

FRAMEWORK SCHEDULE 4 – ANNEX 3

ALTERNATIVE AND ADDITIONAL CLAUSES AND SCHEDULES FOR LOTS 2, 3 AND 5

ALTERNATIVE CLAUSES

Scots Law
Northern Ireland Law
Joint Controller Clauses

ADDITIONAL CLAUSES AND SCHEDULES

SCHEDULES

S1	Implementation Plan
S2	Testing Procedures
S3	Security Requirements (either Part A or Part B)
S4	Staff Transfer
S5	Benchmarking
S6	Business Continuity and Disaster Recovery
S7	Continuous Improvement
S8	Guarantee
S9	MOD Terms

CLAUSES

C1	Relevant Convictions
C2	Security Measures
C3	Collaboration Agreement

Unless there is a clear adjustment to an existing provision of the Contract, additional Clauses incorporated into the Contract via the Order Form will have the effect of being inserted sequentially immediately after Clause 55. New definitions for Schedule 1 (Definitions) will have the effect of being inserted alphabetically into the table therein and associated schedules will have the effect of being inserted sequentially immediately after Schedule 10.

ADDITIONAL CLAUSES AND SCHEDULES - SCHEDULES**S1 IMPLEMENTATION PLAN****1. INTRODUCTION**

1.1 This Schedule S1 (Implementation Plan):

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

2. OUTLINE IMPLEMENTATION PLAN

- 2.1 The Outline Implementation Plan is set out in Attachment 3 (outline Implementation Plan) the Order Form.
- 2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 32 (Supplier Relief Due to Buyer Cause)).

3. APPROVAL OF THE DETAILED IMPLEMENTATION PLAN

- 3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Buyer for approval within twenty (20) Working Days of the Commencement Date.
- 3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:
 - 3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
 - 3.2.2 includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:
 - (a) the completion of each design document;
 - (b) the completion of the build phase;
 - (c) the completion of any Testing to be undertaken in accordance with Schedule S2 (Testing Procedures); and
 - (d) training and roll-out activities;
 - 3.2.3 clearly outlines all the steps required to implement the Milestones to be achieved in the next 15 months (or such other period agreed between the Parties), together with a high level plan for the rest of the programme;

- 3.2.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- 3.2.5 is produced using a software tool as specified, or agreed by the Buyer.
- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Buyer in accordance with Paragraph The Supplier shall submit a draft of the Detailed Implementation Plan to the Buyer for approval within twenty (20) Working Days of the Commencement Date., the Buyer shall have the right:
- 3.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
- (a) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - (b) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - (c) any other work in progress in relation to the Detailed Implementation Plan; and
- 3.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Buyer shall:
- 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
- 3.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than twenty (20) Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Buyer.
- 3.5 If the Buyer rejects the draft Detailed Implementation Plan:
- 3.5.1 the Buyer shall inform the Supplier in writing of its reasons for its rejection; and
- 3.5.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Buyer's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Buyer for the Buyer's approval within twenty (20) Working Days of the date of the Buyer's notice of rejection. The provisions of Paragraph Following receipt of the draft Detailed Implementation Plan from the Supplier, the Buyer shall: and this Paragraph If the Buyer rejects the draft Detailed Implementation Plan: shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Buyer approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Buyer's notice of approval.

4. UPDATES TO AND MAINTENANCE OF THE DETAILED IMPLEMENTATION PLAN**4.1** Following the approval of the Detailed Implementation Plan by the Buyer:

4.1.1 the Supplier shall submit a revised Detailed Implementation Plan to the Buyer every three (3) months starting three (3) months from the Commencement Date;

4.1.2 without prejudice to Paragraph the Supplier shall submit a revised Detailed Implementation Plan to the Buyer every three (3) months starting three (3) months from the Commencement Date;, the Buyer shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed Implementation Plan to the Buyer within twenty (20) Working Days of receiving such a request from the Buyer (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

4.1.3 any revised Detailed Implementation Plan shall (subject to Paragraph Save for any amendments which are of a type identified and notified by the Buyer (at the Buyer's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph APPROVAL OF THE DETAILED IMPLEMENTATION PLAN; and

4.1.4 the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in Part B of Schedule 7 (Governance) where used) or any such service management board established under Part A of Schedule 7 (Governance) where used. In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Buyer not less than five (5) Working Days in advance of such meeting.

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

4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and

4.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 32 (Supplier Relief Due to Buyer Cause).

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

5. GOVERNMENT REVIEWS

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

S2 TESTING PROCEDURES**1. DEFINITIONS**

In this Schedule S2 (Testing Procedures), the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Issue Threshold”	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.;
“Test Plan”	a plan: <ul style="list-style-type: none"> (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph TEST PLANS;
“Test Reports”	the reports to be produced by the Supplier setting out the results of Tests;
“Test Specification”	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph TEST SPECIFICATION;

“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph TEST STRATEGY;
“Test Success Criteria”	in relation to a Test, the test success criteria for that Test as referred to in Paragraph TEST SUCCESS CRITERIA;
“Test Witness”	any person appointed by the Buyer pursuant to Paragraph The Buyer may, in its sole discretion, require the attendance 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.; and
“Testing Procedures”	the applicable testing procedures and Test Success Criteria set out in this Schedule S2 (Testing Procedures).

2. RISK

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

2.1.1 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

2.1.2 affect the Buyer's right subsequently to reject:

(a) all or any element of the Deliverables to which a Test Certificate relates; or

(b) any Milestone to which the Milestone Achievement Certificate relates.

2.2 Notwithstanding the issuing of any Milestone Achievement Certificate, the Supplier shall remain solely responsible for ensuring that:

2.2.1 the Services are implemented in accordance with this Contract; and

2.2.2 each Service Level is met in accordance with this Contract.

3. TESTING OVERVIEW

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

3.2 The Supplier shall not submit any Deliverable for Testing:

3.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;

3.2.2 until the Buyer has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and

- 3.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between the Buyer and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable (as defined in Schedule 4 (Dispute Resolution Procedure) of this Contract).

4. TEST STRATEGY

- 4.1 The Supplier shall develop the final Test Strategy as soon as practicable after the Commencement Date but in any case no later than twenty (20) Working Days (or such other period as the Parties may agree in writing) after the Commencement Date.
- 4.2 The final Test Strategy shall include:
- 4.2.1 an overview of how Testing will be conducted in accordance with the 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 method for mapping the expected Test results to the Test Success Criteria;
 - 4.2.4 the procedure to be followed if a Deliverable fails to satisfy the Test Success Criteria or produces unexpected results, including a procedure for the resolution of Test Issues;
 - 4.2.5 the procedure to be followed to sign off each Test;
 - 4.2.6 the process for the production and maintenance of Test Reports and reporting, including templates for the Test Reports and the Test Issue Management Log, and a sample plan for the resolution of Test Issues;
 - 4.2.7 the names and contact details of the Buyer's and the Supplier's Test representatives;
 - 4.2.8 a high level identification of the resources required for Testing, including facilities, infrastructure, personnel and Buyer and/or third party involvement in the conduct of the Tests;
 - (a) the technical environments required to support the Tests; and
 - (b) the procedure for managing the configuration of the Test environments.

5. TEST PLANS

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

5.2 Each Test Plan shall include as a minimum:

5.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being tested and, for each Test, the specific Test Success Criteria to be satisfied;

5.2.2 a detailed procedure for the Tests to be carried out, including:

(a) the timetable for the Tests, including start and end dates;

(b) the Testing mechanism;

(c) dates and methods by which the Buyer can inspect Test results or witness the Tests in order to establish that the Test Success Criteria have been met;

(d) the mechanism for ensuring the quality, completeness and relevance of the Tests;

(e) the format and an example of Test progress reports and the process with which the Buyer accesses daily Test schedules;

(f) the process which the Buyer will use to review Test Issues and the Supplier's progress in resolving these in a timely basis;

(g) the Test Schedule;

(h) the re-Test procedure, the timetable and the resources which would be required for re-Testing; and

(i) the process for escalating Test Issues from a re-test situation to the taking of specific remedial action to resolve the Test Issue.

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

6. TEST SUCCESS CRITERIA

The Test Success Criteria for each Test that must be Achieved for the Supplier to Achieve a Milestone shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph TEST PLANS.

7. TEST SPECIFICATION

7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least ten (10) Working Days (or such other period as the Parties may agree in the Test Strategy or

otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

- 7.2 Each Test Specification shall include as a minimum:
- 7.2.1 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;
 - 7.2.2 a plan to make the resources available for Testing;
 - 7.2.3 Test scripts;
 - 7.2.4 Test pre-requisites and the mechanism for measuring them; and
 - 7.2.5 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.

8. TESTING

- 8.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 8.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph TEST WITNESSING.
- 8.3 The Supplier shall notify the Buyer at least ten (10) Working Days (or such other period as the Parties may agree in writing) in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests, except where the Buyer has specified in writing that such attendance is not necessary.
- 8.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 8.5 The Supplier shall provide to the Buyer in relation to each Test:
- 8.5.1 a draft Test Report not less than two (2) Working Days (or such other period as the Parties may agree in writing) prior to the date on which the Test is planned to end; and
 - 8.5.2 the final Test Report within five (5) Working Days (or such other period as the Parties may agree in writing) of completion of Testing.
- 8.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
- 8.6.1 an overview of the Testing conducted;
 - 8.6.2 identification of the relevant Test Success Criteria that have been satisfied;

- 8.6.3 identification of the relevant Test Success Criteria that have not been satisfied together with the Supplier's explanation of why those criteria have not been met;
- 8.6.4 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
- 8.6.5 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 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.; and
- 8.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

9. TEST ISSUES

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Buyer upon request.
- 9.3 The Buyer shall confirm the classification of any Test Issue unresolved at the end of a Test in consultation with the Supplier. If the Parties are unable to agree the classification of any unresolved Test Issue, the Dispute shall be dealt with in accordance with the Dispute Resolution Procedure using the Expedited Dispute Timetable (as defined in Schedule 4 (Dispute Resolution Procedure) of this Contract).

10. TEST WITNESSING

- 10.1 The Buyer may, in its sole discretion, require the attendance 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 Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
 - 10.3.1 shall actively review the Test documentation;
 - 10.3.2 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;

- 10.3.3 shall not be involved in the execution of any Test;
- 10.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
- 10.3.5 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;
- 10.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 10.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

11. TEST QUALITY AUDIT

- 11.1 Without prejudice to its rights pursuant to Clause 29.2 (Records and Audit), the Buyer may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
 - 11.2.1 adherence to an agreed methodology;
 - 11.2.2 adherence to the agreed Testing process;
 - 11.2.3 adherence to the Quality Plan;
 - 11.2.4 review of status and key development issues; and
 - 11.2.5 identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Buyer will give the Supplier at least five (5) Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier's reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Buyer will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule S2, the Buyer witnessing Tests and demonstrations of the Deliverables to the Buyer. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Buyer on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the 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:
- 11.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - 11.6.2 subsequently prepare a written report for the Supplier detailing its concerns, and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 11.7 In the event of an inadequate response to the Buyer's report from the Supplier, the Buyer (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

12. OUTCOME OF TESTING

- 12.1 The Buyer shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
- 12.2.1 the Buyer may issue a Test Certificate conditional upon the remediation of the Test Issues;
 - 12.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
 - 12.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 12.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

13. ISSUE OF MILESTONE ACHIEVEMENT CERTIFICATE

- 13.1 The Buyer shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- 13.1.1 the issuing by the Buyer of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

- 13.1.2 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 (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).
- 13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of Schedule 2 (Charges and Invoicing).
- 13.3 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out:
 - 13.3.1 the applicable Test Issues ; and
 - 13.3.2 any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Milestone Achievement Certificate.
- 13.5 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Milestone Achievement Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a material Default.
- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
 - 13.6.1 any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within ten (10) Working Days of receipt of the Buyer's report pursuant to Paragraph If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out:); and
 - 13.6.2 where the Buyer issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

ANNEX 1: TEST ISSUES – SEVERITY LEVELS

Severity Level 1 Test Issue: a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;

Severity Level 2 Test Issue: a Test Issue for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:

- (a) causes a Component to become unusable;
- (b) causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
- (c) has an adverse impact on any other Component(s) or any other area of the Services;

Severity Level 3 Test Issue: a Test Issue which:

- (a) causes a Component to become unusable;
- (b) causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
- (c) has an impact on any other Component(s) or any other area of the Services;
but for which, as reasonably determined by the Buyer, there is a practicable workaround available;

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

Severity Level 5 Test Issue: a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services

ANNEX 2: TEST CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF BUYER]**

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: **[insert description of Deliverables]**

We refer to the contract (the “**Contract**”) relating to the provision of the Services between the **[name of Buyer]** (the “**Buyer**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule S2 (Testing Procedures) of the Contract.

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

OR

[This Test Certificate is issued pursuant to Paragraph The Buyer shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues. of Schedule S2 (Testing Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[name of Buyer]**

ANNEX 3: MILESTONE ACHIEVEMENT CERTIFICATE

To: **[NAME OF SUPPLIER]**

FROM: **[NAME OF BUYER]**

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: **[insert description of Milestone]**

We refer to the contract (the “**Contract**”) relating to the provision of the Services between the **[name of Buyer]** (the “**Buyer**”) and **[name of Supplier]** (the “**Supplier**”) dated **[date]**.

Capitalised terms used in this certificate have the meanings given to them in Schedule 1 (Definitions) or Schedule S2 (Testing Procedures) of the Contract.

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

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph The Buyer shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following: of Schedule S2 (Testing Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of Schedule 2 (Charges and Invoicing)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of **[name of Buyer]**

S3 SECURITY REQUIREMENTS**PART A – SHORT FORM SECURITY REQUIREMENTS****1. DEFINITIONS**

1.1 In this Part A of Schedule S3 (Security Requirements), the following definitions shall apply:

"Security Management Plan" the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and is set out in the Order Form and as updated from time to time.

2. COMPLIANCE WITH SECURITY REQUIREMENTS AND UPDATES

2.1 The Supplier shall comply with the Security Policy and the requirements of this Schedule S3 (Security Requirements) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.

2.2 Where the Security Policy applies, the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.

2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Services it may propose a Change to the Buyer. 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 subject to the Change Control Procedure.

2.4 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Change Control Procedure the Supplier shall continue to provide the Services in accordance with its existing obligations.

3. SECURITY STANDARDS

3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on security.

3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security which:

3.2.1 is in accordance with the Law and this Contract;

3.2.2 as a minimum demonstrates Good Industry Practice;

3.2.3 meets any specific security threats of immediate relevance to the Services and/or the Buyer Data; and

- 3.2.4 where specified by the Buyer in accordance with Paragraph The Supplier shall comply with the Security Policy and the requirements of this Schedule S3 (Security Requirements) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy. complies with the Security Policy and the ICT Policy.
- 3.3 The references to standards, guidance and policies contained or set out in this Schedule shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. SECURITY MANAGEMENT PLAN

Introduction

- 4.1 The Supplier shall develop and maintain a Security Management Plan in accordance with this Part A of Schedule S3 (Security Requirements). The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

Content of Security Management Plan

- 4.2 The Security Management Plan shall:
- 4.2.1 comply with the principles of security set out in Paragraph SECURITY STANDARDS and any other provisions of this Contract relevant to security;
 - 4.2.2 identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;
 - 4.2.3 detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Buyer with access to the Services, processes associated with the provision of the Services, the Buyer Premises, the Sites and any IT, information and data (including the Buyer's Confidential Information and the Buyer Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - 4.2.4 be developed to protect all aspects of the Services and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any IT, information and data (including the Buyer's Confidential Information and the Buyer Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;

- 4.2.5 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Contract;
- 4.2.6 set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with Paragraph The Supplier shall comply with the Security Policy and the requirements of this Schedule S3 (Security Requirements) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy. the Security Policy; and
- 4.2.7 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Services and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Part A Schedule S3 (Security Requirements).

Development of the Security Management Plan

- 4.3 Within twenty (20) Working Days after the Commencement Date and in accordance with Paragraph SECURITY MANAGEMENT PLAN, the Supplier shall prepare and deliver to the Buyer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in the Order Form.
- 4.4 If the Security Management Plan submitted to the Buyer in accordance with Paragraph Within twenty (20) Working Days after the Commencement Date and in accordance with Paragraph SECURITY MANAGEMENT PLAN, the Supplier shall prepare and deliver to the Buyer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in the Order Form., or any subsequent revision to it in accordance with Paragraph SECURITY MANAGEMENT PLAN, is approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Part A Schedule S3 (Security Requirements). If the Security Management Plan is not approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.
- 4.5 The Buyer shall not unreasonably withhold or delay its decision to approve or not the Security Management Plan pursuant to Paragraph If the Security Management Plan submitted to the Buyer in accordance with Paragraph Within twenty (20) Working Days after the Commencement Date and in accordance with Paragraph SECURITY MANAGEMENT PLAN, the Supplier shall prepare and deliver to the Buyer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in the Order Form., or any subsequent revision to it in accordance with Paragraph SECURITY MANAGEMENT PLAN, is approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in

accordance with this Part A Schedule S3 (Security Requirements). If the Security Management Plan is not approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.. However a refusal by the Buyer to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph The Security Management Plan shall: shall be deemed to be reasonable.

- 4.6 Approval by the Buyer of the Security Management Plan pursuant to Paragraph If the Security Management Plan submitted to the Buyer in accordance with Paragraph Within twenty (20) Working Days after the Commencement Date and in accordance with Paragraph SECURITY MANAGEMENT PLAN, the Supplier shall prepare and deliver to the Buyer for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in the Order Form., or any subsequent revision to it in accordance with Paragraph SECURITY MANAGEMENT PLAN, is approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Part A Schedule S3 (Security Requirements). If the Security Management Plan is not approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. or of any change to the Security Management Plan in accordance with Paragraph SECURITY MANAGEMENT PLAN shall not relieve the Supplier of its obligations under this Part A Schedule S3 (Security Requirements).

Amendment of the Security Management Plan

- 4.7 The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect:
- 4.7.1 emerging changes in Good Industry Practice;
 - 4.7.2 any change or proposed change to the Services and/or associated processes;
 - 4.7.3 where necessary in accordance with Paragraph The Supplier shall comply with the Security Policy and the requirements of this Schedule S3 (Security Requirements) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy., any change to the Security Policy;
 - 4.7.4 any new perceived or changed security threats; and
 - 4.7.5 any reasonable change in requirements requested by the Buyer.
- 4.8 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:

- 4.8.1 suggested improvements to the effectiveness of the Security Management Plan;
 - 4.8.2 updates to the risk assessments; and
 - 4.8.3 suggested improvements in measuring the effectiveness of controls.
- 4.9 Subject to Paragraph The Buyer may, acting reasonably, approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment. , any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph The Security Management Plan shall be fully reviewed and updated by the Supplier at least annually to reflect: , a request by the Buyer or otherwise) shall be subject to the Change Control Procedure.
- 4.10 The Buyer may, acting reasonably, approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment.
- 5. SECURITY BREACH**
- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security., the Supplier shall:
- 5.3 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:
- 5.3.1 minimise the extent of actual or potential harm caused by any Breach of Security;
 - 5.3.2 remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;
 - 5.3.3 prevent an equivalent breach in the future exploiting the same cause failure; and
 - 5.3.4 as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.

- 5.4 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with Paragraph The Supplier shall comply with the Security Policy and the requirements of this Schedule S3 (Security Requirements) including the Security Management Plan (if any) and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy.) or the requirements of this Part A Schedule S3 (Security Requirements), then any required change to the Security Management Plan shall be at no cost to the Buyer.

PART B – LONG FORM SECURITY REQUIREMENTS

1. DEFINITIONS

1.1 In this Part B of Schedule S3 (Security Requirements), the following definitions shall apply:

“Baseline Security Requirements”	the baseline security requirements set out in Annex 1 of this Part B Schedule S3 (Security Requirements);
---	---

“ISMS”	the information security management system and process developed by the Supplier in accordance with Paragraph INFORMATION SECURITY MANAGEMENT SYSTEM (ISMS) (ISMS) as updated from time to time in accordance with this Part B Schedule S3 (Security Requirements);
---------------	---

“Security Management Plan”	the Supplier's security management plan prepared pursuant to this Part B Schedule S3 (Security Requirements), a draft of which has been provided by the Supplier to the Buyer and is set out in the Order Form and as updated from time to time; and
-----------------------------------	--

“Security Tests”	tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.
-------------------------	--

2. SECURITY REQUIREMENTS

2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.

2.2 The Parties shall each appoint a security representative to be responsible for security.

- 2.3 The Buyer shall clearly articulate its high level security requirements so that the Supplier can ensure that the ISMS, security related activities and any mitigations are driven by these fundamental needs.
- 2.4 Both Parties shall provide a reasonable level of access to any members of their staff for the purposes of designing, implementing and managing security.
- 2.5 The Supplier shall use as a minimum Good Industry Practice in the day to day operation of any system holding, transferring or processing Buyer Data and any system that could directly or indirectly have an impact on that information, and shall ensure that Buyer Data remains under the effective control of the Supplier at all times.
- 2.6 The Supplier shall ensure the up-to-date maintenance of a security policy relating to the operation of its own organisation and systems and on request shall supply this document as soon as practicable to the Buyer.
- 2.7 The Buyer and the Supplier acknowledge that information security risks are shared between the Parties and that a compromise of either the Supplier or the Buyer's security provisions represents an unacceptable risk to the Buyer requiring immediate communication and co-operation between the Parties.

3. INFORMATION SECURITY MANAGEMENT SYSTEM (ISMS)

- 3.1 The Supplier shall develop and submit to the Buyer, within twenty (20) Working Days after the Commencement Date, an information security management system for the purposes of this Contract and shall comply with the requirements of Paragraphs The ISMS shall: to In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Supplier shall immediately notify the Buyer Representative of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with. .
- 3.2 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Services, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.
- 3.3 The Buyer acknowledges that:
- 3.3.1 if the Buyer has not stipulated that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier's estate; and
 - 3.3.2 where the Buyer has stipulated that it requires a bespoke ISMS then the Supplier shall be required to present the ISMS for the Buyer's approval.
- 3.4 The ISMS shall:
- 3.4.1 if the Buyer has stipulated that it requires a bespoke ISMS, be developed to protect all aspects of the Services and all processes associated with the provision of the associated with the delivery of the Services, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any IT, information and

data (including the Buyer's Confidential Information and the Buyer Data) to the extent used by the Buyer or the Supplier in connection with this Contract;

- 3.4.2 meet the relevant standards in ISO/IEC 27001 and ISO/IEC27002 in accordance with Paragraph COMPLYING WITH THE ISMS;
- 3.5 at all times provide a level of security which:
 - 3.5.1 is in accordance with the Law and this Contract;
 - 3.5.2 complies with the Baseline Security Requirements;
 - 3.5.3 as a minimum demonstrates Good Industry Practice;
 - 3.5.4 complies with the Security Policy and the ICT Policy;
 - 3.5.5 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) (<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>);
 - 3.5.6 takes account of guidance issued by the Centre for Protection of National Infrastructure (<https://www.cpni.gov.uk>);
 - 3.5.7 complies with HMG Information Assurance Maturity Model and Assurance Framework (<https://www.ncsc.gov.uk/articles/hmg-ia-maturity-model-iamm>);
 - 3.5.8 meets any specific security threats of immediate relevance to the ISMS, the Deliverables and/or Government Data;
 - 3.5.9 addresses issues of incompatibility with the Supplier's own organisational security policies; and
 - 3.5.10 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with Paragraph COMPLYING WITH THE ISMS;
 - 3.5.11 document the security incident management processes and incident response plans;
 - 3.5.12 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Buyer approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
 - 3.5.13 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant Security Management Plan).

- 3.6 Subject to Paragraph SECURITY REQUIREMENTS, the references to Standards, guidance and policies contained or set out in Paragraph The ISMS shall: shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.7 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Supplier shall immediately notify the Buyer Representative of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.8 If the bespoke ISMS submitted to the Buyer pursuant to Paragraph if the Buyer has not stipulated that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier's estate; and is approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Part B Schedule S3 (Security Requirements). If the ISMS is not approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Buyer. If the Buyer does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Buyer pursuant to this Paragraph INFORMATION SECURITY MANAGEMENT SYSTEM (ISMS) may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs The ISMS shall: to In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Supplier shall immediately notify the Buyer Representative of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with. shall be deemed to be reasonable.
- 3.9 Approval by the Buyer of the ISMS pursuant to Paragraph If the bespoke ISMS submitted to the Buyer pursuant to Paragraph if the Buyer has not stipulated that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier's estate; and is approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Part B Schedule S3 (Security Requirements). If the ISMS is not approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Buyer. If the Buyer does not approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Buyer pursuant to this Paragraph INFORMATION SECURITY MANAGEMENT SYSTEM (ISMS) may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs The ISMS shall: to In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Supplier shall immediately notify the Buyer Representative of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with. shall be deemed to be reasonable. or of any change to the ISMS shall not relieve the Supplier of its obligations under this Part B Schedule S3 (Security Requirements).

4. SECURITY MANAGEMENT PLAN

- 4.1 Within twenty (20) Working Days after the Commencement Date, the Supplier shall prepare and submit to the Buyer for approval in accordance with Paragraph SECURITY MANAGEMENT PLAN fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph The Security Management Plan shall:
- 4.2 The Security Management Plan shall:
- 4.2.1 be based on the initial Security Management Plan set out in the Order Form;
 - 4.2.2 comply with the Baseline Security Requirements and, where specified by the Buyer in accordance with Paragraph at all times provide a level of security which:complies with the Security Policy and the ICT Policy;; the Security Policy;
 - 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Part B Schedule S3 (Security Requirements) is complied with by the Supplier;
 - 4.2.4 detail the process for managing any security risks from Sub-Contractors and third parties authorised by the Buyer with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Buyer's Confidential Information and the Buyer Data) and any system that could directly or indirectly have an impact on that information, data and/or the Services;
 - 4.2.5 unless otherwise specified by the Buyer in writing, be developed to protect all aspects of the Services and all processes associated with the delivery of the Services, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Buyer's Confidential Information and the Buyer Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;
 - 4.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Services and all processes associated with the delivery of the Services and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Services comply with the provisions of this Part B Schedule S3 (Security Requirements) (including the requirements set out in Paragraph The ISMS shall:);
 - 4.2.7 demonstrate that the Supplier's approach to delivery of the Services has minimised the Buyer and Supplier effort required to comply with this Part B Schedule S3 (Security Requirements) through consideration of available, appropriate and practicable pan-government accredited services (for example, 'platform as a service' offering from the G-Cloud catalogue);

- 4.2.8 set out the plans for transitioning all security arrangements and responsibilities from those in place at the Commencement Date to those incorporated in the ISMS within the timeframe agreed between the Parties;
 - 4.2.9 set out the scope of the Buyer System that is under the control of the Supplier;
 - 4.2.10 be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other Schedules of this Contract which cover specific areas included within those standards; and
 - 4.2.11 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the Services and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Part B Schedule S3 (Security Requirements).
- 4.3 If the Security Management Plan submitted to the Buyer pursuant to Paragraph Within twenty (20) Working Days after the Commencement Date, the Supplier shall prepare and submit to the Buyer for approval in accordance with Paragraph SECURITY MANAGEMENT PLAN fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph The Security Management Plan shall: is approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Part B Schedule S3 (Security Requirements). If the Security Management Plan is not approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission to the Buyer of the Security Management Plan. If the Buyer does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Buyer pursuant to this Paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph The Security Management Plan shall: shall be deemed to be reasonable.
- 4.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph If the Security Management Plan submitted to the Buyer pursuant to Paragraph Within twenty (20) Working Days after the Commencement Date, the Supplier shall prepare and submit to the Buyer for approval in accordance with Paragraph SECURITY MANAGEMENT PLAN fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph The Security Management Plan shall: is approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Part B Schedule S3 (Security Requirements). If the Security Management Plan is not approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for approval. The Parties shall use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission to the Buyer of the Security Management Plan. If the Buyer does not approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Buyer pursuant to this Paragraph may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph The Security Management Plan shall: shall be deemed to

be reasonable. or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Part B Schedule S3 (Security Requirements).

5. AMENDMENT OF THE ISMS AND SECURITY MANAGEMENT PLAN

5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:

- 5.1.1 emerging changes in Good Industry Practice;
- 5.1.2 any change or proposed change to the Supplier System, the Services and/or associated processes;
- 5.1.3 any new perceived or changed security threats;
- 5.1.4 where required in accordance with Paragraph complies with the Security Policy and the ICT Policy,, any changes to the Security Policy;
- 5.1.5 any new perceived or changed security threats; and
- 5.1.6 any reasonable change in requirement requested by the Buyer.

5.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Buyer. The results of the review shall include, without limitation:

- 5.2.1 suggested improvements to the effectiveness of the ISMS;
- 5.2.2 updates to the risk assessments;
- 5.2.3 proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and
- 5.2.4 suggested improvements in measuring the effectiveness of controls.

5.3 Subject to Paragraph The Buyer may, acting reasonably, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment., any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:, a Buyer request, a change to the Baseline Security Requirements or otherwise) shall be subject to the Change Control Procedure and shall not be implemented until approved in writing by the Buyer.

5.4 The Buyer may, acting reasonably, approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Change Control Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment.

6. SECURITY TESTING

- 6.1 The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests 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 Security Tests shall be agreed in advance with the Buyer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Buyer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Buyer with the results of such Security Tests (in a form approved by the Buyer in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Buyer pursuant to this Contract, the Buyer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Buyer may notify the Supplier of the results of such tests after completion of each such test. If any such Buyer's test adversely affects the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Buyer's test.
- 6.4 Where any Security Test carried out pursuant to Paragraphs The Buyer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Buyer with the results of such Security Tests (in a form approved by the Buyer in advance) as soon as practicable after completion of each Security Test. or Without prejudice to any other right of audit or access granted to the Buyer pursuant to this Contract, the Buyer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Buyer may notify the Supplier of the results of such tests after completion of each such test. If any such Buyer's test adversely affects the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Buyer's test. reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Buyer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Buyer's prior written approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Buyer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or Baseline Security Requirements or the requirements of this Part B Schedule S3 (Security Requirements), the change to the ISMS or Security Management Plan shall be at no cost to the Buyer.
- 6.5 If any repeat Security Test carried out pursuant to Paragraph Where any Security Test carried out pursuant to Paragraphs The Buyer shall be entitled to send a representative to witness the

conduct of the Security Tests. The Supplier shall provide the Buyer with the results of such Security Tests (in a form approved by the Buyer in advance) as soon as practicable after completion of each Security Test. or Without prejudice to any other right of audit or access granted to the Buyer pursuant to this Contract, the Buyer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the ISMS and the Security Management Plan. The Buyer may notify the Supplier of the results of such tests after completion of each such test. If any such Buyer's test adversely affects the Supplier's ability to deliver the Services so as to meet the Service Levels, the Supplier shall be granted relief against any resultant under-performance for the period of the Buyer's test. reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Buyer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Buyer's prior written approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Buyer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or Baseline Security Requirements or the requirements of this Part B Schedule S3 (Security Requirements), the change to the ISMS or Security Management Plan shall be at no cost to the Buyer. reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a material Default of this Contract.

7. COMPLYING WITH THE ISMS

- 7.1 The Buyer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy where such compliance is required in accordance with Paragraph [].
- 7.2 If, on the basis of evidence provided by such security audits, it is the Buyer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy are not being achieved by the Supplier, then the Buyer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier does not become compliant within the required time then the Buyer shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in Paragraph The Buyer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001 and/or the Security Policy where such compliance is required in accordance with Paragraph []., the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 and/or, where relevant, the Security Policy then the Supplier shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Buyer in obtaining such audit.

8. SECURITY BREACH

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.
- 8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security., the Supplier shall:
- 8.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Buyer) necessary to:
 - 8.2.2 minimise the extent of actual or potential harm caused by any Breach of Security;
 - 8.2.3 remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Buyer Assets and/or ISMS to the extent that this is within the Supplier's control;
 - 8.2.4 apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to provide the Services so as to meet the relevant Service Levels, the Supplier shall be granted relief against any resultant under-performance for such period as the Buyer, acting reasonably, may specify by written notice to the Supplier;
 - 8.2.5 prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure; and
 - 8.2.6 supply any requested data to the Buyer (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Buyer's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
 - 8.2.7 as soon as reasonably practicable provide to the Buyer full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Buyer.
- 8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy (where relevant) or the requirements of this Part B Schedule S3 (Security Requirements), then any required change to the ISMS shall be at no cost to the Buyer.

9. VULNERABILITIES AND FIXING THEM

- 9.1 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the IT Environment will be discovered which unless mitigated will present an unacceptable risk to the Buyer's information.

- 9.2 The severity of threat vulnerabilities for the Supplier COTS Software and/or Third Party 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 ISMS and using the appropriate vulnerability scoring systems including:
- 9.2.1 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 <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.
- 9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where:
- 9.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
 - 9.3.2 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 5 days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or
 - 9.3.3 the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.
- 9.4 The Specification and Mobilisation Plan (if applicable) shall include provisions for major version upgrades of all Supplier COTS Software and/or Third Party COTS Software to be upgraded within 6 Months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the 'n-1 version') throughout the Term unless:
- 9.4.1 where upgrading such Supplier COTS Software and/or Third Party COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within 12 Months of release of the latest version; or
 - 9.4.2 is agreed with the Buyer in writing.
- 9.5 The Supplier shall:
- 9.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent Central Government Body;

Additional and Alternative Terms and Conditions

- 9.5.2 ensure that the IT Environment (to the extent that the IT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
 - 9.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the IT Environment by actively monitoring the threat landscape during the Contract Period;
 - 9.5.4 pro-actively scan the IT Environment (to the extent that the IT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Services of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Buyer approvals of exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and;
 - 9.5.5 from the date specified in the Security Management Plan provide a report to the Buyer within five (5) Working Days of the end of each month detailing both patched and outstanding vulnerabilities in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
 - 9.5.6 propose interim mitigation measures to vulnerabilities in the IT Environment known to be exploitable where a security patch is not immediately available;
 - 9.5.7 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 IT Environment); and
 - 9.5.8 inform the Buyer when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the IT Environment and provide initial indications of possible mitigations.
- 9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph VULNERABILITIES AND FIXING THEM, the Supplier shall immediately notify the Buyer.
- 9.7 A failure to comply with Paragraph The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as 'Critical' within 14 days of release, 'Important' within 30 days of release and all 'Other' within 60 Working Days of release, except where: shall constitute a Default, and the Supplier shall comply with the Rectification Plan Process.

ANNEX 1 – BASELINE SECURITY REQUIREMENTS**1. HANDLING CLASSIFIED INFORMATION**

- 1.1 The Supplier shall not handle Buyer information classified SECRET or TOP SECRET except if there is a specific requirement and in this case prior to receipt of such information the Supplier shall seek additional specific guidance from the Buyer.

2. END USER DEVICES

- 2.1 When Buyer Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the National Cyber Security Centre (“NCSC”) to at least Foundation Grade, for example, under the NCSC Commercial Product Assurance scheme (“CPA”).
- 2.2 Devices used to access or manage Buyer Data and services must be under the management authority of Buyer or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a ‘known good’ state prior to being provisioned into the management authority of the Buyer. Unless otherwise agreed with the Buyer in writing, all Supplier devices are expected to meet the set of security requirements set out in the End User Devices Security Guidance (<https://www.ncsc.gov.uk/guidance/end-user-device-security>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Buyer and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the NCSC guidance, then this should be agreed in writing on a case by case basis with the Buyer.

3. DATA PROCESSING, STORAGE, MANAGEMENT AND DESTRUCTION

- 3.1 The Supplier and Buyer recognise the need for the Buyer’s information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Buyer the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Buyer Data will be subject to at all times.
- 3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Buyer in accordance with the Change Control Procedure.
- 3.3 The Supplier shall:
- 3.3.1 provide the Buyer with all Buyer Data on demand in an agreed open format;
 - 3.3.2 have documented processes to guarantee availability of Buyer Data in the event of the Supplier ceasing to trade;
 - 3.3.3 securely destroy all media that has held Buyer Data at the end of life of that media in line with Good Industry Practice; and
 - 3.3.4 securely erase any or all Buyer Data held by the Supplier when requested to do so by the Buyer.

4. ENSURING SECURE COMMUNICATIONS

- 4.1 The Buyer requires that any Buyer Data transmitted over any public network (including the Internet, mobile networks or un-protected enterprise network) or to a mobile device must be encrypted using a product or system component which has been formally assured through a certification process recognised by NCSC, to at least Foundation Grade, for example, under CPA.
- 4.2 The Buyer requires that the configuration and use of all networking equipment to provide the Services, including those that are located in secure physical locations, are at least compliant with Good Industry Practice.

5. SECURITY BY DESIGN

- 5.1 The Supplier shall apply the 'principle of least privilege' (the practice of limiting systems, processes and user access to the minimum possible level) to the design and configuration of IT systems which will process or store Buyer Data.
- 5.2 When designing and configuring the IT Environment (to the extent that the IT Environment is within the control of the Supplier) the Supplier shall follow Good Industry Practice and seek guidance from recognised security professionals with the appropriate skills and/or a NCSC certification (<https://www.ncsc.gov.uk/section/products-services/ncsc-certification>) for all bespoke or complex components of the IT Environment (to the extent that the IT Environment is within the control of the Supplier).

6. SECURITY OF SUPPLIER PERSONNEL

- 6.1 Supplier Personnel shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Supplier shall agree on a case by case basis Supplier Personnel roles which require specific government clearances (such as 'SC') including system administrators with privileged access to IT systems which store or process Buyer Data.
- 6.3 The Supplier shall prevent Supplier Personnel who are unable to obtain the required security clearances from accessing systems which store, process, or are used to manage Buyer Data 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.
- 6.5 Where the Supplier or Sub-Contractors grants increased IT privileges or access rights to Supplier Personnel, those Supplier Personnel shall be granted only those permissions necessary for them to carry out their duties. When Supplier Personnel no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

7. RESTRICTING AND MONITORING ACCESS

- 7.1 The Supplier shall operate an access control regime to ensure all users and administrators of the IT Environment (to the extent that the IT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services.

Applying the 'principle of least privilege', users and administrators shall be allowed access only to those parts of the IT Environment that they require. The Supplier shall retain an audit record of accesses.

8. AUDIT

- 8.1 The Supplier shall collect audit records which relate to security events in the systems 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:
- 8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the IT Environment (to the extent that the IT Environment is within the control of the Supplier). To the extent the design of the Services allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - 8.1.2 Security events generated in the IT Environment (to the extent that the IT Environment is within the control of the Supplier) and shall include: privileged account log-on and log-off events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the IT Environment.
- 8.3 The Supplier shall retain audit records collected in compliance with this Paragraph AUDIT for a period of at least 6 months.

S4 STAFF TRANSFER**1. DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

"Employee Liability"

all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- b) unfair, wrongful or constructive dismissal compensation;
- 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;
- e) outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Sub-contractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;
- f) claims whether in tort, contract or statute or otherwise;

any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"Employment Regulations"

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC;

"Former Supplier"

a supplier supplying the 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);

"Partial Termination"	the partial termination of this Contract to the extent that it relates to the provision of any part of the Services;
"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, and for the purposes of Part D: Pensions, shall include the Commencement Date, where appropriate;
"Replacement Sub-Contractor"	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);
"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;
"Supplier's Final Supplier Personnel List"	a list provided by the Supplier of all Supplier Personnel whose 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;
"Staffing Information"	<p>in relation to all persons identified on the Supplier's Provisional Supplier Personnel List or Supplier's Final Supplier Personnel List, as the case may be, such information as the Buyer may reasonably request (subject to all applicable provisions of the Data Protection Legislation), but including in an anonymised format:</p> <ul style="list-style-type: none"> (a) their ages, dates of commencement of employment or engagement, gender and place of work; (b) details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise; (c) the identity of the employer or relevant contracting Party; (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;

- (e) their wages, salaries, bonuses and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;
- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

"Term" the period commencing on the Commencement Date and ending on the expiry of the Initial Period or any Extension Period or on earlier termination of this Contract;

"Transferring Buyer Employees" those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date and whose names are provided to the Supplier on or prior to 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 whose names are provided to the Supplier on or prior to the Relevant Transfer Date.

2. INTERPRETATION

- 2.1 Where a provision in this Schedule imposes any obligation on the Supplier including (without limit) to comply with a requirement or 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 and where the Sub-contractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3. Which parts of this Schedule apply

- 3.1 The Parties agree that:

- 3.1.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, this Schedule S4 (Staff Transfer) shall apply as follows:
- (a) where the Relevant Transfer involves the transfer of Transferring Buyer Employees, Part A and Part D of this Schedule S4 (Staff Transfer) shall apply;
 - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of this Schedule S4 (Staff Transfer) shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring Buyer Employees and Transferring Former Supplier Employees, Parts A, B and D of this Schedule S4 (Staff Transfer) shall apply; and
 - (d) Part C of this Schedule S4 (Staff Transfer) shall not apply;
- 3.1.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of this Schedule S4 (Staff Transfer) shall apply, Part D of this Schedule S4 (Staff Transfer) may apply and Parts A and B of this Schedule S4 (Staff Transfer) shall not apply; and
- 3.1.3 Part E of this Schedule S4 (Staff Transfer) shall apply on the expiry or termination of the Services or any part of the Services.

PART A - STAFF TRANSFER AT THE COMMENCEMENT DATE**Outsourcing from the Buyer****1. WHAT IS A RELEVANT TRANSFER****1.1 The Buyer and the Supplier agree that:**

- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-Contractor and each such Transferring Buyer Employee.
- 1.1.3 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

2. INDEMNITIES THE BUYER MUST GIVE

- 2.1 Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of any act or omission by the indemnifying party in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date.
- 2.2 The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.

2.3 Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any claim: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:

- 2.3.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
- 2.3.2 the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
- 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier; no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing; to if after the period referred to in Paragraph the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier; no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person; the Buyer will indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any

Sub-Contractor pursuant to the Employment Regulations then shall not apply to any claim: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then.

- 2.4 The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any claim: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any claim:

2.4.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Sub-Contractor; or

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

- 2.5 The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the

Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any claim: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

- 2.6 If the Supplier and/or any Sub-Contractor at any point accept the employment of any person as is described in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any claim: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that his/her contract of employment has been transferred from the Buyer to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then, such person shall be treated as having transferred to the Supplier and/or any Sub-Contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

3. INDEMNITIES THE SUPPLIER MUST GIVE AND ITS OBLIGATIONS

- 3.1 Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-Contractor in respect of

any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date.

- 3.2 The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and any other sums due under Part D: Pensions.

4. INFORMATION THE SUPPLIER MUST PROVIDE

The Supplier shall promptly provide to the Buyer in writing such information as is necessary to enable the Buyer to carry out its duties under regulation 13 of the Employment Regulations. The Buyer shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. CABINET OFFICE REQUIREMENTS

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.
- 5.2 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.
- 5.3 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the

treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice. or The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in shall be agreed in accordance with the Change Control Procedure.

6. PENSIONS

6.1 The Supplier shall comply with:

- 6.1.1 all statutory pension obligations in respect of all Transferring Buyer Employees; and
- 6.1.2 the provisions in Part D: Pensions.

PART B - STAFF TRANSFER AT THE COMMENCEMENT DATE**Transfer from a former supplier on re-procurement****1. WHAT IS A RELEVANT TRANSFER****1.1 The Buyer and the Supplier agree that:**

1.1.1 the commencement of the provision of the Services or of any relevant part of the Services will be a Relevant Transfer in relation to the Transferring Former Supplier Employees; and

1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between each Former Supplier and the Transferring Former Supplier Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Sub-Contractor and each such Transferring Former Supplier Employee.

1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions.

2. INDEMNITIES GIVEN BY THE FORMER SUPPLIER

2.1 Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date., the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

2.2 The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date, the Buyer

shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date, the Buyer shall indemnify the Supplier and any Sub-Contractor against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Sub-Contractor whether occurring or having its origin before, on or after the Relevant Transfer Date.

2.3 Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:

- 2.3.1 the Supplier will within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing;
- 2.3.2 the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
- 2.3.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
- 2.3.4 if after the period referred to in Paragraph the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier; no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs the Supplier will within 5 Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing; to if after the period referred to in Paragraph the Former Supplier may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier; no such offer has been made, or such offer has been made but not

as a result of any alleged act or omission of the Supplier and/or any Sub-Contractor; or

2.4.2 that the termination of employment was unfair because the Supplier and/or Sub-Contractor neglected to follow a fair dismissal procedure.

2.5 The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date.

2.6 If the Supplier and/or any Sub-Contractor at any point accept the employment of any person as is described in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.3 shall not apply to any claim: and The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Relevant Transfer Date., if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that his/her contract of employment has been transferred from a Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:; such person shall be treated as having transferred to the Supplier and/or any Sub-Contractor and the Supplier shall comply with such obligations as may be imposed upon it under applicable Law.

3. INDEMNITIES THE SUPPLIER MUST GIVE AND ITS OBLIGATIONS

3.1 Subject to Paragraph

3.2 The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of any act or omission by the Supplier or any Sub-Contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date.

3.3 The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph Subject to Paragraph The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations., the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

3.4 The Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due under Part D: Pensions.

4. INFORMATION THE SUPPLIER MUST GIVE

The Supplier shall promptly provide to the Buyer and/or at the Buyer's direction, the Former Supplier, in writing such information as is necessary to enable the Buyer and/or the Former Supplier to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Former Supplier shall promptly provide to the Supplier in writing such information as is necessary to enable the Supplier and any Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

5. CABINET OFFICE REQUIREMENTS

5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in (i) the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised 2007; (ii) HM Treasury's guidance "Staff Transfers from Central Government: A Fair Deal for Staff Pensions of 1999; (iii) HM Treasury's guidance: "Fair deal for staff pensions: procurement of Bulk Transfer Agreements and Related Issues" of June 2004; and/or (iv) the New Fair Deal.

5.2 Any changes embodied in any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice. shall be agreed in accordance with the Change Control Procedure.

6. LIMITS ON THE FORMER SUPPLIER'S OBLIGATIONS

Notwithstanding any other provisions of this Part B, where in this Part B 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's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. PENSIONS

7.1 The Supplier shall comply with:

7.1.1 all statutory pension obligations in respect of all Transferring Former Supplier Employees; and

7.1.2 the provisions in Part D: Pensions.

PART C – NO STAFF TRANSFER ON THE COMMENCEMENT DATE**1. WHAT HAPPENS IF THERE IS A STAFF TRANSFER**

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services will not be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim; The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim; The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim; The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim; The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then; all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the

Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:

- 1.2.1 the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing;
- 1.2.2 the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier;
- 1.2.3 if such offer of employment is accepted, the Supplier shall immediately release the person from its employment;
- 1.2.4 if after the period referred to in Paragraph the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier; no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs the Supplier will, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing; to if after the period referred to in Paragraph the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier; no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;:

- 1.2.5 the Buyer will indemnify the Supplier and/or the relevant Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph Subject to Paragraphs The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim.; The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim.; The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim.; The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-

Additional and Alternative Terms and Conditions

Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then; and

- 1.2.6 the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Sub-Contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph Subject to Paragraphs The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such

Additional and Alternative Terms and Conditions

employees of the Supplier and/or employees of the Sub-Contractor., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim:;, The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:;, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:;, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:;, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:.

- 1.3 The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:;, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months

from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim:;, The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:;, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:;, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:;, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim:

- 1.3.1 for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or Sub-Contractor;
or

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

1.4 The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim:, The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim:, The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date.

- 1.5 If the Supplier and/or the Sub-Contractor does not comply with Paragraph Subject to Paragraphs The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim.; The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any claim.; The indemnities in Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim.; The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then: shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph Subject to Paragraphs The indemnities in Paragraph 1.2 shall not apply to any claim.; The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than 3 Months from the Commencement Date. and If the Supplier and/or the Sub-Contractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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., if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that his/her contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Sub-Contractor pursuant to the Employment Regulations then:; all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Sub-Contractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) 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.

2. LIMITS ON THE FORMER SUPPLIER'S 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, the following definitions shall apply and shall be deemed to include the definitions set out in the Annexes:

- "Actuary"** a Fellow of the Institute and Faculty of Actuaries;
- "Admission Agreement"** means either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
- "Broadly Comparable"** (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and
- (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;
- "Fair Deal Employees"** those:
- (a) Transferring Buyer Employees; and/or
- (b) Transferring Former Supplier Employees; and/or

- (c) 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 if after the period referred to in Paragraph the Buyer may offer employment to such person, or take such other steps as it considers appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier; no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person; of Parts A or B or Paragraph if after the period referred to in Paragraph the Buyer may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Supplier; no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person; of Part C;
- (d) where the Former Supplier becomes the Supplier those employees;

who at the Commencement Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;

- "Fair Deal Schemes"** means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
- "Fund Actuary"** means Fund Actuary as defined in Annex D3 to this Part D;
- "LGPS"** the schemes as defined in Annex D3 to this Part D;
- "NHSPS"** the schemes as defined in Annex D2 to this Part D;
- "New Fair Deal"** the revised Fair Deal position set out in the HM Treasury guidance: *"Fair Deal for Staff Pensions: Staff Transfer from Central Government"* issued in October 2013 including:
- (a) any amendments to that document immediately prior to the Relevant Transfer Date; and
- (b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the CCS or Buyer; and

"Statutory Schemes" means the CSPS, NHSPS or LGPS.

2. SUPPLIER OBLIGATIONS TO PARTICIPATE IN THE PENSION SCHEMES

- 2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, 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 Agreement and/or Direction Letter, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
 - 2.3.2 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.

3. SUPPLIER OBLIGATION TO PROVIDE INFORMATION

- 3.1 The Supplier undertakes to the Buyer:
- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
 - 3.1.2 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).

4. INDEMNITIES THE SUPPLIER MUST GIVE

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified NHS Pensions the Buyer and/or any Replacement Supplier and/or any Replacement Sub-Contractor on demand from and against all and any Losses whatsoever arising out of or in connection with any liability towards all and any Fair Deal Employees arising in respect of service on or after the Relevant Transfer Date which arise from any breach by the Supplier of this Part D, and/or the CSPS Admission Agreement and/or the Direction Letter and/or the LGPS Admission Agreement or relates to the payment of benefits under and/or participation in an occupational pension scheme (within the meaning provided for in section 1 of the Pension Schemes Act 1993) or the Fair Deal Schemes.
- 4.2 The Supplier hereby indemnifies the NHS Pensions, the Buyer and/or any Replacement Supplier and/or Replacement Sub-Contractor from and against all Losses suffered or incurred by it or them which arise from claims by Fair Deal Employees of the Supplier and/or of any Sub-Contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

- 4.2.1 relate to pension rights in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract; or
 - 4.2.2 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.
- 4.3 The indemnities in this Part D and its Annexes:
- 4.3.1 shall survive termination of this Contract; and
 - 4.3.2 shall not be affected by the caps on liability contained in Clause 19.

5. WHAT HAPPENS IF THERE IS A DISPUTE

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute between the Buyer and/or the Supplier or between their respective actuaries or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Buyer and/or the Supplier be referred to an independent Actuary:
- 5.1.1 who will act as an expert and not as an arbitrator;
 - 5.1.2 whose decision will be final and binding on the Buyer and/or the Supplier; and
 - 5.1.3 whose expenses shall be borne equally by the Buyer and/or the Supplier unless the independent Actuary shall otherwise direct.

6. OTHER PEOPLE'S RIGHTS

- 6.1 The Parties agree Clause 52 does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to him or her or it 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 or its own right under section 1(1) of the CRTPA.

7. WHAT HAPPENS IF THERE IS A BREACH OF THIS PART D

- 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 this Contract for material Default in the event that the Supplier:
- 7.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or
 - 7.1.2 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. TRANSFERRING NEW FAIR DEAL EMPLOYEES

8.1 Save on expiry or termination of this Contract, if the employment of any Fair Deal Employee transfers to another employer (by way of a transfer under the Employment Regulations) the Supplier shall and shall procure that any relevant Sub-Contractor shall:

8.1.1 consult with and inform those Fair Deal Employees of the pension provisions relating to that transfer; and

8.1.2 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

9. WHAT HAPPENS TO PENSIONS IF THIS CONTRACT ENDS

The provisions of Part E: Staff Transfer On Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

10. BROADLY COMPARABLE PENSION SCHEMES

10.1 If either:

10.1.1 the terms of any of Paragraphs The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS. of Annex D1: CSPS, If the Buyer is entitled to terminate this Contract or the Supplier (or its Sub-Contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Sub-Contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Broadly Comparable Pension Scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-Contractors. of Annex D2: NHSPS and or 4 of Annex D3: LGPS apply; and/or

10.1.2 the Buyer agrees, having considered the exceptional cases provided for in New Fair Deal, (such agreement not to be unreasonably withheld) that the Supplier (and/or its Sub-contractors, if any) need not continue to provide the Fair Deal Employees, who continue to qualify for Fair Deal Protection, with access to the appropriate Statutory Scheme;

the Supplier must (and must, where relevant, procure that each of its Sub-Contractors will) ensure that, with effect from the Relevant Transfer Date or if later cessation of participation in the Statutory Scheme until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme

under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

- 10.2 Where the Supplier has set up a Broadly Comparable pension scheme or schemes pursuant to the provisions of Paragraph 1f either; the Supplier shall (and shall procure that any of its Sub-Contractors shall):
- 10.2.1 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 covering all relevant Fair Deal Employees, as soon as it is able to do so and in any event no later than 28 days before the Relevant Transfer Date;
 - 10.2.2 fully fund any such Broadly Comparable pension scheme in accordance with the funding requirements set by that Broadly Comparable pension scheme's Actuary or by the Government Actuary's Department for the period ending on the Service Transfer Date;
 - 10.2.3 instruct any such Broadly Comparable pension scheme's Actuary to, and to provide all such co-operation and assistance in respect of any such Broadly Comparable pension scheme as the Replacement Supplier and/or CCS and/or NHS Pension and/or CSPA and/or the relevant Administering Authority 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 Employee that remain eligible for New Fair Deal protection following a Service Transfer;
 - 10.2.4 provide a replacement Broadly Comparable pension scheme with immediate effect for those Fair Deal Employees who are still employed by the Supplier and/or relevant Sub-Contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-Contractor's Broadly Comparable pension scheme is terminated;
 - 10.2.5 allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-Contractor, the Shortfall shall be paid by the Supplier; and
 - 10.2.6 indemnify the Buyer and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or on demand for any failure to pay the Shortfall as required under Paragraph 1f allow and make all necessary arrangements to effect, in respect of any Fair Deal Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the relevant

Additional and Alternative Terms and Conditions

Statutory Scheme and as is relevant on a day for day service basis and to give effect to any transfer of accrued rights required as part of participation under New Fair Deal. For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the appropriate Statutory Scheme to fund day for day service ("**Shortfall**"), the Supplier or the Sub-Contractor (as agreed between them) must pay the Statutory Scheme, as required, provided that in the absence of any agreement between the Supplier and any Sub-Contractor, the Shortfall shall be paid by the Supplier; and above.

ANNEX D1 – CIVIL SERVICE PENSIONS SCHEMES (CSPS)**1. DEFINITIONS**

1.1 In this Annex D1: CSPS to Part D: Pensions, the following definition shall apply:

"CSPS Admission Agreement" an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;

"CSPS Eligible Employee" any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement; and

"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.

2. ACCESS TO EQUIVALENT PENSION SCHEMES AFTER TRANSFER

2.1 The Supplier shall procure that the Fair Deal Employees, 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 and the Supplier shall procure that the Fair Deal Employees continue to accrue benefits in accordance with the provisions governing the relevant section of the CSPS for service from (and including) the Relevant Transfer Date.

2.2 The Supplier undertakes that should it cease to participate in the CSPS for whatever reason at a time when it has CSPS Eligible Employees, that it will, at no extra cost to the Buyer, provide to any Fair Deal Employee who immediately prior to such cessation of participation remained a CSPS Eligible Employee with access to a pension scheme which is Broadly Comparable to the CSPS on the date the CSPS Eligible Employees ceased to participate in the CSPS.

ANNEX D2 – NHS PENSION SCHEMES**1. DEFINITIONS**

1.1 In this Annex D2: NHSPS to Part D: Pensions, the following definitions shall apply:

"Direction Letter" an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Sub-contractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Sub-contractor in the NHSPS in respect of the NHSPS Eligible Employees;

"NHSPS Eligible Employees" each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:

- (a) their employment with the 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 the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the 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 or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;

"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;
"NHS Pensions"	NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;
"NHSPS"	the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and governed by subsequent regulations under that Act including the NHS Pension Scheme Regulations;
"NHS Pension Scheme Arrears"	any failure on the part of the Supplier or its Sub-Contractors (if any) to pay employer's contributions or deduct and pay across employee's contributions to the NHSPS or meet any other financial obligations under the NHSPS or any Direction Letter in respect of the NHSPS Eligible Employees;
"NHS Pension Scheme Regulations"	as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations made in respect of the NHSPS, each as amended from time to time;
"NHS Premature Retirement Rights"	rights to which any Fair Deal Employee (had they remained in the employment of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS) would have been or are entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;
"Pension Benefits"	any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor's benefits provided under an occupational pension scheme; and
"Retirement Benefits Scheme"	a pension scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

2. MEMBERSHIP OF THE NHS PENSION SCHEME

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-Contractors to which the employment of any NHSPS Eligible Employee compulsorily transfers as a result of the award

of this Contract, if not an NHS Body or other employer which participates automatically in the NHSPS, must by or as soon as reasonably practicable after the Relevant Transfer Date, each secure a Direction Letter to enable the NHSPS Eligible Employees to retain either continuous active membership of or eligibility for, the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract, and have a right to membership or eligibility of that scheme under the terms of the Direction Letter.

- 2.2 The Supplier must supply to the Buyer by or as soon as reasonably practicable after the Relevant Transfer Date a complete copy of each Direction Letter.
- 2.3 The Supplier must ensure (and procure that each of its Sub-Contracts (if any) ensures) that all of its NHSPS Eligible Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter.
- 2.4 The Supplier will (and will procure that its Sub-Contractors (if any) will) comply with the terms of the Direction Letter, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health in respect of the NHSPS Eligible Employees for so long as it remains bound by the terms of any such Direction Letter.
- 2.5 Where any employee omitted from the Direction Letter supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Eligible Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Eligible Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.6 The Supplier will (and will procure that its Sub-Contractors (if any) will) as soon as reasonably practicable and at its (or its Sub-Contractor's) cost, obtain any guarantee, bond or indemnity that may from time to time be required by the Secretary of State for Health.

3. ACCESS TO NHS PENSION SCHEMES AFTER TRANSFER

The Supplier will procure that with effect from the Relevant Transfer Date the NHSPS Eligible Employees shall be either eligible for or remain in continuous active membership of (as the case may be) the NHSPS for employment from (and including) the Relevant Transfer Date.

4. CONTINUATION OF EARLY RETIREMENT RIGHTS AFTER TRANSFER

From the Relevant Transfer Date until the Service Transfer Date, the Supplier must provide (and/or must ensure that its Sub-contractors (if any) provide) NHS Premature Retirement Rights in respect of the NHSPS Eligible Employees that are identical to the benefits they would have received had they remained employees of the Buyer, an NHS Body or other employer which participates automatically in the NHSPS.

5. WHAT THE BUYER DO IF THE SUPPLIER BREACHES ITS PENSION OBLIGATIONS

- 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-Contractor) breaches the terms of its Direction Letter. 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.

5.2 If the Buyer is entitled to terminate this Contract or the Supplier (or its Sub-Contractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Sub-Contractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Broadly Comparable Pension Scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Sub-Contractors.

5.3 In addition to the Buyer's right to terminate this Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

6. COMPENSATION WHEN PENSION SCHEME ACCESS CAN'T BE PROVIDED

6.1 If the Supplier (or its Sub-Contractor, if relevant) is unable to provide the NHSPS Eligible Employees with either:

6.1.1 membership of the NHSPS (having used its best endeavours to secure a Direction Letter); or

6.1.2 access to 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 Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Sub-Contractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Eligible Employees. The Supplier must meet (or must procure that the relevant Sub-Contractor meets) the costs of the 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 this Contract.

7. INDEMNITIES THAT A SUPPLIER MUST GIVE

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 Eligible Employee that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of his or her employment rights.

7.2 The Supplier must indemnify and keep indemnified the Buyer, NHS Pensions and any Replacement Supplier against all Losses arising out of the Supplier (or its Sub-Contractor) allowing anyone who is not an NHSPS Eligible Employee to join or claim membership of the NHSPS at any time during the Contract Period.

8. SUB-CONTRACTORS

8.1 If the Supplier enters into a Sub-Contract for the delivery of all or part or any component of the Services which will involve the transfer of employment of any NHSPS Eligible Employee it will impose obligations on its Sub-Contractor in identical terms as those imposed on the

Supplier in relation to Pension Benefits and NHS Premature Retirement Rights by this Annex, including requiring that:

- 8.1.1 if the Supplier has secured a Direction Letter, the Sub-Contractor also secures a Direction Letter in respect of the NHSPS Eligible Employees for their future service with the Sub-Contractor as a condition of being awarded the Sub-Contract and the Supplier shall be responsible for ensuring that the Buyer receives a complete copy of each such Sub-Contractor direction letter as soon as reasonably practicable; or
 - 8.1.2 if, in accordance with Paragraph 4 of this Annex, the Supplier has offered the NHSPS Eligible Employees access to a pension scheme under which the benefits are Broadly Comparable to those provided under the NHSPS, the Sub-contractor either secures a Direction Letter in respect of the NHSPS Eligible Employees or (with the prior consent of the Buyer) provides NHSPS Eligible Employees with access to a scheme with Pension Benefits which are Broadly Comparable to those provided under the NHSPS whereupon the provisions of Paragraph 10 (Broadly Comparable Pension Scheme) of Part D: Pensions shall apply.
- 8.2 The Supplier shall procure that each Sub-Contractor provides indemnities to the Buyer, NHS Pensions and/or any Replacement Supplier and/or Replacement Sub-Contractor that are identical to the indemnities set out in Paragraph 7 of this Annex D2. Where a Sub-Contractor fails to satisfy any claim made under such one or more indemnities, the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

ANNEX D2 – LOCAL GOVERNMENT PENSION SCHEMES (LGPS)**1. DEFINITIONS**

1.1 In this Annex D3: LGPS to Part D: Pensions, the following definitions shall apply:

"Administering Authority"	in relation to the Fund, the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;
"Fund"	a pension fund within the LGPS, the details of this are set out in the Order Form;
"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 Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
"LGPS Eligible Employees"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and
"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2. SUPPLIER MUST BECOME A LGPS ADMISSION BODY

2.1 Where the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date, the Supplier shall become an LGPS Admission Body and shall on or before the Relevant Transfer Date enter into a LGPS Admission Agreement with the Administering Authority which will have effect from and including the Relevant Transfer Date.

- 2.2 The LGPS Admission Agreement must ensure that all LGPS Eligible Employees covered by that Agreement who were active LGPS members immediately before the Relevant Transfer Date are admitted to the LGPS with effect on and from the Relevant Transfer Date. Any LGPS Eligible Employees who were eligible to join the LGPS but were not active LGPS members immediately before the Relevant Transfer Date must retain the ability to join the LGPS after the Relevant Transfer Date if they wish to do so.
- 2.3 The Supplier shall provide any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.
- 2.4 The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Eligible Employees in any pension scheme other than the LGPS.

3. RIGHT OF SET-OFF

The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Supplier (or from any relevant Sub-Contractor) under an LGPS Admission Agreement and shall pay such amount to the relevant Fund.

4. SUPPLIER CEASES TO BE AN LGPS ADMISSION BODY

If the Supplier employs any LGPS Eligible Employees from a Relevant Transfer Date and the Supplier either cannot or does not participate in the LGPS, the Supplier shall offer such LGPS Eligible Employee membership of a pension scheme Broadly Comparable to the LGPS.

5. DISCRETIONARY BENEFITS

Where the Supplier is an LGPS Admission Body, the Supplier shall award benefits to the LGPS Eligible Employees under the LGPS in circumstances where the LGPS Eligible Employees would have received such benefits had they still been employed by their previous employer. Where such benefits are of a discretionary nature, they shall be awarded on the basis of the previous employer's written policy in relation to such benefits at the time of the Relevant Transfer Date.

PART E – STAFF TRANSFER ON EXIT**1. OBLIGATIONS BEFORE A STAFF TRANSFER**

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

- 1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;
- 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract;
- 1.1.3 the date which is 12 Months before the end of the Term; and
- 1.1.4 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 Data Protection Legislation, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Personnel List and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the 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 (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).

1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs The Supplier agrees that within 20 Working Days of the earliest of: and 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 (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided). 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 The Supplier agrees that within 20 Working Days of the earliest of: and 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 (i) the Supplier's Final Supplier Personnel List, which shall identify the basis upon which they are Transferring Supplier Employees and (ii) the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided). 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 1.1.1, receipt of the giving of notice of early termination or any Partial Termination of this Contract; and 1.1.3, the Supplier agrees that it 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, unless otherwise instructed by the Buyer (acting reasonably):
- 1.5.1 not 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;
 - 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Personnel (including any payments connected with the termination of employment);
 - 1.5.3 not 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;
 - 1.5.4 not 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;
 - 1.5.5 not 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);
 - 1.5.6 not 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;
 - 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Sub-Contractor;
 - 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Sub-Contractor reasonable access to Supplier Personnel and/or their consultation representatives to inform them of the intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Sub-Contractor in respect of persons expected to be Transferring Supplier Employees;
 - 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
 - 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Sub-Contractor of any notice to terminate

Additional and Alternative Terms and Conditions

employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect;

- 1.5.11 not for a period of 12 Months from the Service Transfer Date 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 (unless otherwise instructed by the Buyer (acting reasonably));
 - 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
 - 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
 - 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract (including without limitation identification of the Fair Deal Employees);
 - 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
 - 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services on the expiry or termination of this Contract.
- 1.6 On or around each anniversary of the Commencement Date and up to four times during the last 12 Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within 20 Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of employees engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each employee engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
 - 1.6.4 a description of the nature of the work undertaken by each employee by location.
- 1.7 The Supplier 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 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:

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; and
- 1.7.6 bank/building society account details for payroll purposes.

2. STAFF TRANSFER WHEN THE CONTRACT ENDS

- 2.1 A change in the identity of the supplier of the Services (or part of the Services), howsoever arising, may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier agree that 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 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 including (without limit) the payment of all remuneration, benefits, entitlements, PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the Fair Deal Schemes (as defined in Part D: Pensions).
- 2.3 Subject to Paragraph The indemnity in Paragraph Subject to Paragraph The indemnity 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., 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 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. 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., 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 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.

- 2.4 The indemnity in Paragraph Subject to Paragraph The indemnity in Paragraph Subject to Paragraph The indemnity 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., 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 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. 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., 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 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. 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.
- 2.5 Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations then.
- 2.5.1 the Replacement Supplier and/or Replacement Sub-Contractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;

- 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-Contractor;
- 2.5.3 if such offer of employment is accepted, the Replacement Supplier and/or Replacement Sub-Contractor shall immediately release the person from its employment;
- 2.5.4 if after the period referred to in Paragraph the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-Contractor; no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-Contractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Sub-Contractor's compliance with Paragraphs the Replacement Supplier and/or Replacement Sub-Contractor will, within 5 Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing; to if after the period referred to in Paragraph the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 10 Working Days of receipt of notice from the Replacement Supplier and/or Replacement Sub-Contractor; no such offer has been made, or such offer has been made but not accepted, the Replacement Supplier and/or Replacement Sub-Contractor may within 5 Working Days give notice to terminate the employment of such person; the Supplier will indemnify the Replacement Supplier and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has

been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations .

2.6 The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to:

2.6.1 any claim for 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 equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees, arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Sub-Contractor, or

2.6.2 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.

2.7 The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined

in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date.

- 2.8 If at any point the Replacement Supplier and/or Replacement Sub-Contract accepts the employment of any such person as is described in Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations, such person shall be treated as a Transferring Supplier Employee and Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall cease to apply to such person.
- 2.9 The Supplier shall promptly provide 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.

- 2.10 Subject to Paragraph The Supplier shall promptly provide 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., 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 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
- 2.11 The indemnity in Paragraph Subject to Paragraph The Supplier shall promptly provide 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., 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 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Sub-Contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee. 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, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Personnel List in accordance with Paragraph Subject to Paragraphs The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that his/her contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Sub-Contractor pursuant to the Employment Regulations shall not apply to: and The indemnity in Paragraph Subject to Paragraphs The indemnity in Paragraph 2.5 shall not apply to: and The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than 3 Months from the Service Transfer Date., if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier

OFFICIAL-SENSITIVE COMMERCIAL

708110450 (DInfoCom/0237)
Additional and Alternative Terms and Conditions

OFFICIAL-SENSITIVE COMMERCIAL

S5 BENCHMARKING**1. INTRODUCTION**

1.1 In this Schedule, the following definitions shall apply:

"Benchmark Review"	a review of the Services carried out in accordance with this Schedule to determine whether those Services represent Good Value;
"Benchmarked Services"	any Services included within the scope of a Benchmark Review pursuant to this Schedule;
"Comparable Rates"	the Charges for Comparable Services;
"Comparable Services"	services that are identical or materially similar to the Benchmarked Services (including in terms of scope, specification, volume and quality of performance) provided that if no identical or materially similar Services exist in the market, the Supplier shall propose an approach for developing a comparable Services benchmark;
"Comparison Group"	a sample group of organisations providing Comparable Services which consists of organisations which are either of similar size to the Supplier or which are similarly structured in terms of their business and their service offering so as to be fair comparators with the Supplier or which, are best practice organisations;
"Equivalent Data"	data derived from an analysis of the Comparable Rates and/or the Comparable Services (as applicable) provided by the Comparison Group;
"Good Value"	that the Benchmarked Rates are within the Upper Quartile; and
"Upper Quartile"	in respect of Benchmarked Rates, that based on an analysis of Equivalent Data, the Benchmarked Rates, as compared to the range of prices for Comparable Services, are within the top 25% in terms of best value for money for the recipients of Comparable Services.

2. WHEN YOU SHOULD USE THIS SCHEDULE

2.1 The Supplier acknowledges that the Buyer wishes to ensure that the Services, represent value for money to the taxpayer throughout the Contract Period.

2.2 This Schedule sets to ensure this Contract represent value for money throughout and that the Buyer may terminate this Contract by issuing a written notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraphs 3 of this Schedule.

3. BENCHMARKING**3.1 How benchmarking works**

- 3.1.1 The Buyer may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services.
- 3.1.2 The Buyer shall not be entitled to request a Benchmark Review during the first six (6) Month period from the Commencement Date or at intervals of less than twelve (12) Months after any previous Benchmark Review.
- 3.1.3 The purpose of a Benchmark Review will be to establish whether the Benchmarked Services are, individually and/or as a whole, Good Value.
- 3.1.4 The Services that are to be the Benchmarked Services will be identified by the Buyer in writing.
- 3.1.5 Upon its request for a Benchmark Review the Buyer shall nominate a benchmarker. The Supplier must approve the nomination within ten (10) Working Days unless the Supplier provides a reasonable explanation for rejecting the appointment. If the appointment is rejected then the Buyer may propose an alternative benchmarker. If the Parties cannot agree the appointment within twenty (20) days of the initial request for Benchmark review then a benchmarker shall be selected by the Chartered Institute of Financial Accountants.
- 3.1.6 The cost of a benchmarker shall be borne by the Buyer (provided that each Party shall bear its own internal costs of the Benchmark Review) except where the Benchmark Review demonstrates that the Benchmarked Service and/or the Benchmarked Services are not Good Value, in which case the Parties shall share the cost of the benchmarker in such proportions as the Parties agree (acting reasonably). Invoices by the benchmarker shall be raised against the Supplier and the relevant portion shall be reimbursed by the Buyer.

3.2 Benchmarking Process

- 3.2.1 The benchmarker shall produce and send to the Buyer, for approval, a draft plan for the Benchmark Review which must include:
- (a) a proposed cost and timetable for the Benchmark Review;
 - (b) a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
 - (c) a description of how the benchmarker will scope and identify the Comparison Group.
- 3.2.2 The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
- 3.2.3 The Buyer must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an

amended draft plan and this Paragraph 5.2.3 shall apply to any amended draft plan.

3.2.4 Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its approval of the draft plan.

3.2.5 Once it has received the approval of the draft plan, the benchmarker shall:

(a) finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the Supplier's professional judgment using:

- (i) market intelligence;
 - (ii) the benchmarker's own data and experience;
 - (iii) relevant published information; and
 - (iv) pursuant to Paragraph 5.2.6 below, information from other suppliers or purchasers on Comparable Rates;
- (b) by applying the adjustment factors listed in Paragraph 5.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
- (c) using the Equivalent Data, calculate the Upper Quartile;
- (d) determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.

3.2.6 The Supplier shall use all reasonable endeavours and act in good faith to supply information required by the benchmarker in order to undertake the benchmarking. The Supplier agrees to use its reasonable endeavours to obtain information from other suppliers or purchasers on Comparable Rates.

3.2.7 In carrying out the benchmarking analysis the benchmarker may have regard to the following matters when performing a comparative assessment of the Benchmarked Rates and the Comparable Rates in order to derive Equivalent Data:

- (a) the contractual terms and business environment under which the Comparable Rates are being provided (including the scale and geographical spread of the customers);
- (b) exchange rates;
- (c) any other factors reasonably identified by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive.

3.3 **Benchmarking Report**

- 3.3.1 For the purposes of this Schedule "**Benchmarking Report**" shall mean the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule;
- 3.3.2 The benchmarker shall prepare a Benchmarking Report and deliver it to the Buyer, at the time specified in the plan approved pursuant to Paragraph The Buyer must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 5.2.3 shall apply to any amended draft plan., setting out its findings. Those findings shall be required to:
- (a) include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Services as a whole are, Good Value;
 - (b) if any of the Benchmarked Services are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Services as a whole Good Value; and
 - (c) include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Supplier has calculated whether or not the Benchmarked Services are, individually or as a whole, Good Value.
- 3.3.3 The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Buyer in accordance with the Change Control Procedure.

S6 BUSINESS CONTINUITY AND DISASTER RECOVERY**1. DEFINITIONS**

1.2 In this Schedule, the following definitions shall apply:

"BCDR Plan"	has the meaning given to it in Paragraph At least ninety (90) Working Days prior to the Commencement Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a "BCDR Plan"), which shall detail the processes and arrangements that the Supplier shall follow to: of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph Section 2 which shall relate to business continuity (the "Business Continuity Plan"); and of this Schedule;
"Disaster Recovery Plan"	has the meaning given to it in Paragraph Section 3 which shall relate to disaster recovery (the "Disaster Recovery Plan"). of this Schedule;
"Related Supplier"	any person who provides services to the Buyer which are related to the Services from time to time;
"Review Report"	has the meaning given to it in Paragraph the Supplier's proposals (the "Supplier's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan. of this Schedule; and
"Supplier's Proposals"	has the meaning given to it in Paragraph the Supplier's proposals (the "Supplier's Proposals") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan. of this Schedule;

2. BCDR Plan

- 2.1 At least ninety (90) Working Days prior to the Commencement Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a **"BCDR Plan"**), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services; and
 - 2.1.2 the recovery of the Services in the event of a Disaster
- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - 2.2.2 Section 2 which shall relate to business continuity (the **"Business Continuity Plan"**); and
 - 2.2.3 Section 3 which shall relate to disaster recovery (the **"Disaster Recovery Plan"**).

- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

3. General Principles of the BCDR Plan (Section 1)

- 3.1 Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Services and any goods and/or services provided to the Buyer by a Related Supplier;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
 - (a) failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (b) identification of any single points of failure within the provision of the Services and processes for managing those risks;
 - (c) identification of risks arising from the interaction of the provision of the Services with the goods and/or services provided by a Related Supplier; and
 - (d) a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Supplier (and any Sub-Contractors) and for the Buyer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;
- 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.

- 3.2 The BCDR Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Services and the business operations supported by the provision of Services.
- 3.4 The Supplier shall not be entitled to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

4. Business Continuity (Section 2)

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes facilitated by the provision of Services remain supported and to ensure continuity of the business operations supported by the Services including:
- 4.1.1 the alternative processes, options and responsibilities that may be adopted in the event of a failure in or disruption to the provision of the Services; and
 - 4.1.2 the steps to be taken by the Supplier upon resumption of the provision of the Services in order to address the effect of the failure or disruption.
- 4.2 The Business Continuity Plan shall:
- 4.2.1 address the various possible levels of failures of or disruptions to the provision of Services;
 - 4.2.2 set out the goods and/or services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services; and
 - 4.2.3 set out the circumstances in which the Business Continuity Plan is invoked.

5. Disaster Recovery (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
- 5.2.1 loss of access to the Buyer Premises;
 - 5.2.2 loss of utilities to the Buyer Premises;
 - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
 - 5.2.4 loss of a Sub-Contractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;

- 5.2.7 staff training and awareness;
- 5.2.8 BCDR Plan testing;
- 5.2.9 post implementation review process;
- 5.2.10 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.2.11 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.2.12 testing and management arrangements.

6. Review and changing the BCDR Plan

- 6.1 The Supplier shall review the BCDR Plan:
 - 6.1.1 on a regular basis and as a minimum once every six (6) months;
 - 6.1.2 within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph Invoking the BCDR Plan; and
 - 6.1.3 where the Buyer requests in writing any additional reviews (over and above those provided for in Paragraphs on a regular basis and as a minimum once every six (6) months; and within three (3) calendar months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph Invoking the BCDR Plan; and of this Schedule) whereupon the Supplier shall conduct such reviews in accordance with the Buyer's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Buyer for the Buyer's approval. The costs of both Parties of any such additional reviews shall be met by the Buyer except that the Supplier shall not be entitled to charge the Buyer for any costs that it may incur above any estimate without the Buyer's prior written approval.
- 6.2 Each review of the BCDR Plan pursuant to Paragraph The Supplier shall review the BCDR Plan: shall assess its suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan, and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the Supplier within such period as the Buyer shall reasonably require.
- 6.3 The Supplier shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the Buyer a report (a "**Review Report**") setting out the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan.
- 6.4 Following receipt of the Review Report and the Supplier's Proposals, the Parties shall use reasonable endeavours to agree the Review Report and the Supplier's Proposals. If the Parties are unable to agree Review Report and the Supplier's Proposals within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 6.5 The Supplier shall as soon as is reasonably practicable after receiving the approval of the Supplier's Proposals effect any change in its practices or procedures necessary so as to give

effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
 - 7.1.1 regularly and in any event not less than once in every Contract Year;
 - 7.1.2 in the event of any major reconfiguration of the Services; and
 - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).
- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

8. Invoking the BCDR Plan

- 8.1 In the event of a complete loss of service or in the event of a Disaster, the Supplier shall immediately invoke the BCDR Plan (and shall inform the Buyer promptly of such invocation). In all other instances the Supplier shall invoke or test the BCDR Plan only with the prior consent of the Buyer.

S7 CONTINUOUS IMPROVEMENT**1. SUPPLIER'S OBLIGATIONS**

- 1.1 The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Services with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Buyer.
- 1.2 The Supplier must adopt a policy of continuous improvement in relation to the Services, which must include regular reviews with the Buyer of the Services and the way it provides them, with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Services. The Supplier and the Buyer must provide each other with any information relevant to meeting this objective.
- 1.3 In addition to Paragraph The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Services with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Buyer., the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's approval. The Continuous Improvement Plan must include, as a minimum, proposals:
 - 1.3.1 identifying the emergence of relevant new and evolving technologies;
 - 1.3.2 changes in business processes of the Supplier or the Buyer and ways of working that would provide cost savings and/or enhanced benefits to the Buyer (such as methods of interaction, supply chain efficiencies, reduction in energy consumption and methods of sale);
 - 1.3.3 new or potential improvements to the provision of the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services; and
 - 1.3.4 measuring and reducing the sustainability impacts of the Supplier's operations and supply-chains relating to the Services, and identifying opportunities to assist the Buyer in meeting their sustainability objectives.
- 1.4 The initial Continuous Improvement Plan for the first (1st) Contract Year shall be submitted by the Supplier to the Buyer for approval within six (6) Months following the Commencement Date, whichever is earlier.
- 1.5 The Buyer shall notify the Supplier of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.

- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Change in accordance with the Change Control Procedure and the Supplier must implement such Change at no additional cost to the Buyer.
- 1.8 Once the first Continuous Improvement Plan has been approved in accordance with Paragraph The Buyer shall notify the Supplier of its approval or rejection of the proposed Continuous Improvement Plan or any updates to it within twenty (20) Working Days of receipt. If it is rejected then the Supplier shall, within ten (10) Working Days of receipt of notice of rejection, submit a revised Continuous Improvement Plan reflecting the changes required. Once approved, it becomes the Continuous Improvement Plan for the purposes of this Contract.:
- 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed services in accordance with the Continuous Improvement Plan; and
 - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph In addition to Paragraph The Supplier must, throughout the Contract Period, identify new or potential improvements to the provision of the Services with a view to reducing the Buyer's costs (including the Charges) and/or improving the quality and efficiency of the Services and their supply to the Buyer., the Supplier shall produce at the start of each Contract Year a plan for improving the provision of Services and/or reducing the Charges (without adversely affecting the performance of this Contract) during that Contract Year ("**Continuous Improvement Plan**") for the Buyer's approval. The Continuous Improvement Plan must include, as a minimum, proposals:.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11 Should the Supplier's costs in providing the Services to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Services.
- 1.12 At any time during the Contract Period of this Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

S8 GUARANTEE

1. GUARANTEE

1.1 Where a Buyer has stipulated in the Order Form that the award of this Contract is conditional upon the receipt of a Guarantee then, on or prior to the Commencement Date or on any other date specified by the Buyer, the Supplier shall deliver to the Buyer:

1.1.1 an executed Guarantee from a Guarantor; and

1.1.2 a certified copy extract of the board minutes and/or resolution of the Guarantor approving the execution of the Guarantee.

1.2 Where a Buyer has procured a Guarantee from the Supplier under Paragraph 1.1 above, the Buyer may terminate the Contract for material Default where:

1.2.1 the Guarantor withdraws the Guarantee in whole or in part for any reason whatsoever;

1.2.2 the Guarantor is in breach or anticipatory breach of the Guarantee;

1.2.3 an Insolvency Event occurs in respect of the Guarantor;

1.2.4 the Guarantee becomes invalid or unenforceable for any reason whatsoever;
or

1.2.5 the Supplier fails to provide any of the documentation required by Paragraph 1.1 by the date so specified by the Buyer;

and in each case the Guarantee is not replaced by an alternative guarantee agreement acceptable to the Buyer.

ANNEX – FORM OF GUARANTEE

DEED OF GUARANTEE

PROVIDED BY

[INSERT NAME OF THE GUARANTOR]

FOR THE BENEFIT OF

[INSERT NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

PROVIDED BY:

[Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("Guarantor")

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Guarantor that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees for the benefit of the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION**1.1 In this Deed of Guarantee:**

1.1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

1.1.2 the words and phrases below shall have the following meanings:

["Beneficiary"	means [insert name of the Buyer with whom the Supplier enters into a Contract] and "Beneficiaries" shall be construed accordingly;]
["Contract"	means the call off contract between the Supplier and the Buyer;]
["Framework Contract"	means the framework contract with Framework Reference RM6100 between the Minister for the Cabinet Office represented by its executive agency the Crown Commercial Service and the Supplier;]
["Guaranteed Agreement"	means the Contract;]
"Guaranteed Obligations"	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
"Supplier"	means [Insert the name, address and registration number of the Supplier as each appears in the Contract].

- 1.2 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.3 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.4 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.5 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.6 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.7 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.8 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.9 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.10 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary. to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[Insert Address of the Guarantor in England and Wales]

[Insert Facsimile Number]

For the Attention of [Insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
- 4.2.1 if delivered by hand, at the time of delivery; or
 - 4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
 - 4.2.3 if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
 - 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
 - 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
 - 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice,

any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.

- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.
- 5.8 The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

6. GUARANTOR INTENT

Without prejudice to the generality of Clause BENEFCIARY'S PROTECTIONS (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the

performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

- 7.1.1 of subrogation and indemnity;
- 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
- 7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

- 8.1.1 exercise any rights it may have to be indemnified by the Supplier;
- 8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;
- 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
- 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or
- 8.1.5 claim any set-off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause DEFERRAL OF RIGHTS, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

- 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

- 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
- 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause OBLIGATION TO ENTER INTO A NEW CONTRACT, have been duly authorised by all necessary corporate action and do not contravene or conflict with:
- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the

Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. THIRD PARTY RIGHTS

Other than the Beneficiary, a person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. SURVIVAL

This Deed of Guarantee shall survive termination or expiry of the Guaranteed Agreement.

16. GOVERNING LAW

16.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

16.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

16.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

16.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

17. [Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non-English incorporated Guarantor]

- 17.1 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

S10 MOD TERMS**1. DEFINITIONS**

1.1 In this Schedule, the following definitions shall apply:

"MOD Terms and Conditions"	the terms and conditions listed in this Schedule;
"MOD Site"	shall include any of Her Majesty's Ships or Vessels and Service Stations; and
"Officer in charge"	shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments.

2. ACCESS TO MOD SITES

2.1 The Buyer shall issue passes for those representatives of the Supplier who are approved for admission to the MOD Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Buyer and shall be surrendered on demand or on completion of the supply of the Services.

2.2 The Supplier's representatives when employed within the boundaries of a MOD Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that MOD Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.

2.3 The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a MOD Site. Sleeping accommodation and messing facilities, if required, may be provided by the Buyer wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At MOD Sites overseas, accommodation and messing facilities, if required, shall be provided wherever possible. The status to be accorded to the Supplier's Personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible give his decision before the commencement of this Contract where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Buyer and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Buyer with other evidence relating to the costs of this Contract.

2.4 Where the Supplier's representatives are required by this Contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) shall be provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The Supplier shall make such arrangements through the Technical Branch named for this purpose in this Contract. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Buyer shall reimburse the Supplier's reasonable costs for such transport

of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier's representatives locally overseas which is necessary for the purpose of this Contract shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.

- 2.5 Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 2.6 Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.
- 2.7 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.
- 2.8 The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Buyer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made by the Buyer shall be recovered from the Supplier

3. DEFCONS and DEFFORMS

- 3.1 The DEFCONS and DEFORMS listed in the Annex to this Schedule are incorporated into this Contract.
- 3.2 In the event of a conflict between any DEFCONS and DEFFORMS listed in the Annex to this Schedule and the other terms in this Contract, the DEFCONS and DEFFORMS shall prevail.

ANNEX - MOD DEFCONs AND DEFFORMs

The following MOD DEFCONs and DEFFORMs form part of this Call Off Contract:

DEFCON Number	Edition	Description
DEFCON 5J	18/11/16	Unique Identifiers
DEFCON 76	11/22	Contractor's Personnel at Government Establishments
DEFCON 129J	18/11/16	The Use of The Electronic Business Delivery Form
DEFCON 513	04/22	Value Added Tax
DEFCON 516	04/12	Equality
DEFCON 518	02/17	Transfer
DEFCON 520	08/21	Corrupt Gifts and Payments of Commission
DEFCON 522	11/21	Payment and Recovery of Sums Due
DEFCON 531	09/21	Disclosure of Information
DEFCON 532B	12/22	Protection of Personal Data (Where Personal Data is being processed on behalf of the Authority)
DEFCON 534	06/21	Subcontracting and Prompt Payment
DEFCON 537	12/21	Rights of Third Parties
DEFCON 539	01/22	Transparency
DEFCON 550	02/14	Child Labour and Employment Law
DEFCON 566	10/20	Change of Control of Contractor
DEFCON 604	06/14	Progress Reports
DEFCON 632	11/21	Third Party Intellectual Property – Rights and Restrictions
DEFCON 642	07/21	Progress Meetings
DEFCON 658	10/22	Cyber
DEFCON 659A	09/21	Security Measures
DEFCON 660	12/15	Official-Sensitive Security Requirements
DEFCON 671	10/22	Plastic Packaging Tax
DEFCON 694	07/21	Accounting for Property of the Authority
DEFCON 707	11/22	Rights in Technical Data
DEFFORM Number		Description
DEFFORM 111	10/22	Addresses and Other Information
DEFFORM 129J	09/17	The Use Of The electronic Business Delivery Form
DEFFORM 711	11/22	Notification of Intellectual Property Rights (IPR) Restrictions (to be completed on Contract Award)
The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via https://www.gov.uk/guidance/knowledge-in-defence-kid		

ADDITIONAL CLAUSES AND SCHEDULES – CLAUSES**C1****1. RELEVANT CONVICTIONS**

1.1 For the purpose of this Clause, the following definitions shall apply:

“Conviction” means other than for minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order, or being placed on a list kept pursuant to section 1 of the Protection of Children Act 1999 or being placed on a list kept pursuant to the Safeguarding Vulnerable Groups Act 2006; and

“Relevant Conviction” means a Conviction that is relevant to the nature of the Services to be provided or as specified by the Buyer in the Order Form.

1.2 The Supplier shall ensure that no person who discloses that he has a Relevant Conviction, or who is found to have any Relevant Convictions (whether as a result of a police check or through the procedure of the Disclosure and Barring Service (DBS) or otherwise), is employed or engaged in any part of the provision of the Services without the approval of the Buyer.

1.3 Notwithstanding Clause 1.3.1, for each member of Supplier Personnel who, in providing the Services, has, will have or is likely to have access to children, vulnerable persons or other members of the public to whom the Buyer owes a special duty of care, the Supplier shall (and shall procure that the relevant Sub-Contractor shall):

1.3.1 carry out a check with the records held by the Department for Education (DfE);

1.3.2 conduct thorough questioning regarding any Relevant Convictions; and

1.3.3 ensure a police check is completed and such other checks as may be carried out through the Disclosure and Barring Service (DBS),

and the Supplier shall not (and shall ensure that any Sub-Contractor shall not) engage or continue to employ in the provision of the Services any person who has a Relevant Conviction or an inappropriate record.

C2**1. SECURITY MEASURES**

1.1 For the purpose of this Clause, the following definitions shall apply:

“Document” includes specifications, plans, drawings, photographs and books;

- “Secret Matter”** means any matter connected with or arising out of the performance of this Contract which has been, or may hereafter be, by a notice in writing given by the Buyer to the Supplier be designated 'top secret' or 'secret'; and
- “Servant”** where the Supplier is a body corporate shall include a director of that body and any person occupying in relation to that body the position of director by whatever name called.

1.2 The Supplier shall not, either before or after the completion or termination of this Contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a Secret Matter being:

- 1.2.1 without the prior consent in writing of the Buyer, disclosed to or acquired by a person who is an alien or who is a British subject by virtue only of a certificate of naturalisation in which his name was included;
- 1.2.2 disclosed to or acquired by a person as respects whom the Buyer has given to the Supplier a notice in writing which has not been cancelled stating that the Buyer requires that Secret Matters shall not be disclosed to that person;
- 1.2.3 without the prior consent in writing of the Buyer, disclosed to or acquired by any person who is not a servant of the Supplier; or
- 1.2.4 disclosed to or acquired by a person who is an employee of the Supplier except in a case where it is necessary for the proper performance of this Contract that such person shall have the information.

1.3 Without prejudice to the provisions of Clause 1.2, the Supplier shall, both before and after the completion or termination of this Contract, take all reasonable steps to ensure:

- 1.3.1 no such person as is mentioned in Clause 1.2 hereof shall have access to any item or document under the control of the Supplier containing information about a Secret Matter except with the prior consent in writing of the Buyer;
- 1.3.2 that no visitor to any premises in which there is any item to be supplied under this Contract or where Services are being supplied shall see or discuss with the Supplier or any person employed by him any Secret Matter unless the visitor is authorised in writing by the Buyer so to do;
- 1.3.3 that no photograph of any item to be supplied under this Contract or any portions of the Services shall be taken except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Buyer, and that no such photograph shall, without such consent, be published or otherwise circulated;
- 1.3.4 that all information about any Secret Matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded, and that, except insofar as may be necessary for the proper performance of this Contract or with the prior consent in writing of the Buyer, no copies of or extracts from any such document, model or item shall be made or used and no designation of description which may reveal

information about the nature or contents of any such document, model or item shall be placed thereon; and

- 1.3.5 that if the Buyer gives notice in writing to the Supplier at any time requiring the delivery to the Buyer of any such document, model or item as is mentioned in Clause 1.3.3, that document, model or item (including all copies of or extracts therefrom) shall forthwith be delivered to the Buyer who shall be deemed to be the owner thereof and accordingly entitled to retain the same.
- 1.4 The decision of the Buyer on the question whether the Supplier has taken or is taking all reasonable steps as required by the foregoing provisions of this Clause 1.2 shall be final and conclusive.
- 1.5 If and when directed by the Buyer, the Supplier shall furnish full particulars of all people who are at any time concerned with any Secret Matter.
- 1.6 If and when directed by the Buyer, the Supplier shall secure that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, shall sign a statement that he understands that the Official Secrets Act, 1911 to 1989 and, where applicable, the Atomic Energy Act 1946, apply to the person signing the statement both during the carrying out and after expiry or termination of this Contract.
- 1.7 If, at any time either before or after the expiry or termination of this Contract, it comes to the notice of the Supplier that any person acting without lawful authority is seeking or has sought to obtain information concerning this Contract or anything done or to be done in pursuance thereof, the matter shall be forthwith reported by the Supplier to the Buyer and the report shall, in each case, be accompanied by a statement of the facts, including, if possible, the name, address and occupation of that person, and the Supplier shall be responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person shall forthwith report the matter to the Supplier with a statement of the facts as aforesaid.
- 1.8 The Supplier shall place every person employed by it, other than a Sub-Contractor, who in its opinion has or will have such knowledge of any Secret Matter as to appreciate its significance, under a duty to the Supplier to observe the same obligations in relation to that matter as are imposed on the Supplier by Clauses 1.2 and 1.3 and shall, if directed by the Buyer, place every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any Secret Matter which may be specified in the direction, and shall at all times use its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this Clause C2 observes the said obligations, and the Supplier shall give such instructions and information to every such person as may be necessary for that purpose, and shall, immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, report the facts to the Supplier with all necessary particulars.
- 1.9 The Supplier shall, if directed by the Buyer, include in the Sub-Contract provisions in such terms as the Buyer may consider appropriate for placing the Sub-Contractor under obligations in relation to secrecy and security corresponding to those placed on the Supplier by this Clause C2, but with such variations (if any) as the Buyer may consider necessary. Further the Supplier shall:

- 1.9.1 give such notices, directions, requirements and decisions to its Sub-Contractors as may be necessary to bring the provisions relating to secrecy and security which are included in Sub-Contracts under this Clause C2 into operation in such cases and to such extent as the Buyer may direct;
 - 1.9.2 if there comes to its notice any breach by the Sub-Contractor of the obligations of secrecy and security included in their Sub-Contracts in pursuance of this Clause C2, notify such breach forthwith to the Buyer; and
 - 1.9.3 if and when so required by the Buyer, exercise its power to determine the Sub-Contract under the provision in that Sub-Contract which corresponds to Clause 1.12.
- 1.10 The Supplier shall give the Buyer such information and particulars as the Buyer may from time to time require for the purposes of satisfying the Buyer that the obligations imposed by or under the foregoing provisions of this Clause C2 have been and are being observed and as to what the Supplier has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the Supplier shall secure that a representative of the Buyer duly authorised in writing shall be entitled at reasonable times to enter and inspect any premises in which anything is being done or is to be done under this Contract or in which there is or will be any item to be supplied under this Contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this Contract and that any such representative shall be given all such information as he may require on the occasion of, or arising out of, any such inspection.
- 1.11 Nothing in this Clause C2 shall prevent any person from giving any information or doing anything on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing.
- 1.12 If the Buyer shall consider that any of the following events has occurred:
- 1.12.1 that the Supplier has committed a breach of, or failed to comply with any of, the foregoing provisions of this Clause C2; or
 - 1.12.2 that the Supplier has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the Buyer, or with any department or person acting on behalf of the Crown; or
 - 1.12.3 that by reason of an act or omission on the part of the Supplier, or of a person employed by the Supplier, which does not constitute such a breach or failure as is mentioned in Clause 1.12.2, information about a Secret Matter has been or is likely to be acquired by a person who, in the opinion of the Buyer, ought not to have such information;
- and shall also decide that the interests of the State require the termination of this Contract, the Buyer may by notice in writing terminate this Contract forthwith.
- 1.13 A decision of the Buyer to terminate this Contract in accordance with the provisions of Clause 1.12 shall be final and conclusive and it shall not be necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the Buyer's decision is based.
- 1.14 **Supplier's notice**

- 1.14.1 The Supplier may within five (5) Working Days of the termination of this Contract in accordance with the provisions of Clause 1.12, give the Buyer notice in writing requesting the Buyer to state whether the event upon which the Buyer's decision to terminate was based is an event mentioned in Clause 1.12 and to give particulars of that event; and
- 1.14.2 the Buyer shall within ten (10) Working Days of the receipt of such a request give notice in writing to the Supplier containing such a statement and particulars as are required by the request.

1.15 Matters pursuant to termination

- 1.15.1 The termination of this Contract pursuant to Clause 1.12 shall be without prejudice to any rights of either party which shall have accrued before the date of such termination;
- 1.15.2 The Supplier shall be entitled to be paid for any work or thing done under this Contract and accepted but not paid for by the Buyer at the date of such termination either at the price which would have been payable under this Contract if this Contract had not been terminated, or at a reasonable price;
- 1.15.3 The Buyer may take over any work or thing done or made under this Contract (whether completed or not) and not accepted at the date of such termination which the Buyer may by notice in writing to the Supplier given within thirty (30) Working Days from the time when the provisions of this Clause C2 shall have effect, elect to take over, and the Supplier shall be entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable. The Supplier shall in accordance with directions given by the Buyer, deliver any work or thing taken over under this Clause, and take all such other steps as may be reasonably necessary to enable the Buyer to have the full benefit of any work or thing taken over under this Clause; and
- 1.15.4 Save as aforesaid, the Supplier shall not be entitled to any payment from the Buyer after the termination of this Contract
- 1.15.5 If, after notice of termination of this Contract pursuant to the provisions of Clause 1.12:
- (a) the Buyer shall not within ten (10) Working Days of the receipt of a request from the Supplier, furnish such a statement and particulars as are detailed in Clause 1.14; or
 - (b) the Buyer shall state in the statement and particulars detailed in Clause 1.14 that the event upon which the Buyer's decision to terminate this Contract was based on an event mentioned in Clause 1.12.3,

2 the respective rights and obligations of the Supplier and the Buyer shall be terminated in accordance with the following provisions:

- (a) the Buyer shall take over from the Supplier at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the

possession of the Supplier upon the termination of this Contract under the provisions of Clause 1.12 and properly provided by or supplied to the Supplier for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the Supplier shall, with the concurrence of the Buyer, elect to retain;

- (b) the Supplier shall prepare and deliver to the Buyer within an agreed period or in default of agreement within such period as the Buyer may specify, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the Buyer and shall deliver such materials and items in accordance with the directions of the Buyer who shall pay to the Supplier fair and reasonable handling and delivery charges incurred in complying with such directions;
- (c) the Buyer shall indemnify the Supplier against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the Supplier in connection with this Contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the Supplier by reason of the termination of this Contract;
- (d) if hardship to the Supplier should arise from the operation of this Clause 1.15 it shall be open to the Supplier to refer the circumstances to the Buyer who, on being satisfied that such hardship exists shall make such allowance, if any, as in its opinion is reasonable and the decision of the Buyer on any matter arising out of this Clause shall be final and conclusive; and
- (e) subject to the operation of Clauses 1.15.3, 1.15.4 and 1.15.5, termination of this Contract shall be without prejudice to any rights of either party that may have accrued before the date of such termination.

C3

1. COLLABORATION AGREEMENT

- 1.1 Where the Buyer has specified in the Order Form that the Buyer requires the Supplier to enter into a Collaboration Agreement (the form of which is set out Schedule 12 of the Call-off Terms, either:
 - 1.1.1 the Supplier shall deliver to the Buyer an executed Collaboration Agreement within the time period specified in the Order Form; or
 - 1.1.2 a Collaboration Agreement should be executed between the Parties and such contractors as required by the Buyer, on or prior to the Commencement Date as a condition precedent for entry into this Contract.

SCHEDULE 11 – COLLABORATION AGREEMENT

[Guidance Note: see separate document RM6100 Collaboration Agreement]

ALTERNATIVE CLAUSES**SCOTS LAW****1. GOVERNING LAW AND JURISDICTION (CLAUSE 55.1 AND 55.2)**

- 1.1 Reference to "*laws of England and Wales*" in the original Clause 55.1 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with "*laws of Scotland*".
- 1.2 Where legislation is expressly mentioned in the Contract, the adoption of Clause Reference to "*laws of England and Wales*" in the original Clause 55.1 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with "*laws of Scotland*". shall have the effect of substituting the equivalent Scots legislation.
- 1.3 Reference to "the courts of England and Wales" in the original Clause 55.2 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with "the Court of Session".

2. DEFINITIONS (WORKING DAY)

- 2.1 Reference to "*England and Wales*" in the definition of Working Day shall be replaced with "*Scotland*".

3. DEFINITIONS (INSOLVENCY EVENT)

- 3.1 Reference to "*Assignment*" in the definition of Insolvency Event shall be replaced with "*Assignation*".

4. DEFINITIONS (LOSSES)

- 4.1 Reference to "*tort*" in the definition of Losses shall be replaced with "*delict*".

NORTHERN IRELAND LAW**1. GOVERNING LAW AND JURISDICTION (CLAUSE 55.1 AND 55.2)**

- 1.1 Reference to "*laws of England and Wales*" in the original Clause 55.1 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with "*laws of Northern Ireland*".
- 1.2 Where legislation is expressly mentioned in the Contract the adoption of Clause Reference to "*laws of England and Wales*" in the original Clause 55.1 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with "*laws of Northern Ireland*". shall have the effect of substituting the equivalent Northern Ireland legislation.
- 1.3 Reference to "the courts of England and Wales" in the original Clause 55.2 of the Contract (Governing Law, Jurisdiction and Dispute Resolution) shall be replaced with "the Courts of Northern Ireland".

2. DEFINITIONS (WORKING DAY)

- 2.1 Reference to "*England and Wales*" in the definition of Working Day shall be replaced with "*Northern Ireland*".

3. (DEFINITIONS) INSOLVENCY EVENT

- 3.1 Reference to "*section 123 of the Insolvency Act 1986*" in limb f) of the definition of Insolvency Event shall be replaced with "*Article 103 of the Insolvency (NI) Order 1989*".

JOINT CONTROLLER CLAUSES**1. JOINT CONTROLLER STATUS AND ALLOCATION OF RESPONSIBILITIES**

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of these joint controller clauses in replacement of Clauses 34.2 - 34.15 (Where one Party is Controller and the other Party is Processor) and Clauses 34.17 - 34.28 of (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the Party stipulated as such in Attachment 9 (Data Processing) of the Order Form:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for all steps necessary to comply with the GDPR regarding the exercise by Data Subjects of their rights under the GDPR;
 - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the GDPR;
 - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - 1.2.5 shall make available to Data Subjects the essence of these joint controller clauses (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing) of Party stipulated in Clause 1.2 above.

1.3 Notwithstanding the terms of Clause 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

2. Undertakings of both Parties

2.1 The Supplier and the Buyer each undertake that they shall:

2.1.1 report to the other Party every two (2) months on:

- (a) the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
- (b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
- (c) any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
- (d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
- (e) any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,

that it has received in relation to the subject matter of this Contract during that period;

2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Clauses 2.1.1(a) to 2.1.1(e);

2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Clauses 2.1.1(a) to 2.1.1(e) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;

2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under the Contract or is required by Law) ensure consent has been obtained from the Data Subject prior to disclosing or transferring the Personal Data to the third party. For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in these joint controller Clauses;

2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;

2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data

and/or accidental loss, destruction or damage to the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;

2.1.7 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:

- (a) are aware of and comply with their duties under these joint controller Clauses and those in respect of Confidential Information
- (b) are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
- (c) have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- (d) ensure that it has in place Protective Measures as appropriate to protect against a Personal Data Breach having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Personal Data Breach;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (v) ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that it holds; and
 - (vi) ensure that it notifies the other Party as soon as it becomes aware of a Personal Data Breach.

2.2 Each Joint Controller shall use its reasonable endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under these joint controller clauses in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

3. DATA PROTECTION BREACH

3.1 Without prejudice to Clause 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within 48 hours, upon becoming aware of any Personal Data Breach or circumstances that are likely to give rise to a Personal Data Breach, providing the Buyer and its advisors with:

- 3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a Personal Data Breach under the Data Protection Legislation;

- 3.1.2 all reasonable assistance, including:
- (a) co-operation with the other Party and the Information Commissioner investigating the Personal Data Breach and its cause, containing and recovering the compromised Personal Data and compliance with the applicable guidance;
 - (b) co-operation with the other Party including taking such reasonable steps as are directed by the Buyer to assist in the investigation, mitigation and remediation of a Personal Data Breach;
 - (c) co-ordination with the other Party regarding the management of public relations and public statements relating to the Personal Data Breach; and/or
 - (d) providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the Personal Data Breach, with complete information relating to the Personal Data Breach, including, without limitation, the information set out in Clause 3.2.

3.2 Each Party shall take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach as it was that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such Personal Data Breach, including providing the other Party, as soon as possible and within 48 hours of the Personal Data Breach relating to the Personal Data Breach, in particular:

- 3.2.1 the nature of the Personal Data Breach;
- 3.2.2 the nature of Personal Data affected;
- 3.2.3 The categories and number of Data Subjects concerned;
- 3.2.4 the name and contact details of the Supplier's Data Protection Officer or other relevant contact from whom more information may be obtained;
- 3.2.5 measures taken or proposed to be taken to address the Personal Data Breach; and
- 3.2.6 describe the likely consequences of the Personal Data Breach.

4. AUDIT

4.1 The Supplier shall permit:

- 4.1.1 the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and inspections concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with these joint controller clauses and the Data Protection Legislation; and/or
- 4.1.2 the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any relevant records, including the record maintained under Article

30 GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

- 4.2 The Buyer may, in its sole discretion, require the Supplier to provide evidence of the Supplier's compliance with Clause 4.1 in lieu of conducting such an audit, assessment or inspection.

5. IMPACT ASSESSMENTS

- 5.1 The Parties shall:

5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and

5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with the Contract, in accordance with the terms of Article 30 GDPR.

6. ICO GUIDANCE

The Parties agree to take account of any guidance issued by the Information Commissioner and/or any relevant Central Government Body. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner and/or any relevant Central Government Body.

7. LIABILITIES FOR DATA PROTECTION BREACH

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a Personal Data Breach ("Financial Penalties") then the following shall occur:

7.1.1 if in the view of the Information Commissioner, the Buyer is responsible for the Personal Data Breach, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such Personal Data Breach. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach;

7.1.2 if in the view of the Information Commissioner, the Supplier is responsible for the Personal Data Breach, in that it is not a Personal Data Breach that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such Personal Data Breach; or

- 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant Personal Data Breach and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the Personal Data Breach can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure.
- 7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction (“Court”) by a third party in respect of a Personal Data Breach, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the Personal Data Breach shall be liable for the losses arising from such Personal Data Breach. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a Personal Data Breach (the “Claim Losses”):
- 7.3.1 if the Buyer is responsible for the relevant Personal Data Breach, then the Buyer shall be responsible for the Claim Losses;
- 7.3.2 if the Supplier is responsible for the relevant Personal Data Breach, then the Supplier shall be responsible for the Claim Losses: and
- 7.3.3 if responsibility for the relevant Personal Data Breach is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in either clause 7.2 or clause 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a Personal Data Breach, having regard to all the circumstances of the Personal Data Breach and the legal and financial obligations of the Buyer.

8. TERMINATION

- 8.1 If the Supplier is in material Default under any of its obligations under these joint controller clauses, the Buyer shall be entitled to terminate this Contract by issuing a Termination Notice in accordance with Clause 35.

9. SUB-PROCESSING

- 9.1 In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:
- 9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- 9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. DATA RETENTION

- 10.1 The Parties agree to erase Personal Data from any computers, storage devices and storage media that are to be retained as soon as practicable after it has ceased to be necessary for them to retain such Personal Data under applicable Data Protection Legislation and their privacy policy (save to the extent (and for the limited period) that such information needs to be retained by the a Party for statutory compliance purposes or as otherwise required by this Contract), and taking all further actions as may be necessary to ensure its compliance with Data Protection Legislation and its privacy policy.