2.4, Para 4	Core Information Management System Diagram	Attachment 2.4	Operational Services Commencement Date	Any update, annually and after any of the events in para 6.13	Buyer
Sch 2.4, Para 6	Risk Management Documentation	Sch 2.4, Annex 3	Operational Services Commencement Date	Any update, annually and after any of the events in Schedule 2.4, para 6.13 of	Buyer
Cl 22	Commercially Sensitive Information	Attachment 4.2	Effective Date	Upon Contract by the Buyer to vary the information	Buyer and/or Auditor
Cl 15.7	Notified Key Subcontractors	Attachment 4.3	Effective Date	On replacement of key subcontractor	Buyer
Cl 15.5	Third Party Contracts	Attachment 4.4	Effective Date	On appointment of subcontract	Buyer



Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
CI 15.6	Notified Key Sub-Contractors	Attachment 4.3	Effective Date	With each approved appointment or variation	Buyer
CI 15.23	Supply chain Transparency Information Reports	Sch 8.4, Annex 4	thirty days prior to the of the end of each financial year	Every twelve (12) months	Buyer
CI 16,17	Software	Sch 5 and Attachment 5 as appropriate and agreed by the buyer	Operational Services Commencement Date	Upon Contract by the Buyer to vary the information	Buyer
CI 6.4	Detailed Implementation Plan	Sch 6.1	Within 20 Working Days of Effective Date	Every 3 months from Effective Date	Buyer
Sch 6.2, Para 4	Test Strategy	As appropriate and agreed by the Buyer	Within 20 Working Days of Effective Date	Upon update to the test strategy	Buyer
Sch 6.2, Para 5	Test Plan	As appropriate and agreed by the Buyer	20 prior Working Days of relevant test	Upon update to the test plan	Buyer
Sch 6.2, Para 8	Test Specification	As appropriate and agreed by the Buyer	10 prior Working Days of relevant test	Upon update to the test specification	Buyer
Sch 6.2, Para 8	Test Report	As appropriate and agreed by the Buyer	2 Working Days prior to the date on which the test is planned to end for the Draft Test Report 5 days for the Final Test Report following the relevant test completion	Reissue with each retest	Buyer



Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 7.1, Part E Para 1.1	Template Invoice	As appropriate and agreed by the Buyer	Within 10 Working Days of the Effective Date	Upon Contract by the Buyer to vary the template	Buyer
Sch 7.1, Annex 4	Risk Register	Attachment 7.1 (Part C)	Effective Date	Upon Contract by the Buyer to vary the by the Risk Management Board	Buyer
Sch 7.3, Para 5	Benchmarking report	Sch 7.3	Upon receipt from Benchmarkers	Any update	Buyer and Auditor
Sch 7.4 Para 2.3(b)	Financial Indicator Reports	Sch 7.4 para 2.5	As specified in para 2.3(b) of Sch 7.4	As specified in para 2.3(b) of Sch 7.4	Buyer
Sch 7.4 Para 4.3(b)	Financial Distress Remediation Plan	As appropriate and agreed by the Buyer	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)	Buyer
Sch 7.5, Part B, para 1.2	Contract Amendment Report	Sch 7.5, Part B, para 1.2	Within 1 month of a material change being agreed		Buyer
Sch 7.5, Part B, para 1.2	Annual Contract Report	Sch 7.5, Part B, para 1.2	Within 1 month of the end of the Contract Year to which that report relates		Buyer
Sch 7.5 Part B, para 1.2	Financial Reconciliation Report	Sch 7.5, Part B, para 1.2	Within 6 months after the end of the Term		Buyer



Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.1, Para 3.3	Representation and Structure of boards	Attachment 8.1	Within 7 days of receipt of intention, or in the case of a non-Buyer board member agreement by the Buyer		Buyer
Sch 8.1, Para 3.5(e)	Governance meeting packs and minutes of governance meetings (all boards)	As appropriate and agreed by the Buyer	Within 7 days of receipt from chairperson		Buyer
Sch 8.2 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Buyer	Within 10 Working Days of date of receiving change request.		Buyer
Sch 8.2 Para 5	Impact Assessment	As appropriate and agreed by the Buyer	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Buyer to update under Schedule 8.1 Para 5.7	Buyer
Sch 8.2, Para 2.6	Update full copy of the Contract and copy of annotated version illustrating changes	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Buyer
Sch 8.2, Para 4	Change Request	Sch 8.2, Annex 1	Within 10 working days of Buyer issuing the Change Request		Buyer
Sch 8.3, Para 2.1	Dispute Notice	Sch 8.3 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation	Buyer
Sch 8.3, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Buyer



Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.4, Para 1	Reports and Records Provisions	Sch 8.4, Annex 1	Within 3 months of the Effective Date	Frequency specified in Sch 8.4, Annex 1	Buyer
Sch 8.5, Para 2.1 (a)	Register of All Assets, Sub-contracts and Other Relevant Contracts	As appropriate and agreed by the Buyer	Within 3 months of the Effective Date	Any variation	Buyer
Sch 8.5, Para 2.1 (b)	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Buyer	Within 3 months of the Effective Date	Any variation	Buyer
Sch 8.5, Para 3.1	Exit Information	As appropriate and agreed by the Buyer	On reasonable notice given by the Buyer at any point during the Term	Within 10 Working Days of Buyer's written request	Buyer and its potential Replacement Suppliers
Sch 8.5, Para 4.1	Exit Plan	Sch 8.5, Para 4.3	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by the Buyer following a Financial Distress Event Within 20 days after service of Termination Notice or 6 months prior to expiry of the Contract.	Buyer
Sch 8.5, Para 5.7 (b)	Buyer Data (handback)	Sch 8.4, Para 3 and/or as appropriate and agreed by the Buyer	At the end of the Termination Assistance Period	-	Buyer



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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 8.5, Annex 1, Para 1, Para 1.3 & Para 1.4	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Buyer	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Buyer	
Sch 8.6 Service Continuity	Service Continuity Plan	Sch 8.6, Para 2.2	Within 40 days from the Effective Date	Sch 8.6, Para 7.1	Buyer
Sch 8.6, Para 6.2	Service Continuity Plan Review Report	Sch 8.6, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.		
Sch 8.6	Corporate Resolution Planning Information	Sch 8.6, Para 11.3	Sch 8.6 Part 2 Para 11.2	Sch 8.6, Para 11.8	Buyer
Sch 7.4 Para 8	Board Confirmation	As set out at Annex 5 of Sch 7.4	Within 120 days of the first Accounting Reference Date to occur	Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting Reference Date (whichever is the earlier)	Buyer
Sch 9.1, Part E, Para 1.1	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Buyer	Sch 9.1, Para 1.1 A-D	At such intervals as are reasonably requested by the Buyer	Buyer



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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 9.1, Part E, Para 1.2	Supplier's Final Supplier Personnel List	As appropriate and agreed by the Buyer	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees	Buyer and, at the discretion of the Buyer, the Replacement Supplier and/or any Replacement Subcontractor
Sch 9.1, Part E, Para 1.6	Information relating to the manner in which the services are organised	As appropriate and agreed by the Buyer	Effective Date		Buyer
Sch 9.1, Part E, Para 1.7	Payroll and benefits information	As appropriate and agreed by the Buyer	Within 5 Working Days following the Service Transfer Date	-	Buyer, any Replacement Supplier and/or Replacement Sub-contractor
Sch 9.1, Annex	List of Notified Sub-contractors	As appropriate and agreed by the Buyer	Effective Date	Upon any change	Buyer
Sch 9.2	Key Personnel	Attachment 9.2	Effective Date	As amended from time to time	Buyer
Sch 11, Annex Para 2.1	Reports on Data Subject Access Requests	As appropriate and agreed by the Buyer	As agreed with Buyer	As agreed with Buyer	Buyer and Supplier



As part of the Services, the Supplier will provide input to the Buyer in relation to the Buyer’s Business Continuity and Disaster Recovery (BCDR) Plan for approval by the Customer within 30 Working Days from Contract signature.

The Parties have agreed that the Supplier shall provide the following inputs to the Buyer’s BCDR Plan.

Task	Task Description
Overall accountability	The Buyer will own the overall BCDR plan with the Supplier contributing to the technical/systems/process content in the form of BCDR step plans.
Initiation of BCDR event	The Buyer will be responsible for initiating BCDR events in accordance with its major incident management process.
In scope supplier locations	As per supplier locations listed on front sheet Call Off Order Form
BCDR execution	The Supplier will be responsible for completing BCDR actions as detailed in the BCDR plan in order to restore service(s) in the event of a BCDR event being initiated by the Buyer.



Attachment 9.1 – List of Notified Sub-Contractors

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



Attachment 9.2 – Key Personnel

Key Role	Name of Key Personnel	Responsibilities/A uthorities	Phase of the project during which they will be a member of Key Personnel	Minimum period in Key Role
[Redacted content]				



Attachment 11 – Processing Personal Data

This Attachment 11 shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Buyer at its absolute discretion.

1.1.1.1 The contact details of the Buyer’s Data Protection Officer are: [REDACTED]

1.1.1.2 The contact details of the Supplier’s Data Protection Officer are: [REDACTED]

1.1.1.3 The Processor shall comply with any further written instructions with respect to processing by the Controller.

1.1.1.4 Any such further instructions shall be incorporated into this Attachment 11.

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Department of Health and Social Care is Controller. The Buyer is Processor and the Supplier is Subprocessor</p> <p>The Parties acknowledge that in relation to Clause 23 (<i>Protection of Personal Data</i>) and for the purposes of the Data Protection Legislation, references to the Controller shall be interpreted as references to the Buyer as Processor, and references to Processor shall be interpreted as references to the Supplier and Subprocessor. The Buyer is the Processor and the Supplier is the Subprocessor of the Personal Data set out in this Schedule 7 (GDPR Information).</p>
Duration of the processing	<p>In line with instructions received from the Data Processor for the duration of the Call-Off Contract Term, unless instructed to suspend and / or permanently cease the Processing by the Processor.</p>
Nature and purposes of the processing	<p>The purpose of the Processing is to provide the Services as further described in the Order Form.</p> <p>The Supplier will:</p> <p>Process (including sharing with other processors or sub-processors to either DHSC or NHS England engaged in the National Testing Service, e.g. ServerLabs, other suppliers and providers to National Testing Service) personal data:</p> <p>to facilitate linkage of test results and registration data</p> <ul style="list-style-type: none"> - to calculate age of sample, and determine if it is stable enough to process, or if it requires prioritisation - to facilitate the ordering and delivery of Home Test kits - to enable booking for RTS/LTS/MTU testing, - to provide Management Information (MI) capabilities - within mobile applications used in the operational testing process (e.g. to register vehicles, to track test samples, etc)



	<ul style="list-style-type: none"> - to assist NHS England in analysing data and investigating/monitoring service/performance issues - to enable individuals to receive notification of their test results. <p>Supply registration data to NHS Wales in order for Welsh testing to be administered. Supply contact details to the Contract Tracing System (currently CTAS, operated by PHE). Operate an Admin Portal, which is used by call centre agents and staff from other organisations (other processors or sub-processors to either DHSC or NHS England engaged in the National Testing Service, or to DHSC or NHS England, e.g. NHS England service integration team and South-Central Ambulance Service (SCAS)). This Admin Portal provides:</p> <ul style="list-style-type: none"> - 1. 119 Assisted Registration Channel - 2. Barcode Lookup feature – predominantly used by 119 but also various service desks and to solve SCAS complaints - 3. “Bulk SMS” tool to distribute SMS messages en masse to people booked for test site appointments that are disrupted - 4. “Super user” creator tool for to make organisations and super users for Elective Care NHS Trusts - 5. Channel manager to make different test site and home testing channels available or not (for digital self service) - 6. Study creator and management tool for service evaluations <p>Share personal data with third party organisations where instructed to do so by either NHS England or DHSC.</p>
<p>Type of Personal Data</p>	<p>The types of Personal Data being Processed include: Identifying details of individuals. This includes items which identify individuals, as well as contact details and demographic detail. Examples include: Names, addresses, dates of birth, gender, ethnicity, NHS numbers, telephone numbers, email addresses and vehicle registration numbers. Health information of individuals. This includes the details and results of COVID-19 tests, reported symptoms, immunity status and underlying health conditions. Employment information of individuals. This includes occupation, employer and industry of employment.</p>
<p>Categories of Data Subject</p>	<ul style="list-style-type: none"> • Key workers and family members of key workers • Members of the general public • Care Home residents and staff • Staff and inmates in the secure and detained estate (e.g. prisons)
<p>Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data</p>	<p>At the written direction of the Processor, securely delete or securely return the Personal Data (and any copies of it) to the Processor promptly following the earlier of: termination or expiry of this Call-Off Contract; or a request from the Processor or unless the Subprocessor is required by Law to retain the Personal Data.</p>

SCHEDULE 2.2 - PERFORMANCE LEVELS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"Available"	has the meaning given in Paragraph 1 of Part II of Annex 1;
"Change"	for the purpose of this Schedule 2.2 only, means any planned activity that involves the addition, modification or removal of anything that could have an effect on the Services. The scope of these activities includes, but is not limited to, changes to architecture, processes, tools, IT services or their components;
"End User"	any person authorised by the Buyer to use the IT Environment and/or the Services;
"High Severity Service Incident" or "HSSI"	means either a Severity 1 or Severity 2 Incident;
"Incident"	means an unplanned incident or interruption to Services, reduction in the quality of the Services or event which could affect the Services in the future;
"Incident Management Tool"	has the same meaning as Service Management Toolset;
"Incident Record"	means the record of the details and history of an Incident created by the Supplier on the Service Management Toolset, in accordance with the incident management process set out in Part C: Service Management below;
"Known Error"	means a fault, identified through investigations into the Root Cause of a Problem, for which a Permanent Fix has been identified but not implemented;
"Linked Incident"	means an Incident that has been associated with a Master Incident;
"Logged"	means: (a) in relation to a Problem, details of the Problem have been logged on the Service Management Toolset and a Problem Record has been created; and

	(b) in relation to an Incident, details of the Incident have been logged on the Service Management Tool and an Incident Record has been created;
"Maintenance"	means a collection of one or more changes that have been tested together and will be deployed together to resolve one or more Incidents and / or Problems. A Maintenance Release does not include the introduction of new functionality;
"Master Incident"	means the first instance of an Incident being Logged for any related occurrences that are not part of the standard operation of the Services which causes, or may cause, an interruption to or a reduction in the quality of the Services;
"Message Process Time"	has the meaning given in Paragraph 2.1 of Part II of Annex 1;
"Non-Available"	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
"Performance Monitoring Report"	has the meaning given in Paragraph 1.1(a) of Part B;
"Performance Review Meeting"	the regular meetings between the Supplier and the Buyer to manage and review the Supplier's performance under this Contract, as further described in Paragraph 1.5 of Part B;
"Permanent Fix"	means a fix that resolves the underlying Root Cause of a Problem;
"Problem"	means, in respect of one or more existing or potential Incidents, either: (a) the unknown Root Cause, or (b) a known Root Cause that has yet to be Resolved;
"Problem Record"	means a record of the details and history of a Problem raised by the Supplier on the Service Management Toolset in accordance with the problem management process set out in Part C: Service Management below;
"Release"	means an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance

	enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Release and Maintenance Plan"	means a schedule that contains details of the Releases and Maintenance activity;
"Resolution"	means an action taken by or on behalf of the Supplier to fully repair the Root Cause of an Incident or to implement a workaround and confirmed to the reasonable satisfaction of the Buyer. For the avoidance of doubt, the End User shall be able to access and utilise all functions of the Services again without degradation for an Incident or workaround to be a Resolution. "Resolve" and "Resolved" shall be construed accordingly;
"Resolution Time"	means: <ul style="list-style-type: none"> (a) in relation to an Incident, the length of time it takes the Supplier to Resolve the Incident; or (b) in relation to a Problem, the length of time it takes the Supplier to successfully implement a Permanent Fix for the Problem;
"Root Cause"	means the underlying reason for the occurrence of an Incident, Defect or Problem (as the case may be);
"Service Availability"	has the meaning given in Paragraph 2 of Part II of Annex 1;
"Service Bridge"	means the Buyer's function responsible for the management and communication of HSSIs;
"Service Desk" or "Help Desk"	means the single point of contact Service Desk set up and operated by the Buyer;
"Service Downtime"	any period of time during which any of the Services are not Available;
"Service Management Toolset"	means a toolset which shall at its core act as a workflow management system for handling Incidents, Service Requests, Problems and Changes. This shall also include a tool for configuration management and the ability to enable easy linking between Incidents, Service Request, Problems and Change records with each other and with records of

configuration items. The Service Management Toolset shall align to ITIL standards;

"Service Request"

means a request from an End User, service recipient or the Buyer for information, or advice, or for a standard activity provided by the Service Desk. For example to reset a password or to unlock an account;

"Supplier Service Desk"

means the single point of contact service desk operated by the Supplier to receive incidents from the Service Desk; and

"Support Communication"

means any written communication sent from the Supplier to the Buyer or other stakeholders relating to an Incident or a Problem.

PART A: PERFORMANCE INDICATORS AND SERVICE CREDITS

1. PERFORMANCE INDICATORS

1.1 The Services shall be measured against the Key Performance Indicators and rated with a standard of service as set out below:

- (a) the expected level of service ("**Operating Service Level**" or "**OSL**");
- (b) the level at which the Supplier fails to achieve the Operating Service Level and Service Credits, where relevant, begin to accrue ("**Failure Level**" or "**FL1**"); and
- (c) an unacceptable level of service ("**Critical Service Level**" or "**CSL**") and where relevant, where the Supplier shall accrue maximum Service Credits available to that Key Performance Indicator.

1.2 The Supplier shall ensure the Services meet or exceeds the OSL against each Key Performance Indicator for each Service Period.

1.3 The Supplier shall monitor its performance against each Key Performance Indicator and shall send the Buyer a report detailing the level of service actually achieved in accordance with Part B.

1.4 Required Incident Fix times Key Performance Indicator:

	Details of Key Performance Indicator: Fix Times for Severity 1 Incidents.
	Standard Required (24x7)
OSL	<= 2 hours

	Details of Key Performance Indicator: Fix Times for Severity 1 Incidents.
	Standard Required (24x7)
FL1	> 2 hours
CSL	> 4 hours

	Details of Key Performance Indicator: Fix Times for Severity 2 Incidents.
	Standard Required (24x7)
OSL	<= 4 hours
FL1	> 4 hours
CSL	> 6 hours

	Details of Key Performance Indicator: Fix Times for Severity 3 Incidents.
	Standard Required (within Support Hours)
OSL	<= 16 hours
FL1	> 16 hours

	Details of Key Performance Indicator: Fix Times for Severity 4 Incidents
	Standard Required (within Support Hours)
OSL	<= 48 hours
FL1	>48 hours

	Details of Key Performance Indicator: Fix Times for Severity 5 Incidents
	Standard Required (within Support Hours)
OSL	<= 96 hours
FL1	> 96 hours

2. Problem Management – Problem Resolution Key Performance Indicator

2.1 High Priority Problems are Problems that relate to or deemed to be Severity 1 or Severity 2.

Medium Priority Problems are Problems that relate to or deemed to be Severity 3.

Targeted KPIs are not in place for Severity 4 or Severity 5 Problems.

The times associated with Problem KPIs are measured in calendar days and are not related to the support hours.

	Details of Key Performance Indicator: High Priority Problem Resolution Key Performance Indicator
	Standard Required
OSL	<= 30 days
FL1	> 30 Days

	Details of Key Performance Indicator: Medium Priority Problem Resolution Key Performance Indicator
	Standard Required
OSL	<= 60 days
FL1	> 60 Days

3. Availability Key Performance Indicator

	Details of Key Performance Indicator: Service Availability
	Standard Required
OSL	99.9%

4. SERVICE CREDITS

4.1 Service Credits payable to the Buyer shall be determined in accordance with Annex 1. Service Credits shall not be payable and any other contractual remedies Buyer may have as a result of a Supplier failure to meet the relevant level of service shall not apply if the relevant level of

service (including any Operating Service Level) has not been delivered or achieved due to an Excusing Cause.

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

5. Baseline Period

- 5.1 A baselining period of 90 days shall commence from the Effective Date, during which the Supplier will measure, report and validate performance against the Key Performance Indicators ("Baselining Period").
- 5.2 The Supplier will produce a service baseline report no later than 10 days from the end of the Baselining Period which will set out the volume of incidents of Severity 1 to 5 raised during the Baselining Period and will make any recommendations to changes to KPI Performance Measures described in this Attachment 2.2, which will be based on actual volumes observed and documented during the Baselining Period (the "Service Baseline Report").
- 5.3 The Supplier and the Buyer will (each acting reasonably) review and agree any recommended changes identified in the Service Baseline Report, with any changes handled through the Change Control Procedure. The Parties will use their reasonable endeavours to execute a Change Authorisation Note no later than 20 Working Days following the submission of the Service Baseline Report and any revised measures agreed within the Change Authorisation Note will be reported on going forward and will be subject to Service Credits. Where the Parties fail to agree the changes identified by the Supplier in the Service Baseline Report, the existing KPI Performance Measures set out in this Attachment 2.2 shall continue to apply.

6. Service Credit Calculation Principles

- 6.1 Service Credits will only be applied to the Support-Run Service part of the monthly invoice.
- 6.2 Service Credits will not apply until after the baselining period outlined above has concluded, 120 days following commencement.
- 6.3 If more than one Service Level Credit is triggered by a single default, then only a single Service Level Credit will be assessed to Supplier and the higher of the Service Level Credit amounts will apply.
- 6.4 The Supplier is not responsible for (a) actions / inactions of other parties which cause, or result in, a KPI failure, and (b) where a Force Majeure event occurs, which is out-side of the Supplier's control.

7. Excused Performance

7.1 The Supplier shall not be liable for an KPI failure under this Agreement to the extent that such KPI failure is caused by the following:

- (a) A breach by the Buyer of the obligations set out within the Agreement that are directly applicable to the Support-Run workstream.
- (b) Embedded Change resource reductions are requested or approved by the Buyer below the Minimum Capacity requirement.
- (c) A failure by the Buyer to give reasonable prior notice of a Service volume fluctuation of which the Buyer has prior knowledge.
- (d) Service Failures arising as a result of changes implemented by the Buyer or its third-party suppliers other than with the Supplier's express knowledge and consent.
- (e) Where such Service Failure is caused by an underlying application or infrastructure component which is not within the scope of the Services or the introduction of a new application into the environment other than in accordance with the requirements of the Agreement or with reasonable prior notice to the Supplier.
- (f) Services performed under circumstances described in 6.4 above.
- (g) Where the Buyer has requested an elevated risk technical change, in contradiction to Supplier advice, and this change is under waiver conditions (inclusive of KPI and Service Credit waiver conditions).

8. "On Hold" Incidents

8.1 The Supplier may suspend the Fix Time of an Incident by placing it in an On Hold status on the Incident Management Tool ("On Hold"). The Supplier may only put an Incident in an On Hold status as follows:

- (a) For the duration that the ownership of the Incident has been appropriately assigned to another nominated supplier, appointed by the Buyer.
- (b) Where the Supplier is awaiting Buyer information or approval to proceed with resolution of the Incident, providing the agreed method of contacting the Buyer or Buyer representative has been followed.
- (c) At the request of the Buyer or a representative of the Buyer, until such time that the Buyer or its representative requests that activities relating to the Incident are resumed.
- (d) When the Supplier believes the Incident is resolved and initiates attempts to contact the Incident originator, providing the agreed method of contacting the Buyer or Buyer representative has been followed.

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- (e) Defects implemented through deployment activity shall not be measured for the purposes of the Incident Fix KPI unless and until the relevant Defect develops into an Incident or an Incident is caused as a direct result of the Defect implementation.

PART B: PERFORMANCE MONITORING

1. PERFORMANCE MONITORING AND PERFORMANCE REVIEW

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

- (a) a report to the Buyer Representative which summarises the performance by the Supplier against each of the Key Performance Indicators as more particularly described in Paragraph 1.2 (the **"Performance Monitoring Report"**); and
- (b) a report created by the Supplier to the Buyer's senior responsible officer which summarises the Supplier's performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the **"Balanced Scorecard Report"**).

Performance Monitoring Report

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

Information in respect of the Service Period just ended

- (a) for each Key Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
- (b) a summary of all Performance Failures that occurred during the Service Period and any Excusing Causes which were relevant;
- (c) the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- (d) which Performance Failures remain outstanding and progress in resolving them;
- (e) for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- (f) the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;
- (g) the conduct and performance of any agreed periodic tests that have occurred, such as the annual test of the Business Continuity and Disaster Recovery Plan as referenced in Schedule 8.6;
- (h) relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract;
- (i) such other details as the Buyer may reasonably require from time to time; and

Information in respect of previous Service Periods

- (j) a rolling total of the number of Performance Failures that have occurred over the past six Service Periods;
- (k) the amount of Service Credits that have been incurred by the Supplier over the past six Service Periods;
- (l) the conduct and performance of any agreed periodic tests that have occurred in such Service Period such as the annual failover test of the Service Continuity Plan; and

Information in respect of the next Quarter

- (m) any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Buyer and the Supplier for the next Quarter.

Balanced Scorecard Report

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

- (a) financial indicators;
- (b) the Target Performance Levels achieved;
- (c) behavioural indicators;
- (d) performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;
- (e) performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice; and
- (f) Milestone trend chart, showing performance of the overall programme;

1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.51.5.

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

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

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

2. PERFORMANCE RECORDS

2.1 The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc.) in relation to the Services being delivered. The records and documents of the Supplier shall be available for inspection by the Buyer and/or its nominee at any time and the Buyer and/or its nominee may make copies of any such records and documents.

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

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

3. PERFORMANCE VERIFICATION

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

PART C: SERVICE MANAGEMENT

1. Service Desk

1.1 The Supplier Service Desk shall provide the following functions and be the single point of contact that allows the Buyer's Service Desk to:

- (a) Receive notification of Incidents and Service Requests via telephone and electronic means (including email and other web-based systems).
- (b) Request and receive updates on the progress and/or Resolution of specific Incidents, Problems and Service Requests via telephone and other electronic means (including email and other web-based systems); and
- (c) Escalate or complain about the standard of any service provided by the Supplier and logging of Incidents from the Buyer's Service Desk.

1.2 The Supplier Service Desk shall, for the duration of the Contract, record all contacts received by telephone and email on an appropriate Service Management Toolset and provide each caller with a unique Incident reference number for that contact. Any contacts in relation to an existing Incident would be recorded against the existing Incident reference.

1.3 The Supplier will confirm the Severity Level allocated to each Incident or Service Request however the Buyer will retain the right to set the Severity Level as deemed appropriate.

1.4 If the Supplier disagrees with any reallocation of the Severity Level by the Buyer, then the Supplier shall be entitled to raise the issue at the Performance Review Meeting. Failing agreement, the issue shall be dealt with in accordance with the Dispute Resolution Procedure.

1.5 The Supplier shall provide supporting information as may reasonably be required and / or requested by the Buyer or in order to verify that all contacts have been recorded.

1.6 The Supplier will be required to produce a Monthly extract of all Incidents and Service Requests received within the Month.

1.7 The Supplier Service Desk shall not alter any identifiable Personal Data on any systems provided under this Contract, and the Supplier must ensure that the capture, retention and management of any Personal Data complies with Data Protection Legislation and Buyer standards on the protection of Personal Data, including processing of third-party data.

2. Incident Management

Creating and maintaining Incident Records

2.1 The Supplier shall raise an Incident Record on the Incident Management Tool as soon as the Supplier:

- (a) becomes aware of an Incident in; or

- (b) is requested to raise an Incident Record by the Buyer (acting reasonably), where an Incident Record should have already been raised under the provisions of this Schedule.

2.2 The Supplier must create an Incident Record for every Master Incident and every Linked Incident that it becomes aware of.

2.3 Monday to Sunday between 8am and 8pm ("**Core Hours**"), the Supplier shall be deemed to have become aware of an Incident (Master or Linked) on the earlier of:

- (a) when the relevant Incident is reported to the Supplier's Service Desk (including reports received directly into the Incident Management Tool from another supplier via an automated process);
- (b) when the Supplier receives an email or other electronic notification (including web logging facilities) regarding the relevant Incident;
- (c) (for Master Incidents only) when the Supplier identifies (or where it should have identified through its normal operational activities) the relevant Incident itself, via its own performance monitoring system or otherwise. For the purposes of this paragraph, normal operational activities shall be deemed to include any obligations that the Supplier is required to fulfil pursuant to or in connection with this Contract.

2.4 Outside Core Hours and on weekends or bank holidays, in relation to Severity 1, Severity 2 or Severity 3 Incidents, the Supplier shall be deemed to have become aware of an Incident (Master or Linked) when the Incident is notified as per 2.3 and then notified via the out of hours contact number.

2.5 Where the Supplier is notified about several Incidents via a contact, the Supplier shall create a separate Incident Record for each Incident.

2.6 The Supplier is responsible for logging Incidents identified by both reactive and proactive Incident management methods (through the use of performance monitoring), including those reasonably requested by the Buyer from time to time.

2.7 In relation to each Incident, the Supplier is responsible for:

- (a) allocating the Incident with a Severity Level using the guidance set out in Annex 1 ("**Severity Level Guidelines**");
- (b) continuously monitoring and updating the Severity Level of an Incident as required, in accordance with the Severity Level Guidelines;
- (c) allocating the Incident as a Master Incident or a Linked Incident;
- (d) assessing which Services are affected by the Incident (and updating this throughout the lifecycle of the Incident);
- (e) recording on each Incident Record (Master or Linked), during the lifecycle of the Incident; and

- (f) the Supplier shall record the reason for any change that is made to an Incident Record on the Incident Management Tool after the Incident has been closed, and provide a report detailing the changes and the reasons for each change to the Buyer at the Buyer's request.

2.8 Upon request, the Supplier shall update the Buyer about the expected Resolution Time of an Incident.

Master and Linked Incidents

2.9 The Supplier shall employ a Master Incident and Linked Incident hierarchy for Logging and managing Incident Records on its Incident Management tool.

2.10 A separate Incident is created (and shall be Logged by the Supplier) in respect of every Incident that the Supplier becomes aware of and every subsequent report of an Incident of the same type made to the Supplier by the Buyer or its representative.

2.11 Incidents shall be either classified as a Master Incident or a Linked Incident depending on the circumstances as described below.

2.12 A Master Incident is the first (or only) Incident of its type. When a Master Incident exists, any Incident reported to the Supplier by the Buyer or its representative which mirrors an existing Master Incident based on the following factors, will be classed as a Linked Incident if:

- (a) the impact of the Incident is the same or similar to the impact of the Master Incident;
- (b) the Incident relates to the same occurrence;
- (c) initial analysis suggests that the fix necessary to be applied to the Master Incident would be the same as the fix necessary to Resolve the Linked Incident; and
- (d) following execution of a Permanent Fix, it is confirmed that the same fix did in fact Resolve all Linked Incidents.

2.13 A Master Incident shall be created as a result of:

- (a) an Incident being reported to the Supplier by the Buyer or its representative; or
- (b) the Supplier otherwise becoming aware of such an Incident.

2.14 There shall only be one Master Incident (and one Master Incident Record) for each Incident of its type.

2.15 Where a Master Incident has been logged, the Supplier shall only Log a Linked Incident following a report of any subsequent Incidents exhibiting the same root cause or user impact.

2.16 On any occasion that a Linked Incident is Logged, the Supplier shall automatically create an Incident Record which shall contain identical Incident details to the original Master Incident Record (save that it shall be classified as a Linked Incident and retain its unique identifier). The reason for the

creation of an identical Linked Incident Record is to allow all Incidents to be included within the appropriate measurement of the Key Performance Indicators.

2.17 All Linked Incident Records shall be related to the Master Incident Record within the Incident Management Tool (and vice versa) so that all associated Linked Incidents records can be easily identified and reported against.

2.18 A Master Incident may exist without any associated Linked Incidents; however a Linked Incident must be related to an existing Master Incident.

2.19 The Supplier shall use all reasonable endeavours to identify associated Incidents prior to the relevant Incidents being Resolved. Once identified, the Supplier must categorise associated Incidents as Master Incidents or Linked Incidents (as applicable) in the Incident Record.

2.20 If the Supplier does not identify associated Incidents prior to their Resolution, the Supplier is required to re-categorise Master Incidents as Linked Incidents if a connection is later made.

2.21 If the Supplier categorises Incidents as Linked Incidents and then later determines that the relevant Incidents were not in fact Linked Incidents, the Supplier shall amend the Incident Record and, at the Buyer's request, recalculate any impacted Key Performance Indicators and resubmit any incorrect reports to reflect this.

2.22 The Supplier shall be required to assist and support where an incident occurs in the running of the end-to-end Digital Test Service and act in accordance with the Severity designation applied by NHS Digital.

Severity Levels

2.23 All Linked Incidents must have the same Severity Level as the related Master Incident. Changes to the Master Incident's recorded Severity Level shall be reflected in the related Linked Incident's recorded Severity Level. Where incidents are linked to a Sev 1 or Sev 2 incident, these can be recorded as a different severity in the suppliers ITSM tool, though will be counted as child tickets of the master incident and not as separate incidents of a lower severity in terms of KPI calculations.

2.24 For Severity 3, 4 and 5 incidents, if two or more Linked Incidents are allocated different Severity Levels, the applicable Severity Level for all Master Incidents and Linked Incidents shall be deemed to be the highest Severity Level allocated to any Master or Linked Incident (as the case may be).

2.25 If the Supplier refers an Incident to another nominated supplier of the Buyer, the Supplier is responsible for:

- (a) ensuring that the other supplier's minimum data set requirement for Incident logging is met for each separately referred Incident;
- (b) for notifying the Buyer of the referral of their Incident to another supplier; and
- (c) Ensuring the Incident is accepted.

2.26 At the request of the Buyer, the Supplier shall provide justification for the allocation of a particular Severity Level to an Incident. If the Buyer using the Severity Level Guidelines determines

that the Supplier has wrongly allocated the Severity Level to an Incident, the Buyer may require the Supplier to change the Severity Level of the Incident at any time (and require the Supplier to recalculate the Key Performance Indicator and Service Credits (if applicable)).

2.27 If the appropriate Incident Severity Level cannot be agreed, the Buyer will work collaboratively with the Supplier to agree the Incident Severity Level and ensure that the Incident Severity Level applicable to future occurrences of the same Incident is pre-agreed.

High Severity Service Incidents

2.28 The Supplier shall implement a procedure for the management and communication of HSSIs, recognising their impact upon the Buyer which aligns to the handling of Support Communications.

2.29 The Supplier shall inform the Buyer's Service Bridge as soon as possible and in any event within twenty (20) minutes of any Incidents assigned a Severity Level 1 or 2 by telephone or method agreed by the Buyer and Supplier.

2.30 Further updates on the progress and Resolution of such Incidents shall be provided to the Buyer's Service Bridge:

- (a) every 60 (sixty) minutes for a Severity 1 Incident; or
- (b) every 90 (ninety) minutes for a Severity 2 Incident, unless otherwise requested by the Buyer.

2.31 The Supplier shall provide the Buyer with a High Severity Incident Report within 5 working days following the resolution of each HSSI. This should include a summary of the incident, impact, detection, response, recovery and the root cause where known. It should also highlight any mitigations in place or planned to prevent further issues.

2.32 Once the HSSI is resolved, the Supplier and Buyer will undertake a Post Incident Review with the aim of preventing further Incidents. The Supplier is responsible for carrying out tasks assigned to them which are agreed at the Post Incident Review and advising the Buyer when these are complete.

3. Service Change Management

3.1 The Supplier and the Buyer shall work together to agree a Change Management Process within 60 days of the Order Form signature date.

3.2 The Parties shall ensure that all Changes are managed in accordance with the agreed Change Management Process.

3.3 The Supplier shall provide the Buyer with a forward schedule of change, detailing the planned RFCs, on a weekly basis (or on such timescales as may be agreed with the Buyer).

3.4 The Supplier shall provide supporting information and documentation where reasonably requested from the Buyer to support any RFC.

3.5 All Changes, unless where the Buyer deems not required, will require the approval of the Buyer's Clinical Safety Officer in accordance with ISB 0129 Patient Safety Risk Management System – Manufacture of Health Software.

3.6 The Supplier shall ensure that all Changes are carried out in such a manner as to minimise the impact to Buyer and any service recipients including the impact of the Change on the Buyer's other IT services.

4. Maintenance and Release Management

4.1 The Supplier will work together with the Buyer to agree a Release Management Process within 60 days of the Call Off Commencement Date that supports both Parties.

4.2 Any Release or Maintenance activity shall be carried out in such a manner as to avoid any disruption to Services and at such times as to minimise the risk of any impact to the Services.

4.3 The Supplier shall provide the Buyer a Release and Maintenance Plan on a frequency to be agreed with the Buyer.

4.4 For each Release the Supplier will issue a Release note to the Buyer detailing the contents of the Release and any Defects.

4.5 A Release with a material clinical safety impact will require the approval of the Buyer's Clinical Safety Officer in accordance with ISB 0129 Patient Safety Risk Management System – Manufacture of Health Software.

4.6 A Release or Maintenance activity shall be carried out in accordance with the Release and Maintenance Plan unless:

- (a) the Supplier has provided the Buyer with reasonable written notice of a cancellation or a postponement; or
- (b) the Buyer has provided the Supplier with reasonable written notice which reasonably requests an alternative date for the Release or Maintenance activity.

4.7 If either the Supplier or the Buyer postpones a Release or Maintenance activity, the Parties shall agree an alternative date for the relevant Release or Maintenance activity.

5. Problem Management

Creating & Maintaining Problem Records

5.1 The Supplier shall raise a Problem Record on the Service Management Toolset as soon as:

- (a) the Supplier becomes aware of a Problem affecting one or more of its Services (or part thereof); or
- (b) the Supplier is notified about a Problem affecting one or more of its Services (or part thereof) by the Buyer where a Problem should have already been raised under the provisions of this Schedule; or
- (c) where the Root Cause of an Incident is unknown or requires further investigation.

5.2 The Supplier shall only raise one Problem Record for each Problem (representative of all affected Services).

5.3 The Supplier shall be deemed to be aware of, and is responsible for Logging, Problems identified by the following sources:

- (a) via both reactive and proactive Problem management methods (through the use of performance monitoring and trending);
- (b) from Defects developing into Problems as a result of Releases or Changes being deployed; and
- (c) where an Incident has been Resolved via the use of a workaround and the underlying Root Cause is not known, a Problem Record will be Logged immediately upon closure of the Incident in any of the following circumstances:
- (d) from problems received from other suppliers; and
- (e) at the request of the Buyer.

5.4 In relation to each Problem, the Supplier is responsible for:

- (a) allocating the Problem with a Severity Level;
- (b) assessing which Services are affected by the Problem (and updating this throughout the lifecycle of the Problem); and
- (c) monitoring and updating the Severity Level of a Problem as required, in accordance with the Severity Level Guidelines.

5.5 At the request of the Buyer or its representative, the Supplier shall provide justification for the allocation of a particular Severity Level to a Problem. If the Buyer using the Problem Severity Level Guidelines determines that the Supplier has wrongly allocated the Severity Level of a Problem, the Buyer may require the Supplier to change the Severity Level of the Problem at any time (and require the Supplier to recalculate the Key Performance Indicator and Service Credits (if applicable)).

5.6 If the appropriate Problem Severity Level cannot be agreed, the Buyer will work collaboratively with the Supplier to agree the Problem Severity Level and ensure that the Problem Severity Level applicable to future occurrences of the same Problem is pre-agreed.

5.7 The Supplier shall record the reason for any change to the Severity Level that is made to a Problem Record.

5.8 A Problem Record shall only be closed when all components impacted by the relevant Problem have received a Permanent Fix and the Buyer confirms acceptance to the Supplier.

5.9 Upon request, the Supplier shall update the Buyer about any aspects of a Problem.

5.10 The Supplier will be responsible for the provision and upkeep of a Buyer facing Problem Management database report.

5.11 The Supplier should make available a copy of its Problem tracker on a weekly basis. The tracker will list details of every problem record irrespective of status which is recorded by the Supplier; in addition to this the Supplier will provide monthly problem related KPI statistics within 2 working days of the end of each month. This will include the number of Problems opened that month, the number of Problems closed that month, the average age of open problems at the end of that month and the total number of open problem records.

Problem Management – Known Errors

5.12 The Supplier shall conduct Root Cause analysis for each Problem Record in order to identify a Known Error and subsequently robust resolution for each and ensure that the Root Cause is fully understood prior to the development of any fix.

5.13 The Supplier will facilitate the Resolution of Known Errors via the Supplier’s Change Management Process and release management process.

5.14 The Supplier shall make Known Errors relating to Problems available to the Supplier’s Incident Management teams in order to match them to Incidents.

6. CORE HOURS

The Supplier shall provide Service Management services in accordance with the following core hours (“Core Hours”):

Service Management	Coverage Hours
Supplier point of contact	8am – 8pm x 7 days
Incident Management - Critical Incidents (Severity 1 & 2)	24x7x365
Incident Management – High Incidents (Severity 3)	8am – 8pm Mon – Sun
Incident Management – Medium Incidents (Severity 4 & 5)	8am – 8pm Mon – Sun
Problem Management – High	8am – 6pm Mon – Fri
Problem Management – Medium	8am – 6pm Mon – Fri
Service Optimisation support	8am – 6pm Mon – Sun
Disaster Recovery	24x7x365
Change Management	8am – 6pm Mon – Sun Emergency changes 24x7x365
Service Configuration Management	8am – 6pm Mon – Sun

Service Management	Coverage Hours
Asset Management	8am – 6pm Mon – Sun
Patch Management	8am – 6pm Mon – Sun 24x7x365 as required
Monitoring & Alerting	24x7x365
Service Requests	8am – 8pm Mon – Sun

ANNEX 1: KEY PERFORMANCE INDICATORS

PART I: KEY PERFORMANCE INDICATORS

KPI Performance Criteria	Key Indicator	KPI Performance Measure	KPI Performance Measure and Service Credit Calculation	Core Service Hours	Service Credit Cap for each Service Period
Service Availability The availability measure is the amount of time the end to end (Full Component) service is available as a percentage of the operational hours	Availability	99.9% availability of service during 24x7 period. Measurement is per calendar month and per service / value stream (ie Results Service / Result Matching / Home Service...)		24 x 7 X 365	
Repeat HSSI	Performance	<3 Sev 1 & Sev 2 incidents per calendar month		24 x7 x365	
Change Management	Performance	=>60% of changes implemented that do not result in HSSI (root cause of HSSI is a release\change).		24 x 7 x 365	

Severity Level	Response Time	Resolution Time	OSL	FL1	CSL	KPI Performance Measure and Service Credit Calculation	Core Service Hours	Service Credit Cap for each Service Period
Severity 1	15 minutes	<= 2 hours	<= 2 hours	> 2 hours	> 4 hours		24 x 7 X 365	

Severity 2	30 minutes	<= 4 hours	<= 4 hours	> 4 hours	>6 hours		24 x 7 X 365
Severity 3	1 hour	<= 16 hours	<= 16 hours	> 16 hours	NA		8am - 8pm Mon - Sun

Severity 4	4 hours	<= 48 hours	<= 48 hours	>48 hours	NA		8am – 8pm Mon – Fri
Severity 5	4 hours	<= 96 hours	<= 96 hours	>96 hours	NA		8am – 8pm Mon – Fri

Severity Level	OSL	CSL	KPI Performance Measure Calculation	Service Credit Regime
High Priority Problem Resolution	<= 30 days	> 30 Days	the Problem Resolution Time for each Problem Resolved in that Month	Non-SC KPI
Medium Priority Problem Resolution	<= 60 days	> 60 Days	the Problem Resolution Time for each Problem Resolved in that Month	Non-SC KPI

Note: references to a percentage of the support/run Charges in the table above mean the relevant percentage of the support/run Charges which would otherwise have been payable in relation to the Service Period in which the relevant Performance Failure occurred.

Severity Level Guidance

Severity	Description	Illustrative Examples (non-exhaustive)
1	<p>Loss of service or major functional or non-functional issue which results in either a) the complete service being unusable by one or more organisations, or b) a significant element of the service being unusable by all users.</p> <p>Examples of which (but not an exhaustive list) are:</p> <ul style="list-style-type: none"> • Have significant adverse impact on the provision of service to a large number of users • Have significant adverse impact on the delivery of care to a large number of subjects • Causes significant financial loss and/or disruption to the NHS, customer organisations, an NHS Digital Service Recipient or an NHS Digital Party • Result in any material loss or corruption of NHS Data or in the provision of incorrect NHS Data to an End User • Causes significant reputational damage and loss of public trust in the NHS or an NHS Digital Party 	<ul style="list-style-type: none"> •Service totally unavailable. (e.g. Results Service, Home Service or Result Matching Service) •Incorrect results flowing to a subjects leading to potential clinical risk. •Data loss relating to orders or test results. •Data breach impacting a significant volume of subject data.
2	<p>Significant issue with the service (functional or non-functional) which deems a significant element of the service unusable to a number of users:</p> <p>Examples of which (but not an exhaustive list) are;</p> <ul style="list-style-type: none"> • Have significant adverse impact on the provision of service to a moderate number of End Users • Have moderate adverse impact on the delivery of care to a large number of End Users • Have significant adverse impact on the delivery of patient care to a small (i.e. one or more) or moderate number of subjects. • Have a moderate adverse impact on the delivery of patient care to a high number of subjects • Causes financial loss and/or disruption to the NHS an NHS Digital Service Recipient or an NHS Digital Party which is more than trivial but less severe than the significant financial loss described in the definition of severity 1 • Result in any loss or corruption of NHS Data or in the provision of incorrect NHS Data to an End User • Causes significant reputational damage and loss of public trust in the NHS or an NHS Digital Party, which is more than trivial but less severe than the significant damage described in the definition of severity 1 	<ul style="list-style-type: none"> •Service performing significantly slower than usual. E.g. Delayed result processing, leading to delays in excess of an hour for subjects receiving results. Test kits being sent to incorrect addresses for a moderate proportion of users. •Delays in Home Orders processing leading to subject kits not being dispatched on the same day. •An inability for users to access and place orders through the Bulk Order service. A cohort, such as █████ Agents, being unable to order Test Kits.

<p>3</p>	<p>Moderate Issue with the service (functional or non-functional) that does not render a significant element of the service unusable, but has an adverse effect on the use of the service</p> <p>Examples of which (but not an exhaustive list) are;</p> <ul style="list-style-type: none"> • Have moderate adverse impact on the provision of service to a moderate number of End Users • Have a minor adverse impact on the provision of the Service to a large number of End Users • Have moderate adverse impact on the delivery of patient care to a small (i.e. one or more) or moderate number of subjects • Have a minor adverse impact on the delivery of patient care to a large number of subjects 	<ul style="list-style-type: none"> •A delay to Home Orders being processed that may lead to delays to subjects receiving tests if not resolved. •Inaccurate error messages returned for invalid API calls which causes impacts on other parts of the wider Test Digital service. •Management Information not flowing into the Management Information systems within expected timeframes. •Issues with the processing of individual tests where there is potential clinical impact associated with the processing of that result.
<p>4</p>	<p>Minor issue with service that has a low impact or has a viable workaround immediately available. Minor or cosmetic issue with no functional impact.</p> <p>Examples of which (but not an exhaustive list) are;</p> <ul style="list-style-type: none"> • Have a minor adverse impact on the provision of the Service to a small (i.e. one or more) or moderate number of End Users 	<ul style="list-style-type: none"> •Issues with the processing of individual tests where there is no clinical impact associated. <p>Incorrect error handling which causes a minor inconvenience to other parts of the wider Test Digital Service.</p>
<p>5</p>	<p>Minor Issue with no immediate viable workaround that requires technical fixes to be implemented through governance such as change control</p>	<ul style="list-style-type: none"> •A punctuation error or spelling mistake in text which would not cause confusion to users. •Minor text misalignment or typo •A layout which looks non-standard on low-usage device or web browser (e.g. Opera)

Severity Guidelines for Problems

Severity 1 and Severity 2 Problems are classed as High Priority Problems

Severity 3 Problems are classed as Medium Priority Problems

Severity 4/5 Problems are classed as Low Priority Problems.

Problem Severity Scoring Table

Category	Criteria	Score
Frequency		
Impact to other supplier(s)		
Impact to Users or Citizens		
Quality of Workaround		
Potential Clinical Safety/ Security Impact		
Distribution		
Reputational Impact		

PART II: DEFINITIONS

1. AVAILABLE

1.1 The IT Environment and/or the Services shall be Available when:

- (a) End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and
- (b) the Supplier System is able to process the Buyer Data and to provide any required reports within the timescales set out in the Services Description ; and
- (c) all Performance Indicators other than Service Availability are above the KPI Service Threshold.

2. SERVICE AVAILABILITY

2.1 Service Availability shall be measured as a percentage of the total time in a Service Period, in accordance with the following formula:

$$\text{Service Availability \%} = \frac{(MP - SD) \times 100}{MP}$$

where:

MP = total number of minutes, excluding Permitted Maintenance, within the relevant Service Period; and

SD = total number of minutes of Service Downtime, excluding Permitted Maintenance, in the relevant Service Period.

2.2 When calculating Service Availability in accordance with this Paragraph 2:

- (a) Service Downtime arising due to Permitted Maintenance that is carried out by the Supplier in accordance with Clause 9.4 (Maintenance) shall be subtracted from the total number of hours in the relevant Service Period; and

- (b) Service Credits shall accrue if:
 - (i) any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or
 - (ii) where maintenance undertaken by the Supplier exceeds the availability targets in any Service Period.

3. FIX TIMES

3.1 The “**Fix Time**” of an Incident or Problem is the period from the time that the Incident or Problem has been reported to the Supplier to the point of its Resolution.

3.2 Fix Times for Severity 3 Service Incidents, Severity 4 Service Incidents and Severity 5 Service Incidents shall be measured in Operational Hours.

Worked example: if the Operational Hours for a fault are 0800-1800, then the clock stops measuring Fix Time at 1800 in the evening and restarts at 0800 the following day).

3.3 Fix times for Severity 1 Service Incidents and Severity 2 Service Incidents shall be measured 24x7.

3.4 The Supplier shall measure Fix Times as part of its service management responsibilities and report periodically to the Buyer on Fix Times as part of the Performance Monitoring Report.

3.5 For the purposes of this Paragraph 5, the following expressions shall have the meanings set opposite them below:

“Operational Hours” In relation to any Service, the hours for which that Service is to be operational as set out in Attachment 2.1 (*Services Description*) of the Order Form;

SCHEDULE 2.3: STANDARDS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Standards Hub” the Government’s open and transparent standards adoption process as documented at <http://standards.data.gov.uk/>; and

“Suggested Challenge” a submission to suggest the adoption of new or emergent standards in the format specified on Standards Hub.

2. GENERAL

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

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

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

3. TECHNOLOGY AND DIGITAL SERVICES PRACTICE

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

4. OPEN DATA STANDARDS & STANDARDS HUB

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

4.2 Without prejudice to the generality of Paragraph 2.2, the Supplier shall, when implementing or updating a technical component or part of the Software or Supplier Solution where there is a requirement under this Contract or opportunity to use a new or emergent standard, submit a Suggested Challenge compliant with the UK Government’s Open Standards Principles (using the process detailed on Standards Hub and documented at <http://standards.data.gov.uk/>). Each Suggested Challenge submitted by the Supplier shall detail, subject to the security and confidentiality provisions in this Contract, an illustration of

such requirement or opportunity within the IT Environment, Supplier Solution and Government's IT infrastructure and the suggested open standard.

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

5. TECHNOLOGY ARCHITECTURE STANDARDS

The Supplier shall produce full and detailed technical architecture documentation for the Supplier Solution in accordance with Good Industry Practice. If documentation exists that complies with the Open Group Architecture Framework 9.2 or its equivalent, then this shall be deemed acceptable.

6. ACCESSIBLE DIGITAL STANDARDS

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

- 6.1 the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA;
- 6.2 ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability;
- 6.3 The NHS Digital Service Accessibility Standards and government guidance on making your service accessible to everyone that needs it;
- (a) <https://service-manual.nhs.uk/accessibility>; and
- (b) <https://www.gov.uk/service-manual/helping-people-to-use-your-service/making-your-service-accessible-an-introduction>.

7. SERVICE MANAGEMENT SOFTWARE & STANDARDS

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
- (a) ITIL v4;
- (b) ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";
- (c) ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
- (d) ISO 10007: 2017 "Quality management systems – Guidelines for configuration management";
- (e) ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019;
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- (f) ISO 27001 Information Security Management Systems;
- (g) ISO 27002 Code of Practice for Information Security Controls;
- (h) ISO 27005 Information Security Risk Management;
- (i) ISO 27031 Guidelines for Information and Communication Technology Readiness for Business Continuity;
- (j) ISO 22301 Business Continuity Management Systems

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

8. ENVIRONMENTAL REQUIREMENTS

8.1 The Supplier shall comply with the environmental requirements set out in Attachment 2.3 (Environmental Requirements) of the Order Form.

9. HARDWARE SAFETY STANDARDS

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

- (a) any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
- (b) any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
- (c) any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and
- (d) any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.

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

10. ADDITIONAL STANDARDS

10.1 The Supplier shall also comply with the following additional Standards:

- (a) NCSC security recommendations - <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>
 - (b) NIST cybersecurity standard recommendations - <https://www.nist.gov/cyberframework>
 - (c) GDS service standard - <https://www.gov.uk/service-manual/service-standard>
 - (d) NHS service standard - <https://service-manual.nhs.uk/service-standard>
 - (e) Any clinical software build shall be compliant with the clinical risk management standards DCB0129 and DCB 0160 - <https://digital.nhs.uk/services/solution-assurance/the-clinical-safety-team/clinical-risk-management-standards>
 - (f) NHS Digital standards - <https://digital.nhs.uk/about-nhs-digital/our-work/nhs-digital-data-and-technology-standards/framework>
 - (g) Government Digital Standard and Password Guidance - <https://design-system.service.gov.uk/patterns/passwords/> and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/458857/Password_guidance_-_simplifying_your_approach.pdf
 - (h) NHS guidelines for cloud infrastructure - <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/nhs-and-social-care-data-off-shoring-and-the-use-of-public-cloud-services/nhs-and-social-care-data-off-shoring-and-the-use-of-public-cloud-services-guidance>
 - (i) The Business Continuity Institute Good Practice Guidelines - <https://www.thebci.org/training-qualifications/good-practice-guidelines.html>
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ANNEX: ENVIRONMENTAL REQUIREMENTS

DEFINITIONS

1. In this Annex, the following definitions shall apply:

- “Permitted Item”** means those items which are permissible under this Contract to the extent set out in Table B of Attachment 2.3 (Environmental Requirements) of the Order Form;
- “Prohibited Items”** means those items which are not permissible under this Contract as set out at Table A of Attachment 2.3 (Environmental Requirements) of the Order Form;
- “Sustainability Reports”** written reports to be completed by the Supplier containing the information outlined in Table C of Attachment 2.3 (Environmental Requirements) of the Order Form;
- “Waste Hierarchy”** means prioritisation of waste management in the following order of preference:
- (1) Prevention – by using less material in design and manufacture. Keeping products for longer;
 - (2) Preparing for re-use – by checking, cleaning, repairing, refurbishing, whole items or spare parts;
 - (3) Recycling – by turning waste into a new substance or produce, including composting if it meets quality protocols;
 - (4) Other Recovery – through anaerobic digestion, incineration with energy recovery, gasification and pyrolysis which produce energy (fuels, heat and power) and materials from waste; some backfilling; and
 - (5) Disposal - Landfill and incineration without energy recovery.

ENVIRONMENTAL REQUIREMENTS

2. The Supplier shall comply in all material respects with all applicable environmental laws and regulations in force in relation to this Contract.
 3. The Supplier warrants that it has obtained ISO 14001 certification from an accredited body and shall comply with and maintain certification requirements throughout the Term.
 4. In performing its obligations under this Contract the Supplier shall to the reasonable satisfaction of the Buyer:
 - 4.1 demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Buyer’s reasonable questions;
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- 4.2 prioritise waste management in accordance with the Waste Hierarchy;
 - 4.3 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the law;
 - 4.4 ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Contract do so in a legally compliant way, undertake reasonable checks on a regular basis to ensure this;
 - 4.5 inform the Environmental Agency within one Working Day in the event that a permit or exemption to carry or send waste generated under this Contract is revoked and in circumstances where a permit or exemption to carry or send waste generated under this Contract is revoked the Supplier shall cease to carry or send waste or allow waste to be carried by any Sub-contractor until authorisation is obtained from the Environmental Agency;
 - 4.6 minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
 - 4.7 reduce and minimise carbon emissions by taking into account factors including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.
 - 5. The Supplier shall use reasonable endeavours to avoid the use of paper and card in carrying out its obligations under this Contract. Where unavoidable under reasonable endeavours, the Supplier shall ensure that any paper or card deployed in the performance of the Services consists of one hundred percent (100%) recycled content and used on both sides where feasible to do so.
 - 6. The Supplier shall not provide to the Buyer Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
 - 7. The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Contract unless:
 - 7.1 it is a Permitted Item; or
 - 7.2 the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.
 - 8. The Supplier shall complete the Sustainability Report in relation its provision of the Services under this Contract and provide the Sustainability Report to the Buyer on the date and frequency outlined in Table C of Order Form Attachment 2.3.
 - 9. The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with the provisions of this Annex within fourteen (14) days of such request, provided that such requests are limited to two per Contract Year.
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SCHEDULE 2.4: SECURITY MANAGEMENT

Part A: Security Assurance

1. Definitions

1.1 In this Schedule:

- “Anti-Malicious Software”** means software that scans for and identifies possible Malicious Software in the IT Environment;
- “Breach of Security”**
- (a) an event that results, or could result, in:
 - (b) any unauthorised access to or use of the Buyer Data, the Services and/or the Information Management System; and/or
 - (c) the loss, corruption and/or unauthorised disclosure of any information or data (including the Confidential Information and the Buyer Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract;
- “Certification Requirements”** means the information security requirements set out in Paragraph 6;
- “CHECK Service Provider”** means a company which has been certified by the National Cyber Security Centre, holds "Green Light" status and is authorised to provide the IT Health Check services required by Paragraph 7.1;
- “CREST Service Provider”** means a company with a SOC Accreditation from CREST International;
- “Higher Risk Sub-contractor”** means a Sub-contractor that Processes Buyer Data, where that data includes either:
- (a) the Personal Data of 1000 or more individuals in aggregate during the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); or
 - (b) Special Category Personal Data;

“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Incident Management Process”	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Buyer Data, the Buyer, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 4 using the template set out in Annex 3;
“Information Assurance Assessment”	means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches and/or theft and which shall be prepared by the Supplier using the template set out in Annex 3;
“Information Management System”	means <ul style="list-style-type: none"> (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to provide the parts of the Services that require Processing Buyer Data; and (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);
“Information Security Approval Statement”	means a notice issued by the Buyer which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that: <ul style="list-style-type: none"> (a) the Buyer is satisfied that the identified risks have been adequately and appropriately addressed; (b) the Buyer has accepted the residual risks; and

- (c) the Supplier may use the Information Management System to Process Buyer Data;

“IT Health Check”

has the meaning given in Paragraph 7.1;

“Medium Risk Sub-contractor”

means a Sub-contractor that Processes Buyer Data, where that data

- (a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); and
- (b) does not include Special Category Personal Data;

“Personal Data Processing Statement”

means a document setting out:

- (a) the types of Personal Data which the Supplier and/or its Sub-contractors Processes or will Process under this Contract;
- (b) the categories of Data Subjects whose Personal Data the Supplier and/or its Sub-contractors Processes or will Process under this Contract;
- (c) the nature and purpose of such Processing;
- (d) the locations at which the Supplier and/or its Sub-contractors Process Personal Data under this Contract; and
- (e) the Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data Processed under this Contract against a Breach of Security (insofar as that Breach of Security relates to data) or a Personal Data Breach;

“Process”

means any operation which is performed on data, whether or not by automated means, including collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

“Required Changes Register”	mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 5.2 together with the date by which such change shall be implemented and the date on which such change was implemented;
“Risk Register”	is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Buyer for approval in accordance with Paragraph 4;
“Security Management Plan”	means the document prepared by the Supplier using the template in Annex 3, comprising: <ul style="list-style-type: none"> (a) the Information Assurance Assessment; (b) the Personal Data Processing Statement; (c) the Required Changes Register; and (d) the Incident Management Process;
“Special Category Personal Data”	means the categories of Personal Data set out in article 9(1) of the GDPR.

2. Introduction

2.1 This Schedule sets out:

- 2.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Buyer Data and the Information Management System;
- 2.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Buyer Data;
- 2.1.3 The security requirements in Annex 1, with which the Supplier must comply;
- 2.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term;
- 2.1.5 the Supplier's obligations to:
 - (a) return or destroy Buyer Data on the expiry or earlier termination of this Contract; and

- (b) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 8; and
- (c) report Breaches of Security to the Buyer.

3. Principles of Security

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

- 3.1.1 the Sites;
- 3.1.2 the IT Environment;
- 3.1.3 the Information Management System; and
- 3.1.4 the Services.

3.2 Notwithstanding the involvement of the Buyer in assessing the arrangements which the Supplier implements to ensure the security of the Buyer Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:

- 3.2.1 the security, confidentiality, integrity and availability of the Buyer Data whilst that Buyer Data is under the control of the Supplier or any of its Sub-contractors; and
- 3.2.2 the security of the Information Management System.

3.3 The Supplier shall:

- 3.3.1 comply with the security requirements in Annex 1; and
- 3.3.2 ensure that each Sub-contractor that Processes Buyer Data complies with the Sub-contractor Security Requirements.

3.4 The Supplier shall provide the Buyer with access to Supplier Personnel responsible for information assurance to facilitate the Buyer's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

4. Information Security Assurance

4.1 The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2, from the first Operational Services Commencement Date.

4.2 The Supplier shall undertake that that the following activities shall be completed within 30 Working Days of the date of signature to this Contract:

- 4.2.1 the Supplier has issued to the Buyer all certificates set out in clause 6.1, the Supplier has completed a Data Security and Protection Toolkit assessment.

- 4.3 The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Contract in order to ensure the security of the Buyer Data and the Information Management System.
- 4.4 The Supplier shall prepare and submit to the Buyer within 30 Working Days of Contract signature, the Security Management Plan, which comprises:
 - 4.4.1 an Information Assurance Assessment;
 - 4.4.2 the Required Changes Register;
 - 4.4.3 the Personal Data Processing Statement; and
 - 4.4.4 the Incident Management Process.
- 4.5 The Buyer shall review and approve the Supplier's proposed Security Management Plan as soon as possible and, in any event in accordance with the deliverables acceptance criteria process as set out within the Call Off Order Form.
- 4.6 The Buyer may require, and the Supplier shall provide the Buyer and its authorised representatives with:
 - 4.6.1 access to the Supplier Personnel;
 - 4.6.2 access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Contract; and
 - 4.6.3 such other information and/or documentation that the Buyer or its authorised representatives may reasonably require,
 - 4.6.4 to assist the Buyer to establish whether the arrangements which the Supplier and its Sub-contractors have implemented in order to ensure the security of the Buyer Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by the Buyer in accordance with this Paragraph within 10 Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Buyer with the access that it requires within [24 hours of receipt of such request.

5. Compliance Reviews

- 5.1 The Supplier shall regularly review and update the Security Management Plan, and provide such to the Buyer, at least once each year and as required by this Paragraph.
- 5.2 The Supplier shall notify the Buyer within 2 Working Days after becoming aware of:
 - 5.2.1 a significant change to the components or architecture of the Information Management System;
 - 5.2.2 a new risk to the components or architecture of the Information Management System;

- 5.2.3 a vulnerability to the components or architecture of the Service which is classified 'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 8.2 of Annex 1 to this Schedule;
 - 5.2.4 a change in the threat profile;
 - 5.2.5 a significant change to any risk component;
 - 5.2.6 a significant change in the quantity of Personal Data held within the Service;
 - 5.2.7 a proposal to change any of the Sites from which any part of the Services are provided; and/or
 - 5.2.8 an ISO27001 audit report produced in connection with the Certification Requirements indicates significant concerns.
- 5.3 Within 10 Working Days of such notifying the Buyer or such other timescale as may be agreed with the Buyer, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Buyer for review and approval.
- 5.4 Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.

6. Certification Requirements

- 6.1 The Supplier shall be certified as compliant with:
- 6.1.1 ISO/IEC 27001:2013 by a United Kingdom Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
 - 6.1.2 Cyber Essentials PLUS,
- and shall provide the Buyer with a copy of each such certificate of compliance within 1 week of Contract signature.
- 6.2 The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:
- 6.2.1 ISO/IEC 27001:2013 by a United Kingdom Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; or
 - 6.2.2 Cyber Essentials PLUS,
- and shall provide the Buyer with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor shall be permitted to receive, store or Process Buyer Data.

- 6.3 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.
- 6.4 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Buyer Data:
 - 6.4.1 securely destroys Buyer Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001:2013; and
 - 6.4.2 are certified as compliant with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard or an alternative standard as agreed by the Buyer.
- 6.5 The Supplier shall provide the Buyer with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 6 before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Buyer Data.
- 6.6 The Supplier shall notify the Buyer as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from the Buyer, shall or shall procure that the relevant Sub-contractor shall:
 - 6.6.1 immediately ceases using the Buyer Data; and
 - 6.6.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Buyer Data in accordance with the requirements set out in this Paragraph.
 - 6.6.3 The Buyer may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

7. Security Testing

- 7.1 The Supplier shall, at its own cost and expense procure and conduct:
 - 7.1.1 Regular testing of the Supplier Information Management System in accordance with ISO 27001.
- 7.2 In relation to any CHECK/CREST accredited IT Health Check performed by the Supplier, in relation to Services provisioned under this Contract where such testing has been requested, and security resourcing has been procured via additions to the Embedded Change workstream, the Supplier shall:
 - 7.2.1 agree with the Buyer the aim and scope of the IT Health Check;
 - 7.2.2 promptly, and no later than ten 10 Working Days, following the receipt of each IT Health Check report, provide the Buyer with a copy of the full report;
 - 7.2.3 in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:

- (a) prepare a remedial plan for approval by the Buyer (each a "Vulnerability Correction Plan") which sets out in respect of each vulnerability identified in the IT Health Check report:
 - (i) how the vulnerability will be mitigated;
 - (ii) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be mitigated in production systems, which must be:
 - (A) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "medium";
 - (B) within 5 Working Days month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "high"; and
 - (C) within 2 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of "critical";
 - (iii) the tests which the Buyer shall perform or procure to be performed (which may, at the discretion of the Buyer, include a further IT Health Check) to confirm that the vulnerability has been remedied;
- (b) comply with the Vulnerability Correction Plan; and
- (c) conduct such further tests on the Service as are required by the Vulnerability Correction Plan to confirm that the Vulnerability Correction Plan has been complied with.

7.3 The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Buyer.

7.4 If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within 2 Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Buyer with a copy of the test report and:

7.4.1 propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and

7.4.2 where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Buyer.

7.5 The Supplier shall conduct such further tests of the Supplier System as may be required by the Buyer from time to time to demonstrate compliance with its obligations set out this Schedule and the Contract.

7.6 The Supplier shall notify the Buyer immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Annex 1 to this Schedule.

8. Security Monitoring and Reporting

8.1 The Supplier shall:

8.1.1 monitor the delivery of assurance activities;

8.1.2 maintain and update the Security Management Plan in accordance with Paragraph 5;

8.1.3 agree a document which presents the residual security risks to inform the Buyer's decision to give approval to the Supplier to Process, store and transit the Buyer Data;

8.1.4 monitor security risk impacting upon the operation of the Service;

8.1.5 report Breaches of Security in accordance with the approved Incident Management Process;

8.1.6 agree with the Buyer the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Buyer within 30 Working Days of signature to this Contract.

9. Malicious Software

9.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Buyer Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.

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

9.3 Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 9.2 shall be borne by the parties as follows:

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

9.3.2 by the Buyer, in any other circumstance.

10. Breach of Security

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

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

10.2.1 Immediately take all reasonable steps necessary to:

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

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

10.3 In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with this Contract, then such remedial action shall be completed at no additional cost to the Buyer.

ANNEX 1: SECURITY REQUIREMENTS

0. Security Classification of Information

If the provision of the Services requires the Supplier to Process Buyer Data which is classified as OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Buyer from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

1. End User Devices

1.1 The Supplier shall ensure that any Buyer Data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.

1.2 The Supplier shall ensure that any device which is used to Process Buyer Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/collection/end-user-device-security>.

2. Networking

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

3. Personnel Security

3.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard (“BPSS”), or equivalent. BPSS includes: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record. For clarity, all Supplier Personnel who are working on the service, must have been BPSS cleared (or equivalent) within the past 18 months.

3.2 For BPSS equivalent checks outside of the UK, the Parties agree that these will be in line with the relevant applicable employment laws. Where the issue date is greater than 18 months, the Supplier accepts the personnel security risk for resources that do not have a BPSS or equivalent (with a satisfactory outcome) within the last 18 months until this is renewed. The Supplier shall advise the Buyer of the remedy that will be undertaken should an existing resource receive an unsatisfactory outcome.

3.3 The Supplier shall renew BPSS clearances (or equivalent) for resources with BPSS Issue Dates more than 18 months prior to the Effective Date within 30 days of contract signature.

3.4 the Buyer reserves the right to conduct a 5-10% spot check on BPSS clearance commencing 31 days after contract signature as a one-off exercise.

- 3.5 The Buyer and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Buyer to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Buyer Data or data which, if it were Buyer Data, would be classified as OFFICIAL-SENSITIVE.
- 3.6 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 3.1, 3.2 and 5 to be involved in the management and/or provision of the Services except where the Buyer has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 3.7 The Supplier shall ensure that Supplier Personnel are only granted such access to Buyer Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 3.8 The Supplier shall ensure that Supplier Personnel who no longer require access to the Buyer Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Buyer Data revoked within 1 Working Day.
- 3.9 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or the Buyer Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Buyer Data.
- 3.10 The Supplier shall ensure that the training provided to Supplier Staff under paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Buyer Data (“phishing”).
- 3.11 Clauses 3.1 to 3.10 are subject to any related assumptions contained within Attachment 4.1 of the Call Off Order form.

4. Identity, Authentication and Access Control

- 4.1 The Supplier shall operate an access control regime to ensure:
- 4.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
 - 4.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 4.2 The Supplier shall apply the ‘principle of least privilege’ when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.

- 4.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Buyer on request.

5. Data Destruction or Deletion

The Supplier shall:

- 5.1 prior to securely sanitising any Buyer Data or when requested the Supplier shall provide the Government with all Buyer Data in an agreed open format;
- 5.2 have documented processes to ensure the availability of Buyer Data in the event of the Supplier ceasing to trade;
- 5.3 securely erase in a manner agreed with the Buyer any or all Buyer Data held by the Supplier when requested to do so by the Buyer;
- 5.4 securely destroy in a manner agreed with the Buyer all media that has held Buyer Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as agreed by the Buyer; and
- 5.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

6. Audit and Protective Monitoring

- 6.1 The Supplier shall collect audit records which relate to security events in the Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Buyer Data.
- 6.2 The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the Information Management System.
- 6.3 The retention periods for audit records and event logs must be agreed with the Buyer and documented in the Security Management Plan.

7. Location of Buyer Data

The Supplier shall not and shall procure that none of its Sub-contractors Process Buyer Data outside the United Kingdom without the prior written consent of the Buyer, which may be subject to conditions.

8. Vulnerabilities and Corrective Action

- 8.1 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Buyer Data.

- 8.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:
- 8.2.1 the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and
 - 8.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 8.3 Subject to Paragraph 8.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:
- 8.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';
 - 8.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and
 - 8.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.
- 8.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 8.3 shall be extended where:
- 8.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 8.3 if the vulnerability becomes exploitable within the context of the Services;
 - 8.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or
 - 8.4.3 the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.
- 8.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Buyer in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

9. Secure Architecture

- 9.1 The Supplier shall design the Information Management System in accordance with:

- 9.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
- 9.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
- 9.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:
- (a) "Cloud Security Principle 1: data in transit protection" which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
 - (b) "Cloud Security Principle 2: asset protection and resilience" which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
 - (c) "Cloud Security Principle 3: separation between users" which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
 - (d) "Cloud Security Principle 4: governance framework" which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
 - (e) "Cloud Security Principle 5: operational security" which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
 - (f) "Cloud Security Principle 6: personnel security" which, amongst other matters, requires that where Supplier Personnel have access to Buyer Data and/or the Buyer System that those personnel be subject to appropriate security screening and regular security training;
 - (g) "Cloud Security Principle 7: secure development" which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
 - (h) "Cloud Security Principle 8: supply chain security" which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
 - (i) "Cloud Security Principle 9: secure user management" which, amongst other matters, requires the Supplier to make the tools available for the Buyer to securely manage the Buyer's use of the Service;
 - (j) "Cloud Security Principle 10: identity and authentication" which, amongst other matters, requires the Supplier to implement appropriate controls in

order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;

- (k) "Cloud Security Principle 11: external interface protection" which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- (l) "Cloud Security Principle 12: secure service administration" which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;
- (m) "Cloud Security Principle 13: audit information for users" which, amongst other matters, requires the Supplier to be able to provide the Buyer with the audit records it needs to monitor access to the Service and the Buyer Data held by the Supplier and/or its Sub-contractors; and
- (n) "Cloud Security Principle 14: secure use of the service" which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

ANNEX 2: SECURITY REQUIREMENTS FOR SUB-CONTRACTORS

1. Application of Annex

- 1.1 This Annex applies to all Sub-contractors that Process Buyer Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex;
 - 1.2.2 keep sufficient records to demonstrate that compliance to the Buyer; and
 - 1.2.3 ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Buyer Data.

2. Designing and managing secure solutions

- 2.1 The Sub-contractor shall implement their solution(s) to mitigate the security risks in accordance with the NCSC's Cyber Security Design Principles <https://www.ncsc.gov.uk/collection/cyber-security-design-principles>.
- 2.2 The Sub-contractor must assess their systems against the NCSC Cloud Security Principles: <https://www.ncsc.gov.uk/collection/cloud-security?curPage=/collection/cloud-security/implementing-the-cloud-security-principles> at their own cost and expense to demonstrate that the people, process, technical and physical controls have been delivered in an effective way. The Sub-contractor must document that assessment and make that documentation available to the Buyer on the Buyer's request.

3. Data Processing, Storage, Management and Destruction

- 3.1 The Sub-contractor must not Process any Buyer Data outside the United Kingdom. The Buyer may permit the Sub-contractor to Process Buyer Data outside the United Kingdom and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-contractor must securely erase any or all Buyer Data held by the Sub-contractor when requested to do so by the Buyer; and securely destroy all media that has held Buyer Data at the end of life of that media in accordance with the NCSC Assured Service (CAS) Service Requirement Sanitisation Standard, or an alternative agreed in writing by the Buyer.

4. Personnel Security

- 4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

4.2 The Sub-contractor must, if the Buyer requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Buyer Data containing Personal Data above certain volumes specified by the Buyer, or containing Special Category Personal Data.

4.3 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

5. End User Devices

5.1 The Sub-contractor shall ensure that any Buyer Data stored (for any period of time) on a mobile, removable or physically uncontrolled device is encrypted. The Sub-contractor must follow the Information Commissioner's Office guidance on implementing encryption, which can be found at <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/security/encryption/>.

5.2 The Supplier shall ensure that any device used to Process Buyer Data meets all the security requirements set out in the NCSC End User Devices Platform Security Guidance, which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security>.

6. Networking

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

7. Patching and Vulnerability Scanning

7.1 The Sub-contractor must proactively monitor supplier vulnerability websites and ensure all necessary patches and upgrades are applied to maintain security, integrity and availability in accordance with the NCSC Cloud Security Principles.

8. Third Party Sub-contractors

8.1 The Sub-contractor must not transmit or disseminate the Buyer Data to any other person unless specifically authorised by the Buyer. Such authorisation must be in writing to be effective and may be subject to conditions.

8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process the Buyer Data where the licence terms of that software purport to grant the licensor rights to Progress the Buyer Data greater than those rights strictly necessary for the use of the software.

ANNEX 3: SECURITY MANAGEMENT PLAN TEMPLATE

Security Management Plan Template (Accreditation)

[Project/Service and Supplier Name]

0. Executive Summary

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

1. System Description

1.1 Background

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

1.2 Organisational Ownership/Structure

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

1.3 Information assets and flows

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

1.4 System Architecture

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

1.5 Users

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

1.6 Locations

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

1.7 Test and Development Systems

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

1.8 Key roles and responsibilities

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

2. Risk Assessment

2.1 Accreditation/Assurance Scope

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

2.2 Risk appetite

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

2.3 Business impact assessment

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

2.4 Risk assessment

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

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

2.5 Controls

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

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

2.6 Residual risks and actions

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

3. In-service controls

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

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

(d) configuration and change management;

(e) incident management;

(f) vulnerability management;

(g) user access management; and

(h) data sanitisation and disposal.>

4. Security Operating Procedures (SyOPs)

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

5. Major Hardware and Software and end of support dates

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

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

6. Incident Management Process

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

7. Security Requirements for User Organisations

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

8. Required Changes Register

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

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
1	6.4	A new Third Party supplier XXXX will be	Buyer name	11/11/2018	Jul-2019	Open

		performing the print capability.				
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9. Personal Data Processing Statement

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

10. Annex A. ISO27001 and/or Cyber Essential Plus certificates

<Any certifications relied upon should have their certificates included>

11. Annex B. Cloud Security Principles assessment

<A spreadsheet may be attached>

12. Annex C. Protecting Bulk Data assessment if required by the Buyer/Customer

<A spreadsheet may be attached>

13. Annex E. Latest ITHC report and Vulnerability Correction Plan

ANNEX 4 PART A SERVICE ACCESS

Annex 4 Part A and B is subject to any related assumptions contained within Attachment 4.1 of the Call Off Order form and the Supplier responses in column headed Supporting Information within the Requirements Matrix For Core Testing Platform Phase 1, as included within Call Off Order Form Attachment 2.1 Services Description.

1. All personnel must have completed Baseline Personnel Security Standard (BPSS) vetting or local equivalent (to be agreed with the NHSD or UKHSA security team) before working for NHSD or UKHSA. NHSD or UKHSA will identify key roles that will require security check (SC) or developed vetting (DV) vetting.
2. Personnel who are at BPSS or the local equivalent will have access to only those documents that are deemed necessary to carry out their role and at no higher than OFFICIAL-SENSITIVE. OFFICIAL-SENSITIVE Electronic and hard copy documents must not be removed from the NHSD or UKHSA logical and physical office environments unless specifically an SCS level Civil Servant in NHSD or UKHSA gives explicit agreement in writing.
3. Overseas personnel who passed the local BPSS-equivalent checks may have access to OFFICIAL documents and OFFICIAL-SENSITIVE documents.
4. Only those UK resident personnel with SC vetting may have access to SECRET documents unless NHSD or UKHSA give specific permission for other personnel to access. All SECRET documents will remain within the NHSD or UKHSA office environments.
5. NHSD or UKHSA equipment, such as but not limited to laptops or phones, must not be taken overseas without explicit written permission from the NHSD or UKHSA security team. Failure to comply will result in immediate access withdrawal from all NHSD / UKHSA systems.
6. Access to NHSD or UKHSA operational systems in production environments must be limited to personnel accessing from within the UK.
7. Privileged administrator access to NHSD or UKHSA production systems must be limited to UK residents with SC vetting using NHSD or UKHSA equipment. (Privileged administrator access includes those that have the rights to create, modify and delete, identities and access rights unless there is an agreed supervisory control).
8. Direct access to aggregated or mass customer data must be limited to UK residents with SC clearance using NHSD or UKHSA equipment. (Aggregated customer data refers to data pulled together from various sources/systems that contains statistical data about several individuals that has been combined to show general trends or values. Mass customer data refers to data sets containing more than 100,000 records or any data sets containing sensitive personal data as defined by the UK Data Protection Act 2018).
9. Access to development environments and developer collaboration tools is permitted using non-NHSD or non-UKHSA equipment that has been certified to Cyber Essentials Plus or similar standard agreed by NHSD or UKHSA, but any code developed on this equipment must be fully assured to a standard agreed by NHSD or UKHSA before deployment to production.

10. Staff may work overseas at contractually defined locations and must use an agreed route to access NHSD or UKHSA environments.
11. Suppliers must regularly provide NHSD or UKHSA with a list of all staff working outside of the UK and their domicile locations, these staff must not access NHSD or UKHSA environments from other locations.
12. All cloud environments must be in the UK region.
13. All development and test environments must only contain dummy test data.
14. Development and test environments must have assured separation from the live/production systems and must not use live / production information without prior written Authority approval.
15. All production environments must undergo NHSD or UKHSA assurance prior to the integration of NHSD or UKHSA data.
16. A Security Management System including a plan must be developed and maintained, structured in accordance with ISO27001:2013 or an equivalent standard agreed with the Authority, to cover the information assurance aspects throughout the life of the Contract. This will include risk management plans and other artefacts as agreed with the Authority. The Supplier shall review and update the Security Management System and plan at least annually in order to reflect on any changes in the Services and delivery methods and ensure that any changes to the Security Management System and plan are communicated to all relevant Supplier Personnel.
17. There must be a named accountable person from the Supplier who is accountable for the provision of technical, personnel, process and physical security aspects for the Services, including but not limited to security clearances.
18. The Authority must have the ability to audit and assess security controls and risk management methodology at the Supplier's Site.
19. Security must be embedded in all service management including but not limited to change management, incident management, and other Service management artefacts aligned with ISO2000 or an equivalent standard agreed with the Authority.
20. The System must be configured in line with the law, regulations and the Authority's policies, standards and guidance as amended from time to time, including malware policy, patching policy, password standard, information handling and security monitoring.
21. The System and Supplier's Site must have auditable authorisation, authentication and access control based on principle of least privilege and aligned appropriate to the business requirement.
22. The System and processes must enforce separation of duties based upon agreed risk assessment and management.

23. The System must be developed and reviewed against Good Industry Practice, including security testing of the infrastructure and applications, in line with HMG standards and guidelines (and as a minimum those available from the National Cyber Security Centre).
24. The Supplier must share with the Authority the outputs of any risk assessment, mitigation actions and any remaining remediation plans.
25. The Supplier shall ensure that all Supplier Personnel and Sub-contractors are provided with appropriate security education, training and awareness in light of their role, with this aspect being reviewed at least annually. Training shall include elements of physical, personnel and cyber security guidance.
26. The Supplier must have security operational awareness, detection, prevention, response, and remediation processes / controls to effectively manage security incidents.
27. The Supplier must conduct vulnerability management and penetration testing of the System and address the findings of such tests or have the Authority accept in writing any findings that will not be addressed. Penetration testing must be conducted using a suitably qualified third party
28. The Supplier must ensure that the System and any associated infrastructure are designed in a manner to ensure effective physical and logical separation.
29. The Supplier must adopt the Authority's preferred protective monitoring capability or provide their own which is recognised as exceeding the former.
30. Supplier must work with the Buyer to define and establish and maintain a cyber security and data privacy risk register.
31. Supplier must create and maintain security controls library which includes control purpose, scope, effectiveness, and maturity. Provide regular reporting to NHSD Security.
32. Supplier must conduct security testing, including but not limited to static code analysis, configuration compliance, vulnerability analysis, and authorised simulated cyber-attacks with a defined scope ("pen testing"). The frequency and scope of testing, and timescales for remediation will be agreed by NHSD Security. Specific remediation plans will be prioritised based on risk (score based on industry practice such as CVSS), and business functionality priorities.
33. Supplier must identify material data assets, create and maintain a Data Asset Register. The Register will specify the agreed retention period(s), encryption standards for transmission or storage (if any) and agreed methods or standards for data erasure and/or data archival.
34. Supplier must follow the Buyer's processes for raising and managing cyber security incidents and integrate as required with nominated stakeholders.
35. In complying with the Cyber Security Requirements, Supplier activities may include but are not limited to:

- Apply Identity and Access Management (IAM) good practices to protect Data, noting the distinction between IAM for (1) the Supplier and authorised third parties, and (2) end-users of the Solution.
- Implement and document cyber security and data privacy awareness training for its employees within the scope of the Services.
- Apply and maintain good practices and training on Secure Software Development Lifecycle.
- Implementation of a requirements-driven Security Testing regime to support assurance and acceptance of service and application releases.
- Improvements to security network segregation through improving network perimeter security (including content inspection and web application firewalls)
- Development of Business Continuity and Disaster Recovery Plans, including exercises to identify and uplift shortfalls with specified Buyer service levels.
- Review Cyber Incident Response processes and playbooks, integrating with the Buyer incident management and uplifting SLAs in line with Buyer requirements.
- Support with the identification of relevant industry and regulatory standards related to data protection and working with the delivery teams across the Supplier, the Buyer and UKHSA to ensure these are evaluated, documented, and implemented across the programme in line with risk appetite.
- Overseeing change management activity to ensure the Supplier's responsibilities as a data processor are followed and relevant artefacts (such as data processing agreements and data flow diagrams) are maintained and sustained throughout change activity.

PART B CYBER SECURITY PROTECTIVE MONITORING

1. Supplier must implement Protective Monitoring to capture and analyse event logs in order to detect indicators of malicious activity, for agreed use cases.
2. Events should be collected into a central location (SIEM and analytics platforms) and algorithms run over this data to identify activity that warrants further investigation. Supplier should review this activity and raise incidents to the Buyer's Security Operations teams for resolution, whilst also informing the Buyer's CDOC.
3. Supplier shall undertake to collaborate with the Buyer to integrate all security protective monitoring, alerting, and supporting activity within the Buyer CDOC and CSOC processes. This includes identifying assets and services that require monitoring, establishing monitoring use cases, defining and implementing monitoring playbooks, and any other activities that may arise. The exact nature of the requirement in this area will be informed by CSOC and CDOC stakeholders and will require cooperation between Supplier and Buyer to define but may include establishing monitoring playbooks for Supplier' staff to carry out, with associated alerting and escalation to the Buyer, or may include direct ingestion of security event data by CDOC and CSOC as appropriate, with support from Supplier' staff.
4. Supplier will be required to participate in regular Threat Hunting over the collected data. Threat Hunting is where analysts will proactively query the data collected to identify potential attacks that were not detected by operational monitoring. Supplier and Buyer stakeholders will need to agree threat hunting playbooks to ensure that the relevant risks identified by the Buyer are subject to appropriate security analysis.
5. The solution must have both an audit trail and appropriate file meta data so that a user can see who created or updated data without having to have access to the back-end system.

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6. Data suppression and deletion are required but must be logged and controllable by role.
 7. The Halo platform will provide user authentication and role-based access controls for services running on it. Supplier must adhere to the processes in place for the platform.
 8. The solution must deliver authentication based on a 'unique user identity' which is then appropriately authenticated.
 9. Role based access controls must ensure that only those who should have access to the systems can access the systems.

SCHEDULE 6.2: TESTING PROCEDURES

1. DEFINITIONS

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

"Component"	means any constituent parts of the Deliverables;
"Material Test Issue"	means a test issue of Severity Level 1;
"Release"	shall mean a set of Deliverables, agreed by the Buyer as being something which can be released to the intended users of the set of Deliverables;
"Release Approval"	means formal approval by the Buyer of a Release to production;
"Severity Level"	means the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test"	means a procedure intended to establish the quality, performance, or reliability of a Component;
"Test Issue"	means a test issue of Severity Level 1, Severity Level 2, Severity Level 3 or Severity Level 4 as set out in the relevant Test Plan;
"Test Issue Management Log"	means a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
"Test Plan"	means a specific set of tests to be incorporated as part of a release plan or included within test documentation;
"Test Reports"	means the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	means the specification that sets out the Test Success Criteria and how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
"Test Strategy"	means a strategy for the conduct of Testing as described further in Paragraph 4.2 of this Schedule;

**"Test Success
Criteria"**

in relation to a Test, the test success criteria for that Test as specified in the relevant Test Specification;

"Test Witness"

means any person appointed by the Buyer pursuant to Paragraph 10 of this Schedule;

"Tester"

means the organisation responsible for testing as allocated in accordance with the Test Strategy (described in Paragraph 3.1);

**"Testing
Procedures"**

means the applicable testing procedures and Test Success Criteria set out in this Schedule; and

"Live Proving"

means demonstration of successful operation of a deployed Deliverable in an end to end business context.

2. AGILE TESTING

2.1 Testing described in this Schedule shall apply to software as well as other Deliverables (for example migration of data sets).

2.2 When requested by the Buyer, the Supplier shall, with appropriate input from the Buyer, undertake Release planning and shall produce a Test Plan.

2.3 With each Agile development iteration, development teams are required to incorporate the underlying ethos of Agile testing and the Supplier should aim to provide on request:

- (i) the written test scripts;
- (ii) the code intended to perform the digital activity; and
- (iii) test results of the code / activity against the test scripts.

2.4 Wherever possible Testers are required to automate testing (e.g. relevant functional test cases) and automate and execute any regression tests. This shall form part of acceptance testing.

2.5 Prior to release additional tests which may include, but shall not be limited to (as will be agreed within the relevant Test Plan):

- (i) load tests (to be conducted monthly rather than per release unless agreed separately in the Test Plan prior to the release);
- (ii) manual & automated functional testing
- (iii) complete regression tests;
- (iv) penetration testing of new functionality added to the release unless agreed separately in the Test Plan prior to the release;
- (v) integration tests against mocked services;
- (vi) participate in the execution of E2E integration tests when agreed through the NHS Integration Test Plan
- (vii) deployment tests;
- (viii) post deployment testing; and
- (ix) release readiness tests,

shall be executed by the Tester.

2.6 The Supplier shall develop reusable test scripts in a modular manner which can be incorporated within a larger library of routinely run test scripts.

2.7 The Test Strategy will define how testing within the context of iterative agile development interacts with the broader testing of Deliverables and other testing required.

3. HOW TESTING SHOULD WORK

3.1 The identity of the Testers shall vary according to the responsibilities allocated for the relevant Test in the Test Strategy (as supplemented by the Test Plan). If the Test Strategy asserts "sole responsibility" for Testing, then the Tester shall be the Supplier and the Supplier shall hold accountability. If the Test Strategy refers to Testers in

blended teams which may involve both the Buyer and Supplier (such as “Rainbow Teams” or “Self Directed Teams”) then accountability for testing shall be clearly defined within the Test Strategy.

- 3.2 All Tests conducted by the Tester shall be conducted in accordance with the Test Strategy, Test Specification and, as appropriate within an agile context, the Test Plan.
- 3.3 The Supplier will run and successfully complete pre-integration Tests as set out in the relevant Test Plan prior to integration of any Deliverables, unless this requirement is waived by the Buyer.
- 3.4 Where agreed within the Test Plan, the Tester shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.5 Agile iterative tests, as agreed within the Test Strategy, shall align with the iterative development cycle and shall contribute to, but not necessarily be reflected in, the Deliverable level testing regime described within this Schedule.
- 3.6 Prior to granting Release Approval ~~Satisfaction Certificate~~, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

4. PLANNING FOR TESTING

- 4.1 The Supplier shall develop an overarching Test Strategy within three (three) months of contract signature.
- 4.2 The overarching Test Strategy shall include the following principles:
 - 4.2.1 an overview of how Testing will be conducted in relation to the relevant Implementation Plan;
 - 4.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 4.2.3 the procedure to be followed if a Deliverable fails a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
 - 4.2.4 the procedure to be followed to sign off each Test;
 - 4.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
 - 4.2.6 the names and contact details of the Buyer and the Supplier's Test representatives;
 - 4.2.7 a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;
 - 4.2.8 the technical environments required to support the Tests; and
 - 4.2.9 the procedure for managing the configuration of the Test environments.
 - 4.2.10 extraordinary processes for testing of hotfixes and other emergency releases.

4.3 The Test Strategy shall be approved by the Buyer.

4.4 The Supplier shall update the overarching Test Strategy to reflect the specific needs of Changes which are agreed.

5. PREPARING FOR TESTING

5.1 As defined within the Test Strategy, the Tester shall develop Test Plans and submit these for approval as soon as practicable prior to the start date for the relevant Testing as specified in the relevant Implementation Plan.

5.2 Each Test Plan shall include as a minimum:

5.2.1 the approach to be taken to the testing, the purpose of the testing, the Release to which it relates, the epics being tested, any testing or items deemed out of scope, and the test process; and

5.2.2 the summary of the in scope tickets for the release, test impact assessment, out of scope items, in scope test types, test processes, test schedule, Test Witnessing and Quality Audit requirements

5.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Tester shall implement any reasonable requirements of the Buyer in the Test Plan.

5.4 The Buyer shall develop relevant end-to-end Test Plans and submit these for review no later than one (1) Working Days prior to the start date for the relevant Testing.

5.5 The Buyer shall identify and deliver any required 3rd party environments and integration required to execute the relevant end-to-end Test Plan.

6. HOW DELIVERABLES WILL BE TESTED

6.1 The Tester shall make the Test Specification for the relevant Deliverables available during Testing (as specified in the Implementation Plan). The Test Specification will be completed prior to the test exit report being agreed.

6.2 Each Test Specification shall include as a minimum:

6.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;

6.2.2 a plan to make the resources available for Testing;

6.2.3 Test scripts (or a link to the relevant Test tool where these are held);

6.2.4 Test pre-requisites and the mechanism for measuring them; and

6.2.5 expected Test results, including:

(a) a mechanism to be used to capture and record Test results; and

(b) a method to process the Test results to establish their content.

6.2.6 a plan to verify successful deployment of the Deliverable, such as through post deployment tests and monitoring.

7. PERFORMING THE TESTS

- 7.1 Before submitting any Deliverables for Testing the Tester shall subject the relevant Deliverables to its own internal quality control measures.
- 7.2 The Tester shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 10.3.
- 7.3 The Tester shall notify the Buyer upon request of possible dates and times for Test Witnesses to attend the Tests remotely (via screen sharing and video calls).
- 7.4 Where in person attendance at a test is not reasonably practical, the Tester shall facilitate virtual Test witnessing such as via online screen sharing.
- 7.5 The Buyer may raise and close Test Issues during the Test witnessing process.
- 7.6 The Tester shall provide to the Buyer in relation to each Test:
 - 7.6.1 a draft Test Report a reasonable period prior to the planned time of the Release to production; and
 - 7.6.2 the final Test Report within 2 Working Days of completion of Testing.
- 7.7 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 7.7.1 an overview of the Testing conducted including a breakdown of testing performed against the epics and major user stories in scope for testing
 - 7.7.2 Where exploratory testing has been agreed in the Test Plan an exploratory test charter providing a summary of the testing undertaken and screenshot evidence to accompany any observations made.
 - 7.7.3 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Tester's explanation of why any criteria have not been met;
 - 7.7.4 the Tests that were not completed together with the Tester's explanation of why those Tests were not completed;
 - 7.7.5 the list of unresolved defects being introduced by the release and their severity ratings.
 - 7.7.6 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
 - 7.7.7 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
 - 7.7.8 for each test not passed, a proposed severity of the Test Issue's severity impact and fix priority as specified in Paragraph 8.1.

7.8 When a Milestone has been completed the Tester shall submit any Deliverables relating to that Milestone for Testing.

7.9 Not used.

7.10 If the Tester successfully completes the requisite Tests (by achieving the applicable Test Success Criteria), the Buyer shall grant Release Approval as soon as reasonably practical following such successful completion.

7.11 Notwithstanding the granting of Release Approval, the Supplier shall remain responsible for ensuring that the Testing of Deliverables are implemented in accordance with this Contract as defined within the Test Strategy.

8. DISCOVERING PROBLEMS

8.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Tester shall log Test Issues reflecting the Severity Level allocated to each Test Issue.

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

8.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Tester. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using an expedited dispute timetable.

9. LIVE PROVING

9.1 The Buyer and the Supplier may from time to time agree that the Tester shall facilitate Live Proving of a Deliverable in an end to end business context. This may include, but is not limited to, acceleration and manipulation of Live Proving transactions.

10. TEST WITNESSING

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

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

10.3 The Test Witnesses:

10.3.1 shall agree in advance through the Test Plan any witnessing requirements for a specific release.

10.3.2 shall actively review the Test documentation;

10.3.3 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;

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

11. AUDITING THE QUALITY OF THE TEST

- 11.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a "**Testing Quality Audit**").
- 11.2 The Buyer will communicate and agree any Test Quality Audit requirements through the Test Plan to allow the Supplier to impact assess this against delivery timescales.
- 11.3 The Tester shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Buyer will give the Tester at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 11.5 The Tester shall provide all reasonably necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Tester detailing its concerns and the Tester shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 11.7 In the event of an inadequate response to the written report from the Tester, the Buyer (acting reasonably) may withhold Release Approval until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.
- 11.8 The Buyer or an agent or contractor appointed by the Buyer may perform an assessment of the Supplier's quality processes and technologies (each a "**Supplier Quality Maturity Assessment**"). This means scoring of Supplier's capability against pre-defined criteria through information elicited via Buyer's standard quality maturity assessment questionnaire.
- 11.9 The Buyer will give the Tester at least 15 Working Days' written notice of the Buyer's intention to undertake a Supplier Quality Maturity Assessment.
- 11.10 Subject to any measures or limitations Supplier considers reasonably necessary to protect or take account of Supplier's confidentiality, intellectual property, data protection, security requirements or other legal or regulatory obligations, the Tester shall provide all reasonably necessary assistance and reasonable access to all relevant documentation required by the Buyer to enable it to carry out the Supplier Quality Maturity Assessment.

12. OUTCOME OF THE TESTING

- 12.1 The Buyer will grant Release Approval when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Tester and:
- 12.2.1 the Buyer may grant Release Approval conditional upon the remediation of the Test Issues;
- 12.2.2 the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Tester to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
- 12.2.3 where the Supplier has “sole responsibility” (as identified in the relevant Test Plan) and the failure to satisfy the Test Success Criteria is: (i) due to circumstances within the control of the Supplier; and (ii) results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer’s other rights and remedies, such failure shall constitute a Default.
- 12.3 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria and result in a Material Test Issue where the Supplier has “sole responsibility” (as identified in the relevant Test Plan), the failure to satisfy the Test Success Criteria is due to circumstances within the control of the Supplier and the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, the Buyer shall be entitled, without prejudice to its other rights and remedies, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing of the relevant Release which is required for the Test Success Criteria for the relevant Deliverable(s) to be satisfied.
- 12.4 The Buyer shall grant Release Approval in respect of a given Milestone as soon as is reasonably practicable following:
- 12.4.1 the granting by the Buyer of Release Approval and/or conditional Release Approval in respect of all Deliverables related to that Milestone which are due to be Tested; and
- 12.4.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.
- 12.5 The granting of Release Approval shall entitle the Supplier to the receipt of a payment in respect of relevant Milestones in accordance with the provisions of Schedule 7.1 (Charges).
- 12.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 12.7 Not used.
- 12.8 If there is one or more Material Test Issue(s), the Buyer may refuse to grant Release Approval and, without prejudice to the Buyer’s other rights and remedies, such failure shall constitute a Default if the Supplier holds “sole responsibility” (as

identified in the Test Strategy) and the cause of the Material Test Issue(s) is due to circumstances in the control of the Supplier.

12.9 If there are Severity Level 2 Test Issues and/or Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to grant Release Approval conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:

12.9.1 any Rectification Plan shall be agreed before the granting of conditional Release Approval unless the Buyer agrees otherwise (in which case the Tester shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 12.6); and

12.9.2 where the Buyer grants conditional Release Approval, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

13. RISK

13.1 The granting of Release Approval and/or conditional Release Approval shall not:

13.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or

13.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which Release Approval relates.

Annex 1:

Test Issues – Severity Levels

1. SEVERITY 1 ERROR – “HIGHEST”

EXAMPLES:

- 1.1 There is a (functional or non-functional) defect which means a user journey cannot be completed.
- 1.2 Eg journey ends prematurely with a 400 or 404 error page not found error.
- 1.3 Defect resulting in uncontrolled data loss or corruption.
- 1.4 Defect enabling unauthorised access to personal or sensitive data.
- 1.5 Defects resulting in DCB0129 / DCB0160 clinical hazard assessment of ‘high’ or ‘very high’
- 1.6 Accessibility defect preventing completion of journeys intended to be accessible to members of the public by visually impaired users via screen reader.

2. SEVERITY 2 ERROR – “HIGH”

EXAMPLES:

- 2.1 There is a defect which means a user journey can be completed, but the user will experience issues where workarounds have to be applied in order to complete journey.

3. SEVERITY 3 ERROR – “MEDIUM”

- 3.1 There is a defect which means a user journey can be completed functionally without error, but the defect can be circumnavigated easily with a work around, or is an edge case and the risk is low.

4. SEVERITY 4 ERROR – “LOW”

- 4.1 There are cosmetic defects or defects that have no effect on the user’s journey through the application.
- 4.2 Eg cosmetic , spelling mistakes, spacing issues, text positioning in buttons.

Annex 2:

Release Approval

To: [insert name of Supplier]

From: [insert name of Buyer]

[insert Date dd/mm/yyyy]

Dear Sirs,

Release Approval

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

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

The definitions for any capitalised terms in this certificate are as set out in the Call-Off Contract.

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

[OR]

[This Release Approval is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

acting on behalf of [insert name of Buyer]

SCHEDULE 7.1 CHARGES AND INVOICING

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

- “European Standard”** in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
- “Indexation” and “Index”** the adjustment of an amount or sum in accordance with Paragraph 6 of Part C;
- “Reimbursable Expenses”** reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's expenses policy current from time to time, but not including:
- (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and
 - (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
- “Supporting Documentation”** sufficient information in writing to enable the Buyer reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;

Part A: Pricing

1. APPLICABLE PRICING MECHANISM

1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and Annex 3 of this Schedule 7.1 (Charges and Invoicing). Appendix 1 sets out which pricing mechanism shall be used to calculate each Milestone Payment and Service Charge, which shall be one or more of the following:

- (a) “**Time and Materials**”, in which case the Provisions of Paragraph 2 shall apply;
- (b) “**Fixed Price**”, in which case the provisions of Paragraph 3 shall apply.

2. TIME AND MATERIALS MILESTONE PAYMENTS OR SERVICE CHARGES

2.1 Where Attachment 7.1 (Charges) of the Order Form indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:

- (a) the day rates set out in Annex 3 of Part A of this Schedule 7.1 (Charges) of the Order Form shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - (i) not be entitled to include any uplift for risks or contingencies within its day rates;
 - (ii) not be paid any Charges to the extent that they would otherwise exceed the cap (if any) specified against the relevant Charge in Schedule 7.1 (Charges) of the Order Form unless the Supplier has obtained the Buyer’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Buyer immediately in the event of any risk that the cap may be exceeded and the Buyer shall instruct the Supplier on how to proceed;
 - (iii) unless otherwise agreed by the Buyer in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount calculated by multiplying:
 - (A) the total number of days expended by the Supplier in relation to the relevant Milestone; or
 - (B) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,

1. by the Capped ADR; and

- (iv) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier’s obligation to deliver the Services in a proportionate and efficient manner; and
- (b) the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Buyer requests copies of such records, the Supplier shall make them available to the Buyer within 10 Working Days of the Buyer’s request.

2.2 The Supplier shall be entitled to Index the rates set out in Paragraph 6 of Part C of this Schedule 7.1 (Charges) of the Order Form and the Capped ADR in accordance with Paragraph 6 of Part C, but any other caps set out in Attachment 7.1 (Charges) of the Order Form shall not be subject to Indexation.

3. NOT USED

4. FIXED PRICE MILESTONE PAYMENTS OR SERVICE CHARGES

4.1 Where this Schedule 7.1 (Charges and Invoicing) indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be calculated in accordance with Annex 2 and Annex 3 of this document. Charges

calculated by reference to a Fixed Price pricing mechanism shall be subject to increase by way of Indexation.

5. NOT USED

6. NOT USED

7. REIMBURSABLE EXPENSES

7.1 Where:

- (a) Services are to be charged using the Time and Materials pricing mechanism; and
- (b) the Buyer so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Buyer for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

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

7.3 Except as expressly set out in Paragraph 6.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Buyer to the Supplier in respect of such performance, including in respect of matters such as:

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

Part B: Charging Mechanisms

1. NOT USED

(a)

2. SERVICE CHARGES

2.1 Each Service to which a Service Charge relates shall commence as set out in Annex 2 or Annex 3 (as applicable).

2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.

2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:

(a) commences on a day other than the first day of a month; and/or

(b) ends on a day other than the last day of a month,

the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.

2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Buyer unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

3. OPTIONAL SERVICES

Not Used.

PART C: Adjustments to the Charges

4. SERVICE CREDITS

4.1 Service Credits shall be calculated pursuant to the provisions of Schedule 2.2 (*Performance Levels*).

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

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

4.4 Service Credits shall be shown as a deduction from the amount due from the Buyer to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

5. CHANGES TO CHARGES

- 5.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with Schedule 8.2 (Change Control Procedure).
- 5.2 The Buyer may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

6. INDEXATION

- 6.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph 6 to reflect the effects of inflation.
- 6.2 Where Indexation applies, the relevant adjustment shall be:
- (a) applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an “**adjustment date**”); and
 - (b) determined by multiplying the relevant amount or sum by the percentage increase or changes in the Consumer Price Index published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.
- 6.3 Except as set out in this Paragraph 6, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

7. ALLOWABLE ASSUMPTIONS

Not Used.

8. RISK REGISTER

Not Used.

Part C:

Not Used.

Part D: Invoicing and Payment Terms

1. SUPPLIER INVOICES

- 1.1 The Buyer shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
- (a) comply with the requirements of the Buyer’s e-invoicing system;
 - (b) prepare and provide to the Buyer for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Buyer may

reasonably require to assess whether the Charges that will be detailed therein are properly payable; and

- (c) make such amendments as may be reasonably required by the Buyer if the template invoice outlined in (b) is not approved by the Buyer.

1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Buyer's e-invoicing system, or that it contains the following information:

- (a) the date of the invoice;
- (b) a unique invoice number;
- (c) the Service Period or other period(s) to which the relevant Charge(s) relate;
- (d) the correct reference for this Contract;
- (e) the reference number of the purchase order to which it relates (if any);
- (f) the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
- (g) a description of the Services;
- (h) the pricing mechanism used to calculate the Charges (such as Fixed Price, Time and Materials etc.);
- (i) in respect of the Support-Run Service Charges, Embedded Changes Service Charges and any services delivered pursuant to a Change Control Notice, the invoice must contain details of the Services and Deliverables, and details of the work undertaken by the specific teams/squads and the roles within those teams used in delivery of such Services and/or Deliverables;
- (j) any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
- (k) the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Buyer under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
- (l) details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
- (m) reference to any reports required by the Buyer in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports issued by the Supplier for validation by the Buyer, then to any such reports as are validated by the Buyer in respect of the Services);
- (n) a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
- (o) the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
- (p) where the Services have been structured into separate Service lines, the information at (a) to (o) of this paragraph 1.3 shall be broken down in each invoice per Service line.

- 1.4 The Supplier shall invoice the Buyer in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Buyer a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Buyer, following which the Supplier shall be entitled to submit its invoice.
- 1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Buyer as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Buyer any other documentation reasonably required by the Buyer from time to time to substantiate an invoice.
- 1.6 The Supplier shall submit all invoices and Supporting Documentation to:
- sbs.invoicing@nhs.net
- with a copy (again including any Supporting Documentation) to such other person and at such place as the Buyer may notify to the Supplier from time to time.
- 1.7 All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Buyer in writing.
- 1.8 The Buyer shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Buyer's requirements set out in this Part E, the Buyer shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.
- 1.9 If the Buyer fails to consider and verify an invoice in accordance with paragraphs 1.4 and 1.8, the invoice shall be regarded as valid and undisputed for the purpose of paragraph 2.1 (payment in 30 days) after a reasonable time has passed.

2. PAYMENT TERMS

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

APPENDIX 1: PRICING MECHANISM

Introduction

1.1 The Charges shall be made up of:

1.1.1 the Support-Run Service charges described in Paragraph 1.3 below; and

1.1.2 the Call Off Contract charges for Embedded Change Services (calculated in accordance with the rate card) described in Paragraph 1.4 below.

1.2 **NOT USED**

1.3 **SUPPORT-RUN SERVICES CHARGES**

The Charges payable by the Buyer in respect of Run Services will be invoiced in accordance with the frequency and amounts as set out in Annex 2.

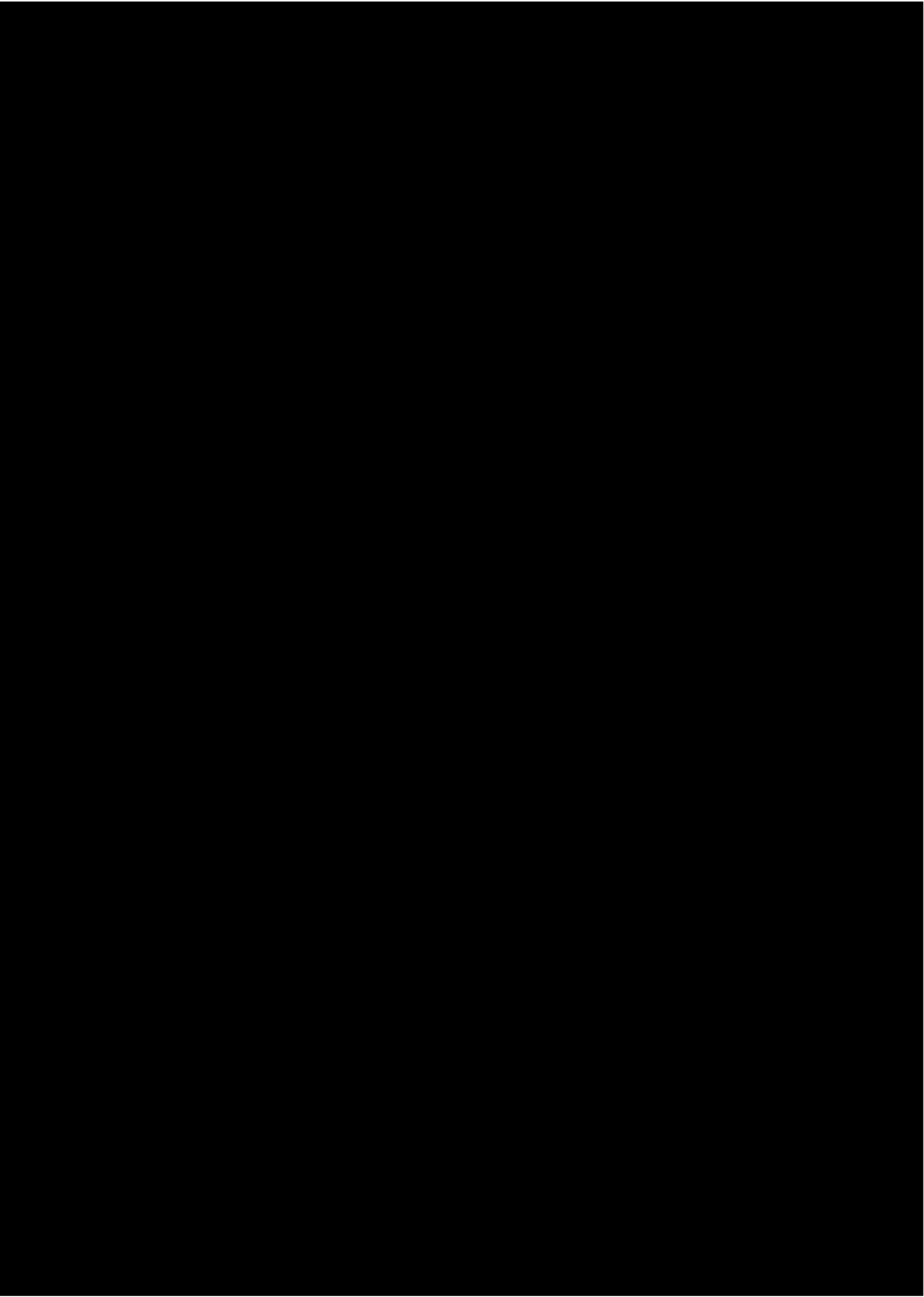
1.4 **EMBEDDED CHANGE SERVICES CHARGES**

Further to the Embedded Change Services Demand Management process described in Attachment 4.1 (Supplier Solution) the Parties will agree the required resource requirements which shall be billed based on actuals in accordance with the rate card set and resourcing profile out in Annex 3.



Annex 1 –

NOT USED.



SCHEDULE 7.5: FINANCIAL REPORTS AND AUDIT RIGHTS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Audit Agents”	(a) the Buyer’s internal and external auditors;
	(b) the Buyer’s statutory or regulatory auditors;
	(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
	(d) HM Treasury or the Cabinet Office;
	(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and
	(f) successors or assigns of any of the above;
“Onerous Contract”	a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;
“Onerous Contract Report”	means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;

PART A: ONEROUS CONTRACTS

1. Not used

2. Not used

3. ONEROUS CONTRACTS

3.1 If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Buyer of the designation and shall prepare and deliver to the Buyer 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 Contract 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 Contract as an Onerous Contract;
 - (c) the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
 - (d) details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Buyer 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 Buyer's receipt of the draft Onerous Contract Report.
- 3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Buyer and Programme Board on an information only basis and the Buyer 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 Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

PART B: NOT USED

PART C: AUDIT RIGHTS

1. AUDIT RIGHTS

- 1.1 The Buyer, acting by itself or through its Audit Agents, provided such Audit Agent has been approved in advance by the Supplier (acting reasonably), shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier of the Supplier's obligations under this Contract, including for the following purposes:
- (a) to verify the accuracy of the Charges and any other amounts payable by the Buyer under this Contract (and proposed or actual variations to such Charges and payments);
 - (b) to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law;
 - (c) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or reasonably suspected breach of security and in the case of

actual or suspected fraud or dishonesty the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;

- (d) to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
- (e) to obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
- (f) to carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
- (g) 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 Buyer has used its resources;
- (h) to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
- (i) 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;
- (j) to review the accuracy and completeness of the Registers;
- (k) to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
- (l) to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
- (m) to review the Supplier's compliance with the Standards;

1.2 Except where an audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has committed a material breach of this Contract, the Buyer may not conduct an audit of the Supplier more than once in any Contract Year. In such instances, the scope of the Audit will be limited to what is required to meet the relevant regulatory body's requirements or to investigate whether the suspected material breach has occurred, as applicable.

1.3 Nothing in this Contract 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 for the purposes of and pursuant to applicable Law.

2. CONDUCT OF AUDITS

2.1 The Buyer shall during each audit comply with those reasonable security, sites, systems and facilities operating procedures of the Supplier 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 Buyer's obligations of confidentiality, the Supplier shall on demand provide the Buyer and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- (a) all information requested by the Buyer within the permitted scope of the audit; and
 - (b) access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.
- 2.4 Except where an audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has committed a material breach of this Contract (in which circumstances the Buyer shall notify the Supplier of its intent to conduct an audit as soon as reasonably practicable and the scope of the Audit will be limited to what is required to meet the relevant regulatory body's requirements or to investigate whether the suspected material breach has occurred, as applicable), the Buyer shall provide at least 15 Working Days' notice of its intention to conduct an audit and shall agree the scope of each audit in advance with the Supplier.
- 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 Buyer for all the Buyer's reasonable costs incurred in connection with the audit.

3. USE OF SUPPLIER'S INTERNAL AUDIT TEAM

- 3.1 As an alternative to the Buyer's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Buyer may request 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 Buyer under Paragraph 3.1 above, where the Supplier agrees to undertake the audit using its own internal audit function, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Buyer 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 Buyer may (without prejudice to any rights and remedies the Buyer 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 Buyer has overpaid any Charges, the Supplier shall pay to the Buyer:
 - (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 Buyer up to the date of repayment by the Supplier; and
 - (iii) the reasonable costs incurred by the Buyer in undertaking the audit,the Buyer may exercise its right to deduct such amount from the Charges if it prefers;
or
- (d) the Buyer has underpaid any Charges, the Buyer shall make promptly good the underpayment and the Supplier shall not be entitled to increase the Charges paid or payable by the Buyer.

SCHEDULE 8.2: CHANGE CONTROL PROCEDURE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Buyer Change Manager”	the person appointed to that position by the Buyer from time to time and notified in writing to the Supplier or, if no person is notified, the Buyer Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5;
“Receiving Party”	the Party which receives a proposed Contract Change; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Buyer 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 Contract 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 Buyer 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 Contract, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Buyer 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 Buyer in accordance with Paragraph 6.2, then:
- (a) unless the Buyer expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
 - (b) any discussions, negotiations or other communications which may take place between the Buyer 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 Contract.
- 2.6 The Supplier shall:
- (a) within 10 Working Days of the Buyer's signature and issue of a Change Authorisation Note, deliver to the Buyer a copy of this Contract 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 Buyer such further copies of the updated Contract as the Buyer may from time to time request.
- 3. COSTS**
- 3.1 Subject to Paragraph 3.3, each party shall bear its own costs for preparing and processing Change Requests.
- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in Attachment 7.1 (*Charges*) of the Order Form. The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources

and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.

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

4. CHANGE REQUEST

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

4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Buyer 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 Buyer issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request the timetable for preparing the Impact Assessment. The timetable shall provide for the completed Impact Assessment to be received by the Buyer within ten (10) Working Days of confirmation from the Buyer that it wishes to proceed, or within a longer time period agreed by the Buyer.

4.4 The Supplier shall provide the completed Impact Assessment to the Buyer as soon as is reasonably practicable and in any event within the period agreed as referred to in paragraph 4.3. 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 Buyer and provided that sufficient information is received by the Buyer to fully understand:

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

then the time period to complete the Impact Assessment shall be extended by the time taken by the Buyer to provide that clarification. The Buyer 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 Contract;

- (c) any variation to the terms of this Contract that will be required as a result of that impact, including changes to:
 - (i) the Services Description, the Performance Indicators and/or the Target Performance Levels;
 - (ii) the format of Buyer 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 Buyer, including any changes required by the proposed Contract Change to the Buyer'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 Buyer may reasonably request in (or in response to) the Change Request.
- 5.2 Subject to the provisions of Paragraph 5.3, the Buyer shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.3 If the Buyer is the Receiving Party and the Buyer 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 Buyer within 10 Working Days of receiving such notification. At the Buyer's discretion, the Parties may repeat the process described in this Paragraph 5.3 until the Buyer is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.4 The calculation of costs for the purposes of Paragraphs 5.1(d) and 5.1(e) shall:
- (a) be based on the Financial Model;
 - (b) facilitate the Financial Transparency Objectives;

- (c) include estimated volumes of each type of resource to be employed and the applicable rate card;
- (d) include full disclosure of any assumptions underlying such Impact Assessment;
- (e) include evidence of the cost of any assets required for the Change; and
- (f) include details of any new Sub-contracts necessary to accomplish the Change.

6. BUYER'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 5.3, the Buyer 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 Buyer 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 Buyer 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) if 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 5.3, on receiving the modified Change Request and/or Impact Assessment, the Buyer shall approve or reject the proposed Contract Change within 10 Working Days.

6.2 If the Buyer 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 Buyer for its signature. Following receipt by the Buyer of the Change Authorisation Note, it shall sign both copies and return one copy to the Supplier. On the Buyer's signature the Change Authorisation Note shall constitute (or, where the Buyer 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 Contract.

6.3 If the Buyer does not sign the Change Authorisation Note within 10 Working Days, then the Supplier shall have the right to notify the Buyer and if the Buyer 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

7.1 Following an Impact Assessment, if:

- (a) the Supplier reasonably believes that any proposed Contract Change which is requested by the Buyer 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 Buyer'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,

7.2 then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Buyer 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 (not counting Change Requests for an increase in personnel resources as described in paragraph 9); and
- (b) the proposed Contract Change is not significant (as determined by the Buyer acting reasonably),

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

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

9. REQUESTS FOR SCALING UP OF RESOURCE

9.1 Where a Change Request from the Buyer is specifically for an increase in personnel resources to be deployed to provide Services, the Supplier shall deploy the additional personnel within 30 days of the Change Request, and the following timescales shall apply to the documentation to support fulfilment of the Change Request within the overriding timeframe of 30 days:

- (a) the Supplier shall provide an Impact Assessment within 5 Working Days after the Change Request;

- (b) if the Buyer requires any amendments or further information in relation to an Impact Assessment, the Buyer shall request it within 2 Working Days of receipt of the Impact Assessment;
- (c) where there is a requirement for the Supplier to provide further information, or to amend and re-issue the Impact Assessment, the Supplier shall complete this within 2 Working Days of receipt of a request; and
- (d) the Buyer shall approve or reject the proposed a finalised Contract Change within 2 Working Days.

9.2 The process outlined in paragraph 9.1 in relation to an increase in personnel resources shall operate separately from the Fast-track Change procedure outlined in paragraph 8.

10. OPERATIONAL CHANGE PROCEDURE

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

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

10.3 The RFOC shall include the following details:

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

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

10.5 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 Buyer when the Operational Change is completed.

11. COMMUNICATIONS

For any Change Communication to be valid under this Schedule, it must be sent to either the Buyer 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 BUYER:		SIGNED ON BEHALF OF THE SUPPLIER:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

SCHEDULE 8.3: DISPUTE RESOLUTION PROCEDURE

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: <ul style="list-style-type: none">(a) another contract with the Buyer or the Supplier which is relevant to this Contract; or(b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2. DISPUTE NOTICES

2.1 If a Dispute arises then:

- (a) the Buyer 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 Buyer) 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 Buyer 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 Buyer 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 Contract 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 Contract 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 Buyer.
- 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 Contract, 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 Buyer 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 Buyer 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 Buyer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Buyer and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Buyer's commercial director and the Supplier's Engagement Lead.
- 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 6.2(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 Buyer 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 Buyer of its intentions and the Buyer 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 Buyer 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 Buyer 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 Contract 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:

- 8.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
- 8.2 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 Buyer reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Buyer 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 Buyer’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 Buyer.
- 9.4 The Buyer 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 Buyer shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - (b) not a Multi-Party Dispute, in which case the Buyer 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 Buyer 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 Buyer;
 - (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 Buyer 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 Buyer, 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 Buyer 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 8.5: EXIT MANAGEMENT

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

“Application Programming Interface” or “API”	Means a piece of software that facilitates access to the Supplier’s application(s) to provide access to business functionality and/or Buyer Data to support any relevant Termination Services which conforms to the Government Digital Service API technical and data standards set online at: https://www.gov.uk/guidance/gds-api-technical-and-data-standards
“Emergency Exit”	any termination of this Contract which is a: (a) termination of the whole or part of this Contract in accordance with Clause 33 (Termination Rights), except where the period of notice given under that Clause is greater than or equal to 6 months; (b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 33 (Termination Rights); or (c) wrongful termination or repudiation of this Contract by either Party;
“Ethical Wall Contract”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties' respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Buyer of the same date as this Contract;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub contractor in connection with the Services but

	which are also used by the Supplier or Key Sub contractor for other purposes of material value;
“Ordinary Exit”	any termination of the whole or any part of this Contract which occurs: <ul style="list-style-type: none"> (a) pursuant to Clause 33 (Termination Rights) where the period of notice given by the Party serving notice to terminate pursuant to such Clause is greater than or equal to 6 months; or (b) as a result of the expiry of the Initial Term or any Extension Period;
“Registers”	the register and configuration database referred to in Paragraphs 2.1(a) and 2.1(b);
“Transferable Assets”	those of the Exclusive Assets which are capable of legal transfer to the Buyer; and
“Transferable Contracts”	the Sub-contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and
“Transferring Contracts”	has the meaning given in Paragraph 7.2(b).

2. OBLIGATIONS DURING THE TERM TO FACILITATE EXIT

2.1 During the Term, the Supplier shall:

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

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

3. OBLIGATIONS TO ASSIST ON RE-TENDERING OF SERVICES

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

- (f) to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
- (g) such other material and information as the Buyer shall reasonably require,
- (together, the “**Exit Information**”).
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Buyer is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Buyer may not under this Paragraph 3.2 disclose any Supplier’s Confidential Information which is information relating to the Supplier’s or its Sub-contractors’ prices or costs).
- 3.3 The Supplier shall:
- (a) notify the Buyer within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Buyer regarding such proposed material changes; and
- (b) provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Buyer.
- 3.4 The Supplier may charge the Buyer for its reasonable additional costs to the extent the Buyer requests more than 4 updates in any 6 month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- (a) prepare an informed offer for those Services; and
- (b) not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).
- 4. OBLIGATION TO ENTER INTO AN ETHICAL WALL AGREEMENT ON RE-TENDERING OF SERVICES**
- 4.1 The Buyer may require the Supplier to enter into the Ethical Wall Contract at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 4.2 If required to enter into the Ethical Wall Contract, the Supplier will return a signed copy of the Ethical Wall Contract within 10 Working Days of receipt. The Supplier’s costs of entering into the Ethical Wall Contract will be borne solely by the Supplier.
- 5. EXIT PLAN**
- 5.1 The Supplier shall, within 3 months after the Contract signature date, deliver to the Buyer an Exit Plan which:

- (a) sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Buyer and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
- (b) complies with the requirements set out in Paragraph 5.2; and
- (c) is otherwise reasonably satisfactory to the Buyer.

5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

5.3 The Exit Plan shall set out, as a minimum:

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

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

Finalisation of the Exit Plan

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

6. TERMINATION SERVICES

Notification of Requirements for Termination Services

- 6.1 The Buyer shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably

practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

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

6.2 The Buyer shall have:

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

Termination Assistance Period

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

- (a) continue to provide the Services (as applicable) and, if required by the Buyer pursuant to Paragraph 6.1, provide the Termination Services;
- (b) in addition to providing the Services and the Termination Services, provide to the Buyer any reasonable assistance requested by the Buyer to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Buyer and/or its Replacement Supplier;
- (c) use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Buyer;
- (d) provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
- (e) at the Buyer's request and on reasonable notice, deliver up-to-date Registers to the Buyer.

6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3(c), if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3(b) without additional costs to the Buyer, any additional costs incurred by the Supplier in

providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.

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

Termination Obligations

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:
- (a) cease to use the Buyer Data;
 - (b) provide the Buyer and/or the Replacement Supplier with a complete and uncorrupted version of the Buyer Data in electronic form (or such other format as reasonably required by the Buyer);
 - (c) erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Buyer Data and promptly certify to the Buyer that it has completed such deletion;
 - (d) return to the Buyer such of the following as is in the Supplier's possession or control:
 - (i) all copies of the Buyer Software and any other software licensed by the Buyer to the Supplier under this Contract;
 - (ii) all materials created by the Supplier under this Contract in which the IPRs are owned by the Buyer;
 - (iii) any parts of the IT Environment and any other equipment which belongs to the Buyer; and
 - (iv) any items that have been on-charged to the Buyer, such as consumables;
 - (e) vacate any Buyer Premises unless access is required to continue to deliver the Services;
 - (f) provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:
 - (i) such information relating to the Services as remains in the possession or control of the Supplier; and

- (ii) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7(f)(ii).

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

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

7. ASSETS, SUB-CONTRACTS AND SOFTWARE

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

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

7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3(e), the Buyer shall provide written notice to the Supplier setting out:

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

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

- (b) which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the “**Transferring Contracts**”),

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

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

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

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

7.5 Where the Supplier is notified in accordance with Paragraph 7.2(b) that the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:

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

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

7.7 The Buyer shall:

- (a) accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
- (b) once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, carry out, perform and discharge all the obligations and

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

- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until such time as the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has been effected.
- 7.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:
- (a) in relation to any matters arising prior to the date of assignment or novation of such Sub contract; and
 - (b) in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clauses 16 (Intellectual Property Rights) and/or Clause 17 (Transfer and Licences Granted by the Supplier).

8. SUPPLIER PERSONNEL

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

9. CHARGES

- 9.1 During the Termination Assistance Period (or for such shorter period as the Buyer may require the Supplier to provide the Termination Services), the Buyer shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan).

If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.

9.2 Where the Buyer requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:

(a) where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable; and

(b) where less than 6 months' notice is provided, no more than 10% increment on the day rates as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.

9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.

9.4 Except as otherwise expressly specified in this Contract, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10. APPORTIONMENTS

10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:

(a) the amounts shall be annualised and divided by 365 to reach a daily rate;

(b) the Buyer shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

(c) the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

10.2 Each Party shall pay (and/or the Buyer shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

ANNEX 1: SCOPE OF THE TERMINATION SERVICES

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

- (l) provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Buyer and/or Replacement Supplier;
- (m) making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Buyer (acting reasonably) at the time of termination or expiry;
- (n) assisting in establishing naming conventions for any new production site;
- (o) analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- (p) generating a computer listing of the Source Code of [insert details of relevant Software] in a form and on media reasonably requested by the Buyer;
- (q) agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- (r) delivering copies of the production databases (with content listings) to the Buyer's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Buyer;
- (s) assisting with the loading, testing and implementation of the production databases;
- (t) assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- (u) in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous [insert time period];
- (v) assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Buyer (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- (w) providing an information pack listing and describing the Services for use by the Buyer in the procurement of the Replacement Services;
- (x) answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Services;
- (y) agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Buyer Data to the Buyer and/or the Replacement Supplier;
- (z) providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Buyer and/or the Replacement Supplier;

- (i) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (ii) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and
 - (aa) knowledge transfer services, including:
 - (i) transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;
 - (ii) providing for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents; and
 - (iii) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors.
2. The Supplier shall:
- (a) provide a documented plan relating to the training matters referred to in Paragraph 1(k) for agreement by the Buyer at the time of termination or expiry of this Contract;
 - (b) co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1(o), providing skills and expertise of a suitable standard; and
 - (c) fully co-operate in the execution of the Buyer Database migration plan agreed pursuant to Paragraph 1(w), providing skills and expertise of a reasonably acceptable standard.
3. To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Buyer and/or the Replacement Supplier.
4. The information which the Supplier shall provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1(y) shall include:
- (a) copies of up-to-date procedures and operations manuals;
 - (b) product information;

- (c) agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier;
 - (d) key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule;
 - (e) information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
 - (f) details of physical and logical security processes and tools which will be available to the Buyer; and
 - (g) any relevant interface information.
5. During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and Suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:
- (a) any such agent or personnel (including employees, consultants and suppliers) having access to any Sites pursuant to this Paragraph 5 shall:
 - (i) sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - (ii) during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and
 - (b) the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

ANNEX 2: DRAFT ETHICAL WALL AGREEMENT

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Contract is dated [] 20[]

Between

- (1) [INSERT NAME OF BUYER] (the "**Buyer**") [acting on behalf of the Crown] of [insert Buyer's address]; and
- (2) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty's registered address] (the "**Counterparty**").

BACKGROUND

- A The Buyer is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Public Contracts Regulations 2015 (as amended) (the **PCR**). The purpose of this document ("**Contract**") is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Procurement.
- B The Buyer is conducting a procurement exercise for the [supply/purchase] of [insert details of project/goods/services] (the "**Purpose**").
- C The Buyer has an obligation to deal with conflicts of interest as set out in Regulation 24 (1) of the PCR. The concept of conflict of interest is wide. In the PCR it is described as covering at least *"any situation where relevant staff members have, directly or indirectly, a financial, economic or other personal interest which might be perceived to compromise their impartiality and independence in the context of the procurement procedure"* (Regulation 24(2)). *"Staff members"* refers to staff members of the Buyer or of a procurement service provider acting on behalf of the Buyer who are involved in the conduct of the procurement procedure or may influence the outcome of that procedure. *"Procurement service provider"* refers to a public or private body which offers ancillary purchasing activities on the market.
- D Pursuant to Regulation 41 of the PCR, the Buyer is under an obligation to ensure that competition is not distorted by the participation of any bidder. Accordingly, the Buyer has identified that a potential distortion of competition could arise as a consequence of a bidder wishing to submit a Tender for this procurement, where it has also performed services for the Buyer under existing contractual arrangements or as a subcontractor under those same arrangements.
- E The parties wish to enter into this Contract to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following words and expressions shall have the following meanings in this agreement and its recitals:

"Affiliate" means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

"Contract" means this ethical walls agreement duly executed by the Parties;

"Bid Team" means any Counterparty, Affiliate, connected to the preparation of an ITT Response;

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

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency;

"Conflicted Personnel" means any Counterparty, Affiliate, staff or agents of the Counterparty or an Affiliate who, because of the Counterparty's relationship with the Buyer under any Contract have or have had access to information which creates or may create a conflict of interest;

"Contract" means the [contract for []] dated [] between the Buyer and the Counterparty and/or an Affiliate;

"Control" means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and **"Controls"** and **"Controlled"** shall be interpreted accordingly;

"Effective Date" means the date of this Contract as set out above;

"Invitation to Tender" or **"ITT"** means an invitation to submit tenders issued by the Buyer as part of an ITT Process;

"ITT Process" means, with regard to the Purpose, the relevant procedure provided for in the PCR which the Buyer has elected to use to select a contractor, together with all relevant information, correspondence and/or documents issued by the Buyer as part of that procurement exercise, all information, correspondence and/or documents issued by the bidders in response together with any resulting contract;

"ITT Response" means the tender submitted or to be submitted by the Counterparty or an Affiliate [(or, where relevant, by an Other Bidder)] in response to an ITT;

"Other Affiliate" any person who is a subsidiary, subsidiary undertaking or holding company of any Other Bidder;

“Other Bidder” means any other bidder or potential bidder that is not the Counterparty or any Affiliate that has or is taking part in the ITT Process;

“Parties” means the Buyer and the Counterparty;

“Professional Advisor” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty under the auspices of compiling its ITT Response;

“Purpose” has the meaning given to it in recital B to this Contract;

“Representative” refers to a person's officers, directors, employees, advisers and agents and, where the context admits, providers or potential providers of finance to the Counterparty or any Affiliate in connection with the ITT Process and the representatives of such providers or potential providers of finance; and

“Third Party” means any person who is not a Party and includes Other Affiliates and Other Bidders.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Buyer or the Counterparty includes disclosure, or provision of access, by or to the representatives of the Buyer or Representatives of the Counterparty (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Contract.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “associate”, “holding company”, “subsidiary”, “subsidiary undertaking” and “wholly owned subsidiary” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words “include” and “including” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Contract shall not affect its construction or interpretation.

2. ETHICAL WALLS

2.1 In consideration of the sum of £1 payable by the Buyer to the Counterparty, receipt of which is hereby acknowledged, the Counterparty:

- (a) shall take all appropriate steps to ensure that neither the Counterparty nor its Affiliates and/or Representatives are in a position where, in the reasonable opinion of the Buyer, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Counterparty or its Affiliates or Representatives and the duties owed to the Buyer under the Contract or pursuant to an open and transparent ITT Process;
- (b) acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty or an Affiliate intends to take part in the ITT Process and, because of the Counterparty's relationship with the Buyer under any Contract, the Counterparty, its Affiliates and/or Representatives have or have had access to information which could provide the Counterparty and/or its Affiliates with an advantage and render unfair an otherwise genuine and open competitive ITT Process; and
- (c) where there is or is likely to be a conflict of interest or the perception of a conflict of interest of any kind in relation to the ITT Process, shall comply with Clause 2.2.

2.2 The Counterparty shall:

- (a) Not assign any of the Conflicted Personnel to the Bid Team at any time;
- (b) Provide to the Buyer a complete and up to date list of the Conflicted Personnel and the Bid Team and reissue such list upon any change to it;
- (c) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates results in information of any kind or in any format and however so stored:
 - (i) about the Contract, its performance, operation and all matters connected or ancillary to it becoming available to the Bid Team; and/or
 - (ii) which would or could in the opinion of the Buyer confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process becoming available to the Bid Team;
- (d) Ensure that by no act or omission by itself, its staff, agents and/or Affiliates and in particular the Bid Team results in information of any kind or in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- (e) Ensure that confidentiality agreements which flow down the Counterparty's obligations in this Contract are entered into as necessary between the Buyer and the Counterparty, its Affiliates, its staff, agents, any Conflicted Personnel, and between any other parties necessary in a form to be prescribed by the Buyer;
- (f) physically separate the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;

- (g) provide regular training to its staff, agents and its Affiliates to ensure it is complying with this Contract;
- (h) monitor Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Contract ensure adherence to the ethical wall arrangements;
- (i) ensure that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- (j) comply with any other action as the Buyer, acting reasonably, may direct.

2.3 In addition to the obligations set out in Clause 2.1(a) and 2.1(c), the Counterparty shall:

- (a) notify the Buyer immediately of all perceived, potential and/or actual conflicts of interest that arise;
- (b) submit in writing to the Buyer full details of the nature of the conflict including (without limitation) full details of the risk assessments undertaken, the impact or potential impact of the conflict, the measures and arrangements that have been established and/or are due to be established to eliminate the conflict and the Counterparty's plans to prevent future conflicts of interests from arising; and
- (c) seek the Buyer's approval thereto,

which the Buyer shall have the right to grant, grant conditionally or deny (if the Buyer denies its approval the Counterparty shall repeat the process set out in clause 2.3 until such time as the Buyer grants approval or the Counterparty withdraws from the ITT Process).

2.4 Any breach of Clause 2.1, Clause 2.2 or Clause 2.3 shall entitle the Buyer to exclude the Counterparty or any Affiliate or Representative from the ITT Process, and the Buyer may, in addition to the right to exclude, take such other steps as it deems necessary where, in the reasonable opinion of the Buyer there has been a breach of Clause 2.1, Clause 2.2 or Clause 2.3.

2.5 The Counterparty will provide, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.1 and 2.2 as reasonably requested by the Buyer.

2.6 The Buyer reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.1(c) and 2.2.

2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Buyer of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Contract.

2.8 The actions of the Buyer pursuant to Clause 2.4 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Buyer.

2.9 In no event shall the Buyer be liable for any bid costs incurred by:

- (a) the Counterparty or any Affiliate or Representative; or
- (b) any Other Bidder, Other Affiliate or Other Representative,

as a result of any breach by the Counterparty, Affiliate or Representative of this Contract, including, without limitation, where the Counterparty or any Affiliate or Representative, or any Other Bidder, Other Affiliate or Other Representative are excluded from the ITT Process.

2.10 The Counterparty acknowledges and agrees that:

- (a) neither damages nor specific performance are adequate remedies in the event of its breach of the obligations in clause 2; and
- (b) in the event of such breach by the Counterparty of any of its obligations in clause 2 which cannot be effectively remedied the Buyer shall have the right to terminate this Contract and the Counterparty's participation in the ITT Process.

3. SOLE RESPONSIBILITY

It is the sole responsibility of the Counterparty to comply with the terms of this Contract. No approval by the Buyer of any procedures, agreements or arrangements provided by the Counterparty or any Affiliate or Representative to the Buyer shall discharge the Counterparty's obligations.

4. WAIVER AND INVALIDITY

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Contract or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Contract is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining provisions of this Contract or affect the validity or enforceability of the provisions of this Contract in relation to any other Party or any other jurisdiction.

5. ASSIGNMENT AND NOVATION

- 5.1 Subject to clause 5.2 the Parties shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Buyer.
- 5.2 The Buyer may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Contract and/or any associated licences to:
 - (a) any Central Government Body; or
 - (b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Buyer; and

(c) the Counterparty shall, at the Buyer's request, enter into a novation agreement in such form as the Buyer may reasonably specify in order to enable the Buyer to exercise its rights pursuant to this Clause 5.

5.3 A change in the legal status of the Buyer such that it ceases to be a Central Government Body shall not affect the validity of this Contract and this Contract shall be binding on any successor body to the Buyer.

6. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a Party to this Contract has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Contract but this does not affect any right remedy of any person which exists or is available otherwise than pursuant to that Act.

7. TRANSPARENCY

The parties acknowledge and agree that the Buyer is under a legal duty pursuant to the PCR to run transparent and fair procurement processes. Accordingly, the Buyer may disclose the contents of this Contract to potential bidders in the ITT Process, for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

8. NOTICES

8.1 Any notices sent under this Contract must be in writing.

8.2 The following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending.	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

	delivery before 9.00am) or on the next Working Day (if after 5.00pm).	
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8.3 Notices shall be sent to the addresses set out below or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under this Contract:

	Counterparty	Buyer
Contact		
Address		
Email		

8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

9. WAIVER AND CUMULATIVE REMEDIES

9.1 The rights and remedies under this Contract may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

9.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

10. TERM

Each party's obligations under this Contract shall continue in full force and effect for period of [] years from the Effective Date.

11. GOVERNING LAW AND JURISDICTION

11.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.



Signed by the Buyer

Name:

Signature:

Position in Buyer:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

SCHEDULE 9.1: STAFF TRANSFER

1. DEFINITIONS

1.1 In this Schedule, the following definitions shall apply:

“Former Supplier”		a supplier supplying services to the Buyer 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);
“New Fair Deal”		the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including: (i) any amendments to that document immediately prior to the Relevant Transfer Date; (ii) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;
“Notified Sub-contractor”		a Sub-contractor identified in Attachment 9.1 (List of Notified Sub-Contractors) of the Order Form to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;
“Old Fair Deal”		HM Treasury Guidance <i>“Staff Transfers from Central Government: A Fair Deal for Staff Pensions”</i> issued in June 1999 including the supplementary guidance <i>“Fair Deal for Staff pensions: Procurement of Bulk Transfer Contracts and Related Issues”</i> issued in June 2004;
“Replacement contractor”	Sub-	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”		a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”		in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;

“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, all information required in Annex 2 (Table of Staffing Information) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in Annex 2 from time to time.
“Statutory Schemes”	means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
“Supplier's Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;
“Supplier's Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Buyer Employees”	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier's Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

2. INTERPRETATION

Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

PART A: TRANSFERRING BUYER EMPLOYEES AT COMMENCEMENT OF SERVICES – NOT USED

PART B: TRANSFERRING FORMER SUPPLIER EMPLOYEES AT COMMENCEMENT OF SERVICES – NOT USED

PART C: NO TRANSFER OF EMPLOYEES AT COMMENCEMENT OF SERVICES

1. PROCEDURE IN THE EVENT OF TRANSFER

- 1.1 The Buyer and the Supplier are proceeding on the basis 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 any Former Supplier.
- 1.2 If any employee of a Former Supplier claims, or it is determined in relation to any employee of a Former Supplier, that his/her contract of employment has been transferred from the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations or the Acquired Rights Directive then the Supplier and/or the Sub-contractor may give notice to terminate the employment or alleged employment of such person.

2. INDEMNITY

- 2.1 The Buyer shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all claims, demands, fines, penalties, losses, liabilities, interest, damages and reasonably incurred costs and expenses (including legal fees) arising out of or in connection with the employment or termination of employment of the employees of the Former Supplier whose employment is terminated in accordance with Paragraph 1.2 provided that any such termination of employment occurs within 2 months of the transfer or alleged transfer of the relevant contract of employment(s) (or such longer period as reasonably required to follow a fair consultation and dismissal process).
- 2.2 If any such person as is described in Paragraph 1.2 is not dismissed by the Supplier and/or any Sub-contractor 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 Buyer and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

3. PROCUREMENT OBLIGATIONS

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

PART D: PENSIONS

1. DEFINITIONS

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

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

D);

"Fair Deal Employees" any of:

- (i) Transferring Buyer Employees;
- (ii) Transferring Former Supplier Employees; and/or
- (iii) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of paragraphs 2.3 (d) of Parts A or B or paragraph 1.2 (d) of Part C;
- (iv) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor)
- (v) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with paragraph 10 of this Part D as notified by the Buyer;

"Fund Actuary" a Fund Actuary as defined in Annex D3 to this Part D;

"LGPS" the scheme as defined in Annex D3 to this Part D; and

"NHSPS" the schemes as defined in Annex D2 to this Part D.

2. PARTICIPATION

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

2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Contract and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.

2.3 The Supplier undertakes:

- (a) to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Contract and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- (b) subject to paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.

2.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Service Commencement Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Service Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

3. PROVISION OF INFORMATION

3.1 The Supplier undertakes to the Buyer:

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

4. INDEMNITIES

4.1 The Supplier shall indemnify and keep indemnified the Buyer, [NHS Pensions,] any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

- (a) arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any breach by the Supplier of this Part D, and/or the CSPA Admission Contract and/or the Direction Letter/Determination and/or the LGPS Admission Contract;

- (b) relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with paragraphs 10 or 11 of this Part D;
- (c) relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
 - (i) relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
 - (ii) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or
- (d) arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.2 The indemnities in this Part D and its Annexes:

- (a) shall survive termination of this Contract; and
- (b) shall not be affected by the caps on liability contained in Clause 25 (Limitation of Liability).

5. DISPUTES

The Dispute Resolution Procedure will not apply to any dispute (i) between the Buyer and/or the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Buyer and/or the Supplier be referred to an independent Actuary:

- (a) who will act as an expert and not as an arbitrator;
- (b) whose decision will be final and binding on the Buyer and/or the Supplier; and
- (c) whose expenses shall be borne equally by the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

6. THIRD PARTY RIGHTS

- 6.1 The Parties agree Clause 43 (Third Party Rights) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.

7. BREACH

- 7.1 The Supplier agrees to notify the Buyer should it breach any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for material Default in the event that the Supplier:
- (a) commits an irremediable breach of any provision or obligation it has under this Part D; or
 - (b) commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the breach and requiring the Supplier to remedy it.

8. TRANSFER TO ANOTHER EMPLOYER/ SUB- CONTRACTORS

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

9. PENSION ISSUES ON EXPIRY OR TERMINATION

- 9.1 The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

9.2 The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Buyer and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

10. BROADLY COMPARABLE PENSION SCHEME ON RELEVANT TRANSFER DATE

10.1 If the terms of any of paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

10.2 Such Broadly Comparable pension scheme must be:

- (a) established by the Relevant Transfer Date;
- (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);
- (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
- (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).

10.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):

- (a) supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
- (c) instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the

Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and

- (d) provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract:

- (a) allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with paragraph 10.3(c) such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with paragraph 10.3(c) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and
- (b) if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had paragraph 10.4(a) been complied with, the Supplier shall (or shall procure that the Sub-contractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if

applicable) (as the Buyer directs) for any failure to pay the difference as required under this paragraph.

11. BROADLY COMPARABLE PENSION SCHEME IN OTHER CIRCUMSTANCES

- 11.1 If the terms of any of paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.
- 11.2 Such Broadly Comparable pension scheme must be:
- (a) established by the date of cessation of participation in the Statutory Scheme;
 - (b) a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
 - (c) capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
 - (d) capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - (e) maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall):
- (a) supply to the Buyer details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - (b) be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
 - (c) where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound

(as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and

- (d) provide a replacement Broadly Comparable pension scheme in accordance with this paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("the Shortfall"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this paragraph.

12. RIGHT OF SET-OFF

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

- (a) any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPS or any CSPS Admission Contract in respect of the CSPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

- (b) any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPS or any Direction Letter/Determination in respect of the NHSPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee; or
- (c) any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Contract in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Sub-contractor or due from any third party under any indemnity, bond or guarantee;

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

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

ANNEX D1: CSPS

1. DEFINITIONS

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

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

2. FUTURE SERVICE BENEFITS

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Contract to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the relevant section of the CSPS that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Sub-contractors shall procure that the CSPS Fair Deal Employees continue to accrue benefits in the CSPS in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.
- 2.2 If the Supplier and/or any of its Sub-contractors enters into a CSPS Admission Contract in accordance with paragraph 2.1 but the CSPS Admission Contract is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractor still employs any CSPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Buyer, offer the remaining CSPS Eligible Employees membership of a pension

[REDACTED]

scheme which is Broadly Comparable to the CSPS on the date those CSPS Eligible Employees ceased to participate in the CSPS in accordance with the provisions of paragraph 11 of Part D.

ANNEX D2: NHSPS

1. DEFINITIONS

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

"Direction Letter/Determination" an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Fair Deal Employees;

"NHS Broadly Comparable Employees" means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom

the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.

“NHSPS Eligible Employees”

any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

"NHSPS Fair Deal Employees"

means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter/Determination or other NHSPS "access" facility but who has never been employed directly by the Buyer, an NHS Body or other

	body which participates automatically in the NHSPS is not an NHSPS Fair Deal Employee;
"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
"NHS Pensions"	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
"NHSPS"	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Regulations"	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
"NHS Premature Retirement Rights"	rights to which any NHSPS Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
"Pension Benefits"	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and

2. MEMBERSHIP OF THE NHSPS

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Sub-contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
- (a) all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
 - (b) the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Sub-contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Sub-contractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

3. NHS PREMATURE RETIREMENT RIGHTS

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Fair Deal Employees that are identical to the benefits they

would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

4. NHS BROADLY COMPARABLE EMPLOYEES

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

5. BREACH AND CANCELLATION OF ANY DIRECTION LETTER/DETERMINATION(S)

5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.

5.2 If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of paragraph 11 of Part D.

6. COMPENSATION

6.1 If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:

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

(b) a Broadly Comparable pension scheme,

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

6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate the Contract under paragraph 7 (Breach) of Part D of this Schedule.



7. SUPPLIER INDEMNITIES

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

ANNEX D3: LGPS

1. DEFINITIONS

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

"2013 Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
"Administering Buyer"	in relation to the Fund [insert name] , the relevant administering authority of that Fund for the purposes of the 2013 Regulations;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Buyer of the Fund;
"Fund"	[insert name], a pension fund within the LGPS;
["Initial Contribution Rate"]	[XX %] of pensionable pay (as defined in the 2013 Regulations);
"LGPS"	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
"LGPS Admission Contract"	an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
"LGPS Eligible Employees"	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Contract;
"LGPS Fair Deal Employees"	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the

provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and

"LGPS Regulations"

the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2. SUPPLIER TO BECOME AN LGPS ADMISSION BODY

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

OPTION 1

2.2 [Any LGPS Fair Deal Employees who:

- (a) were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
- (b) were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

OPTION 2

[Any LGPS Fair Deal Employees whether:

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

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS

Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

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

3. BROADLY COMPARABLE SCHEME

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

4. DISCRETIONARY BENEFITS

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

5. LGPS RISK SHARING

- 5.1 Subject to paragraphs 5.4 to 5.10, if at any time during the term of this Contract the Administering Buyer, pursuant to the LGPS Admission Contract or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “**Excess Amount**”) shall be paid by the Supplier or the Sub-contractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.
- 5.2 Subject to paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Contract, the Administering Buyer, pursuant to the LGPS Admission Contract or the LGPS Regulations, requires the Supplier or any Sub-contractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to A–B (the “**Refund Amount**”) where:

A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year ; and

B = the amount of contributions or payments actually paid by the Supplier or Sub-contractor for that Contract Year, as the case may be, to the Fund.

5.3 Subject to paragraphs 5.4 to 5.10, where the Administering Buyer obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Contract when the LGPS Admission Contract ceases to have effect and the Supplier or any Sub-contractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the Supplier or any Sub-contractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.

5.4 The Supplier and any Sub-contractors shall at all times be responsible for the following costs:

- (a) any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;
- (b) any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
- (c) any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
- (d) any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Sub-contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
- (e) any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Sub-contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
- (f) any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Sub-contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Sub-contractor is contractually bound to provide such increases on the Relevant Transfer Date);
- (g) to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Sub-contractors where a member does not have an absolute entitlement to that benefit under the LGPS;
- (h) any cost of the administration of the Fund that are not met through the Supplier's or Sub-contractor's employer contribution rate, including without limitation an amount

specified in a notice given by the Administering Buyer under Regulation 70 of the 2013 Regulations;

- (i) the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Sub-contractor from the Fund Actuary; and/or
 - (j) any interest payable under the 2013 Regulations or LGPS Administration Contract.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Sub-contractors are responsible for in accordance with paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Buyer obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Contract when the LGPS Admission Contract ceases to have effect and the Supplier or any Sub-contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Credit**”), the Supplier shall (or procure that any Sub-contractor shall) reimburse the Buyer an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Supplier shall (or procure that the Sub-contractor shall) notify the Buyer in writing within twenty (20) Working Days:
- (a) of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of the Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
 - (b) of being informed by the Administering Buyer of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Sub-contractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8 Within twenty (20) Working Days of receiving the notification under paragraph 5.7 above, the Buyer shall either:
- (a) notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
 - (b) request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
 - (c) request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with paragraph 5.8 above, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.

- 5.10 Any Excess Amount or Exit Payment agreed by the Buyer or in accordance with the Dispute Resolution Procedure shall be paid by the Buyer within timescales as agreed between Buyer and Supplier. The amount to be paid by the Buyer shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Sub-contractor.
- 5.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Sub-contractor to the Buyer, shall be paid by the Supplier or any Sub-contractor forthwith as the liability has been agreed. In the event the Supplier or any Sub-contractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.
- 5.12 This paragraph 5 shall survive termination of this Contract.

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 Buyer 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 Buyer at any time (provided that the Buyer 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 Buyer.

1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement 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 Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.

1.4 The Supplier warrants, for the benefit of the Buyer, 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 Buyer (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 Buyer or, at the direction of the Buyer, 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 Buyer any information the Buyer 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;
- (c) the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D (Pensions) of this Schedule 9 (Staff Transfer)(as appropriate); and
- (d) 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 Buyer, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement

Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

2. EMPLOYMENT REGULATIONS EXIT PROVISIONS

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(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 Buyer 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 Buyer 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 Buyer 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/or the Acquired Rights Directive; 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 Buyer 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 or the Acquired Rights Directive, then:
- (a) the Buyer 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 Buyer 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 Buyer 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 Buyer and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer 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 Buyer 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 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.

ANNEX 1: LIST OF NOTIFIED SUB-CONTRACTORS

[Guidance Note: complete the information required in Attachment 9.1 (List of Notified Sub-Contractors) of the Order Form]

ANNEX 2: STAFFING INFORMATION

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor:

Number of Employees in-scope to transfer:

Completion notes

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

EMPLOYEE DETAILS & KEY TERMS							
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

EMPLOYEE DETAILS & KEY TERMS

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

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

CONTRACTUAL PAY AND BENEFITS

Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life insurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS

Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS

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

PENSIONS

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



	OTHER							
Details	Security Level	Check	Security date	Clearance	Expiry	Additional comments	info	or
Emp No 1								
Emp No 2								
Emp No								
Emp No								
Emp No								
Emp No								
Emp No								

SCHEDULE 12

NHS ADDITIONAL PROVISIONS

1. DEFINITIONS

In this Schedule, the following definitions shall apply:

"Contractor"	means any individual delivering the Services (or any part of them)
"CSR Laws"	means Laws relating to corporate social responsibility issues (e.g. anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity), including but not limited to the Modern Slavery Act 2015, the Public Services (Social Value) Act 2012, the Public Contracts Regulations 2015 (as amended) and Article 6 of the Energy Efficiency Directive 2012/27/EU, from time to time in force;
"CSR Policies"	means the Buyer's policies, including, without limitation, anti-bribery and corruption, health and safety, the environmental and sustainable development, equality and diversity, and any similar policy notified to the Supplier by the Buyer from time to time, and "CSR Policy" shall mean any one of them;
"Intermediary"	means any "intermediary" (as defined in section 61M ITEPA) in respect of which any of Conditions A – C within section 61N ITEPA are met
"ITEPA"	Income Tax (Earnings and Pensions) Act 2003
"Medical Device"	means any Deliverable, Software or Service that falls under the definition of a medical device in accordance with guidance published by the Medicines and Healthcare Products Regulatory Agency;
"Off-Payroll Working Rules"	means the provisions of Chapter 10 of Part 2 ITEPA relating to the engagement of workers through intermediaries and the provisions of Social Security Contributions (Intermediaries) Regulations 2000/727 (or, in each case, any other provisions under any law having like effect)
"Status Determination"	means a status determination pursuant to, and for the purposes of, the Off-Payroll Working Rules
"Tax"	means income tax, employee national insurance contributions and employer national insurance

contributions (in each case whether or not required to be accounted for under the PAYE rules of the United Kingdom) and any equivalent tax, contribution or similar obligations elsewhere, together, in each case, with all related penalties and interest

2. NHS USE OF SOFTWARE

- 2.1 The Buyer shall be entitled, free of charge, to sub licence the Software to any contractor and/or Sub-contractor of the Buyer or a Replacement Supplier who is providing Services to the Buyer, unless notified by the Supplier in advance that Software licence does not permit sub-licensing.
- 2.2 The Buyer's role as national information and technology partner to the NHS and social care bodies involves the Buyer buying Services for or on behalf of the NHS and social care entities. The Supplier shall ensure that nothing in the licences for any of the Software shall have the effect of restricting the Buyer from discharging its role as the national information and technology partner for the health and care system, which includes the ability of the Buyer to offer software and Services to the NHS and social care entities. Specifically, any software licensing clause prohibiting 'white labelling', 'provision of outsourcing services' or similar, shall not be interpreted as prohibiting the Buyer's Services.
- 2.3 The Buyer shall be entitled to deploy the Software at any location from which the Buyer and/or any contractor and/or Sub-contractor of the Buyer is undertaking Services pursuant to which the Software is being licenced.
- 2.4 Any Software licenced to the Buyer on a named user basis shall permit the transfer from one user to another user, free of charge provided that the Supplier is notified of the same (including without limitation to a named user who is a contractor and/or Sub-contractor of the Buyer).
- 2.5 The Supplier shall notify and obtain the consent of the Buyer in advance if any Software or Service permits the Supplier or any third party remote access to the software or systems of the Buyer. Notification and consent will be conducted through one or more of the governance forums listed in Schedule 8.1 (*Governance*). The Buyer will maintain a register of the business purpose of the access, the conditions (if any) of such access, and the date at which the access will be reviewed.
- 2.6 The Supplier shall ensure that the Buyer shall be entitled to assign or novate all or any of the Software licences (excluding cloud assets) free of charge to any other Central Government Body, by giving the licensor prior written notice, unless notified by the Supplier in advance that Software licence does not permit novation. In relation to cloud assets only, the Supplier will use all reasonable efforts to transfer the cloud assets to appropriate contracting models of any other Central Government Body.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1 In respect of all Buyer Data, the Buyer shall be the owner of all such Buyer Data and any Buyer Background IPRs and Project Specific IPRs in such Buyer Data and any modifications, updates and amendments in relation to the same. The Supplier may not assign, license or otherwise

- deal with any Buyer Data or IPRs in such Buyer Data without the Buyer's specific written consent.
- 3.2 All Project Specific IPRs shall vest in the Buyer absolutely, and the Supplier hereby assigns to the Buyer, absolutely with full title guarantee (and free from all third party rights), any and all of its right, title and interest in and to all the Project Specific IPRs and shall procure that any third party owner of the Project Specific IPRs assigns them to the Buyer on the same basis to the fullest extent permitted by law.
- 3.3 The assignment under paragraph 3.1 shall be a present assignment for future rights that will take effect immediately on the coming into existence of the relevant Project Specific IPRs as appropriate.
- 3.4 The Supplier shall waive or procure a waiver of any moral rights in any copyright works assigned to the Buyer under the Contract.
- 3.5 The Supplier grants the Buyer a non-exclusive, transferable, perpetual, irrevocable, royalty-free and global licence to use, sub-license and/or commercially exploit use any Supplier Background IPRs or IPRs owned by a third party used to provide the Services including those that are embedded within or which are an integral part of the Project Specific IPRs and to the extent required to enjoy the full benefit of ownership of the Project Specific IPRs. The Buyer shall have the right to grant to any person a sub-licence of any licence granted pursuant to this paragraph.
- 3.6 Unless the Supplier specifically identifies and discloses in writing the Supplier Background IPRs which shall be provided, used or incorporated by the Supplier in the provision of the Services, the default position shall be that all items and Deliverables shall be assigned to the Buyer as Project Specific IPR as if there is no Supplier Background IPRs and Supplier Software.
- 3.7 Each Party undertakes that it shall without charge to the other Party promptly execute all documents, make all applications, give all assistance and do or procure the doing of all acts and things as may be necessary or desirable to give full effect to the assignment of the Project Specific IPRs described in paragraph 3.1 in, and to register ownership of the Project Specific IPRs in, the name of the Buyer (to the extent that registration of rights is available) and/or to give full effect to the licences granted under this paragraph 3 or clauses 17 and 18 of the Call Off Terms. The Supplier shall procure that any third party owner of the Project Specific IPRs does so on the same basis.
- 3.8 The Buyer shall grant to the Supplier a transferable, perpetual, irrevocable, non-exclusive, royalty-free and global licence to use, sub-licence and/or commercially exploit the Project Specific IPRs. The Supplier shall inform the Buyer of any such use, sub-licence or exploitation prior to it occurring.
- 3.9 If the Supplier wishes to use Open Source software then the Supplier shall:
- (a) notify the Buyer in writing giving details of the licence terms and whether there are alternative software providers which the Supplier could seek to use;
 - (b) identify all items of Open Source software used and proposed to be used in an up to date register of open source software; and

- (c) provide copies of the Open Source register and the licences upon request by the Buyer.

4. MEDICAL DEVICES

If and to the extent any Software, Deliverable or part of the Services constitutes a Medical Device, the Supplier warrants and represents that it has all consents, registrations, approvals, licences and permissions relating to Medical Devices as recommended or stipulated by any materials published by the Medicines and Healthcare Products Regulatory Agency.

5. IR35

- 5.1 The Buyer and the Supplier agree and acknowledge that this Contract represents a contract for a fully contracted out service and, as a result, the Off-Payroll Working Rules shall not apply to the Buyer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 5.2 Notwithstanding paragraph 5.1, the Supplier warrants and undertakes to the Buyer that, where any Contractor is or will be delivering their services through an Intermediary, prior to the commencement of the delivery of any services by that Contractor, the Supplier will give written notice to the Buyer, and shall procure that such Contractor shall not be involved in the delivery of the Services (or any part of them) by the Supplier without the prior written consent of the Buyer.
- 5.3 The Supplier warrants and undertakes to the Buyer that it shall manage the delivery of the Services (and any part of them) and shall do or not do (as the case may be) all such things as are necessary, in each case, to ensure that the Off-Payroll Working Rules shall not apply to the Buyer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 5.4 The Supplier shall immediately inform the Buyer if, at any time, it becomes aware of any new or additional fact, matter or circumstance, or any change in any fact, matter or circumstance, in each case, from which it appears that the Off-Payroll Working Rules could apply to the Buyer in relation to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor.
- 5.5 Promptly upon request from the Buyer, the Supplier shall provide (or procure provision) to the Buyer of all such evidence, information and assistance as the Buyer reasonably requires:
 - (a) in order to confirm that the warranties and undertakings given by the Supplier in paragraphs 5.2 and 5.3 are, and remain, true, accurate and correct in all respects; and
 - (b) in connection with the Off-Payroll Working Rules (including, but not limited to, such information or assistance as The Buyer reasonably requires in order to assess whether or not the Off-Payroll Working Rules apply to the provision of the Services (or any part of them) and/or to any arrangements involving the performance of any services by any Contractor or to comply with any other requirement or obligation it may have a result of or in connection with the application of the Off-Payroll Working Rules).

- 5.6 The Supplier shall, at all times, comply with any and all requirements or obligations it may have as a result of or in connection with the application of the Off-Payroll Working Rules to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor, including, but not limited, to any obligation to make any deductions for Tax, and shall procure the compliance of all other parties involved (directly or indirectly) in the supply of the Services (or any part of them).
- 5.7 The Buyer shall be entitled to make any deductions in respect of Tax, from any payments to the Supplier, which it reasonably considers are required to be made as a result of, or connection with, the application of the Off-Payroll Working Rules.
- 5.8 The Supplier shall indemnify The Buyer, on demand and on an after-Tax basis, against:
- (a) any and all proceedings, claims or demands by any third party (including, but without limitation, HM Revenue & Customs and any successor, equivalent or related body);
 - (b) any and all Tax and any other liabilities, losses, deductions, contributions or assessments; and
 - (c) any and all reasonable costs or expenses and any penalties, fines or interest incurred or payable,
- in each case, which arise as a result of, in consequence of, or otherwise in connection with:
- (i) the application of the Off-Payroll Working Rules to the provision of the Services (or any part of them) and / or to any arrangements involving the performance of any services by any Contractor; and/or
 - (ii) the Supplier, at any time, being in breach of any of the warranties or undertakings given in paragraphs 5.2, 5.3 and 5.10.
- 5.9 The Buyer may at its option satisfy the indemnity given under paragraph 5.8 (in whole or in part) by way of deduction from payments due to the Supplier.
- 5.10 The Supplier warrants to the Buyer that it is not, nor will it prior to the cessation of this Contract become, a “managed service company”, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

6. SECURITY OF SUPPLIER PERSONNEL

- 6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: verification of identity, employment history, unspent criminal convictions and right to work, as detailed in the HMG Baseline Personnel Security Standard (<https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>), as may be amended or replaced by the Government from time to time.
- 6.2 The Supplier shall agree on a case by case basis which Supplier Personnel roles which require specific government National Security Vetting clearances (such as ‘SC’) including system administrators with privileged access to IT systems which store or process Buyer Data. The Supplier shall provide and maintain a breakdown of the security clearance held for each

Supplier Personnel role and shall work with the Buyer to propose any necessary amendments to these in order to provide the Services.

- 6.3 The Supplier shall prevent Supplier Personnel who have not yet received or are unable to obtain the security clearances required by this paragraph from accessing systems which store, process, or are used to manage Buyer Data, or from accessing Buyer Premises, except where agreed with the Buyer in writing.
- 6.4 All Supplier Personnel that have the ability to access Buyer Data or systems holding Buyer Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Buyer in writing, this training must be undertaken annually, and the Supplier must be able to demonstrate the completion of the training for all in scope staff.
- 6.5 Where Supplier Personnel are granted the ability to access Buyer Data or systems holding Buyer Data, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need such access but remain employed by the Supplier's organisation, their access rights shall be revoked by the close of business on the following Working Day. When staff no longer need such access and they leave the Supplier's organisation, their access rights shall be revoked by the close of business on the same Working Day.

7. DATA CONTROLLER THIRD PARTY RIGHTS

- 7.1 Further to Clause 23 (*Protection of Personal Data*), where in Attachment 11 (*Processing Personal Data*) of the Order Form there is a third-party public sector Controller listed, the named third party public sector Controller will have CRTPA rights in relation to Data Protection Legislation obligations.
- 7.2 Where the third party public sector Controller wishes to exercise its rights pursuant to paragraph 7.1, the Buyer shall notify the Supplier that the rights are to be exercised.
- 7.3 The enforcement rights granted by paragraph 7.1 are subject to the following restrictions and qualifications:
- (a) the Parties may vary, terminate or rescind the Contract without the consent of any third party; and
 - (b) the Buyer may, as agent or trustee, enforce any term of the Contract on behalf of another such relevant third party to whom rights have been granted.

8. ELECTRONIC INVOICING

- 8.1 The Buyer shall accept and process for payment an electronic invoice submitted for payment by the Supplier where the invoice is undisputed and where it complies with the standard on electronic invoicing.
- 8.2 For the purposes of paragraph 8.1, an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

9. CORPORATE SOCIAL RESPONSIBILITY CONDUCT AND COMPLIANCE

- 9.1 The Buyer applies corporate and social responsibility values to its business operations and activities which are consistent with the Government's corporate social responsibility policies, including, without limitation, those policies relating to anti-bribery and corruption, health and safety, the environment and sustainable development, equality and diversity.
- 9.2 The Supplier represents and warrants that it:
- (a) complies with all CSR Laws;
 - (b) requires its Sub-contractors and any person under its control, to comply with all CSR Laws; and
 - (c) has adopted a written corporate and social responsibility policy that sets out its values for relevant activity and behaviour (including, without limitation, addressing the impact on employees, clients, stakeholders, communities and the environment by the Supplier's business activities).
- 9.3 The Supplier shall notify the Buyer in the event that its corporate and social responsibility policies conflict with, or do not cover the same subject matter in an equivalent level of detail as is in, the CSR Policies.

10. MODERN SLAVERY

- 10.1 The Supplier represents and warrants that at the Effective Date neither the Supplier, nor any of its officers and employees:
- (a) have been convicted of any offence involving slavery and human trafficking; and
 - (b) having made reasonable enquiries, so far as it is aware, have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 10.2 The Supplier shall implement due diligence procedures for its Sub-contractors and other participants in its supply chains to ensure that there is no slavery or human trafficking in its supply chains.
- 10.3 The Supplier shall prepare and deliver to the Buyer each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

11. SUBCONTRACTS

- 11.1 The Supplier shall ensure that each material Sub-contract shall include:
- (a) a right under the Contracts (Rights of Third Parties) Act 1999 for the Buyer to enforce any provisions under the material Sub-contract which confer a benefit upon the Buyer;
 - (b) a provision enabling the Buyer to enforce the material Subcontract as if it were the Supplier; and

- (c) obligations no less onerous on the Sub-contractor than those imposed on the Supplier under this Contract. Compliance with obligations by Sub-contractors will be documented, maintained, and be available for review by Buyer security personnel.

12. EXECUTION AND COUNTERPARTS

- 12.1 This Contract may be executed in any number of counterparts (including by electronic transmission), each of which when executed shall constitute an original but all counterparts together shall constitute one and the same instrument.
- 12.2 Execution of this Contract may be carried out in accordance with the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (SI 2016/696) and the Electronic Communications Act 2000. In the event each Party agrees to sign this Contract by electronic signature (whatever form the electronic signature takes) it is confirmed that this method of signature is as conclusive of each Party's intention to be bound by this Contract as if signed by each Party's manuscript signature. In such situation, this Contract shall be formed on the date on which both Parties have electronically signed the Contract as recorded in the Buyer's electronic contract management system.