

DATED:

(1) THE SECRETARY OF STATE FOR EDUCATION

and

(2) 2BUY2.COM LIMITED

**AGREEMENT RELATING TO THE PROVISION OF EXPERT COMMERCIAL AND
PROCUREMENT ADVICE AND COMPLEX CONTRACT MANAGEMENT TO
SCHOOLS IN THE NORTH WEST OF ENGLAND (SCHOOL BUYING HUBS)**

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THIS AGREEMENT is made on

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR EDUCATION** whose Head Office is at Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the “**Authority**”); and
- (2) **2buy2.com Limited** a company registered in England and Wales under company number 0692506 whose registered office is at Pencoed Technology Centre, Pencoed Technology Park, Pencoed, Bridgend CF35 5HZ (the “**Provider**”)

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

INTRODUCTION

- (A) In line with the principles in the Authority’s Schools’ Buying Strategy, the Authority sought to procure services to deliver regional ‘School Buying Hubs’. School Buying Hubs will offer procurement advice and guidance, complex contract support and help with aggregation of deals to schools and Multi-Academy Trusts.
- (B) On 03/06/2017 the Authority advertised in the Official Journal of the European Union (reference 2017/S 106-213339), inviting prospective Providers to submit proposals for the provision of expert commercial and procurement advice and complex contract management to regional schools.
- (C) The Provider has experience in commercial and procurement matters in the public sector.
- (D) On the basis of the Provider’s response to the advertisement and a subsequent tender process, the Authority selected the Provider as its preferred provider.

IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 In this Agreement, unless the context otherwise requires:
 - (a) the singular includes the plural and vice versa;
 - (b) reference to a gender includes the other gender and the neuter;

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- (c) references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
 - (d) a reference to any Law includes a reference to that Law as amended, extended, consolidated or re-enacted from time to time;
 - (e) the words “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
 - (f) references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
 - (g) the headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement;
 - (h) unless otherwise provided, references to Clauses and Schedules are references to the clauses and schedules of this Agreement and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear; and
 - (i) references to this Agreement are references to this Agreement as amended from time to time.
- 1.3 Where a standard, policy or document is referred to in this Agreement by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Provider shall notify the Authority as soon as they become aware and the Parties shall update this Agreement with a reference to the replacement hyperlink.
- 1.4 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- (a) the Clauses and Schedule 1 (*Definitions*);
 - (b) Schedules 2.1 (*Specification*) and 2.2 (*Performance Levels only from commencement of BAU*) and their Annexes;
 - (c) any other Schedules and their Annexes (other than Schedule 3.1 (*Provider Solution*) and its Annexes; and
 - (d) Schedule 3.1 (*Provider Solution*) and its Annexes (if any).
- 1.5 The Schedules and their Annexes form part of this Agreement.

1.6 In entering into this Agreement the Authority is acting as part of the Crown.

2 DUE DILIGENCE

2.1 The Provider acknowledges that the Authority has delivered or made available to the Provider all of the information and documents that the Provider considers necessary or relevant for the performance of its obligations under this Agreement.

2.2 In the event that the Provider feels that any material information or documents have not been made available by the Authority in order for it to adequately perform its obligations under this Agreement, the Provider shall notify the Authority as soon as reasonably practicable.

3 WARRANTIES

3.1 The Authority represents and warrants that:

- (a) it has full capacity and authority to enter into and to perform this Agreement;
- (b) this Agreement is executed by its duly authorised representative;
- (c) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement; and
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Provider represents and warrants that:

- (a) it is validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- (b) it has full capacity and authority to enter into and to perform this Agreement;
- (c) this Agreement is executed by its duly authorised representative;
- (d) it has all necessary consents and regulatory approvals to enter into this Agreement;
- (e) there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or,

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to its knowledge, threatened against it or any of its Affiliates that might affect its ability to perform its obligations under this Agreement;

- (f) its execution, delivery and performance of its obligations under this Agreement will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- (g) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);
- (h) all written statements and representations in any written submissions made by the Provider as part of the procurement process, remain true and accurate except to the extent that such statements and representations have been superseded or varied by this Agreement or to the extent that the Provider has otherwise disclosed to the Authority in writing prior to the date of this Agreement;
- (i) it has notified the Authority in writing of any Occasions of Tax Non-Compliance and any litigation in which it is involved that is in connection with any Occasion of Tax Non-Compliance;
- (j) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (k) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Provider or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Provider's assets or revenue.

3.3 The representations and warranties set out in Clause 3.2 shall be deemed to be repeated by the Provider on the Effective Date (if later than the date of signature of this Agreement) by reference to the facts then existing.

3.4 Each of the representations and warranties set out in Clauses 3.1 and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Agreement.

3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause 3.1 or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.

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- 3.6 For the avoidance of doubt, the fact that any provision within this Agreement is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Provider.
- 3.7 Except as expressly stated in this Agreement, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

SECTION B – THE SERVICES

4 TERM

4.1 This Agreement shall:

- (a) come into force on the Effective Date, save for Clauses 1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 18 (*Confidentiality*), 19 (*Freedom of Information*), 21 (*Publicity and Branding*), 22 (*Limitations on Liability*), 31 (*Waiver and Cumulative Remedies*), 32 (*Relationship of the Parties*), 35 (*Severance*), 37 (*Entire Agreement*), 38 (*Third Party Rights*), 39 (*Notices*), 40 (*Disputes*) and 41 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- (b) unless terminated at an earlier date by operation of Law or in accordance with Clause 27 (*Termination Rights*), terminate at the end of the Term:

5 SERVICES

Standard of Services

5.1 The Provider shall provide the Services from (and including) the Effective Date.

5.2 The Provider shall ensure that:

- (a) the Services:
 - (i) comply in all respects with the Specification; and
 - (ii) are supplied in accordance with the Provider Solution and the provisions of this Agreement; and

5.3 The Provider shall:

- (a) perform its obligations under this Agreement, including in relation to the supply of the Services in accordance with:
 - (i) all applicable Law;
 - (ii) Good Industry Practice;
 - (iii) the Baseline Security Requirements;
- (b) deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

Provider covenants

5.4 The Provider shall:

- (a) at all times allocate sufficient resources with the appropriate expertise to supply the Services in accordance with this Agreement to the End Users;

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- (b) save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause 12 (*Change*), obtain, and maintain throughout the duration of this Agreement, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- (c) ensure that any Documentation and training provided by the Provider to the Authority or End Users are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- (d) to the extent that it does not infringe the Provider's intellectual property rights or commercially sensitive information, co-operate with the Other Providers and provide reasonable information (including any Documentation), advice and assistance in connection with the Services to any Other Provider to enable such Other Provider to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Agreement for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Provider;
- (e) to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority and the applicable End Users, all warranties and indemnities provided by third parties or any Sub-Contractor in respect of the Services;
- (f) unless it is unable to do so, assign to the Authority on the Authority's written request any such warranties and/or indemnities as are referred to in Clause 5.4(e);
- (g) provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
- (h) gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Provider's compliance with its obligations under this Agreement;
- (i) notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
- (j) notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Agreement;
- (k) ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission

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is related to the Provider's obligations under this Agreement; and

- (l) manage closure or termination of Services to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- (m) have in place an acceptable complaints handling and escalation procedure to be available for review by the Authority upon request.

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

5.6 Without prejudice to Clauses 17.2 and 17.3 (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Provider shall:

- (a) remedy any breach of its obligations in Clauses 5.4(b) to 5.4(d) inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
- (b) remedy any breach of its obligations in Clause 5.4(a) and Clauses 5.4(e) to 5.4(j) inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
- (c) meet all the costs of, and incidental to, the performance of such remedial work,

and any failure of the Provider to comply with its obligations under Clause 5.6(a) or Clause 5.6(b) within the specified or agreed timeframe shall constitute a Notifiable Default.

Continuing obligation to provide the Services

5.7 The Provider shall continue to perform all of its obligations under this Agreement and shall not suspend the supply of the Services, notwithstanding:

- (a) any withholding of the Service Charges by the Authority pursuant to Clause 7.2(d)(ii) (*Performance Failures*);
- (b) the existence of an unresolved Dispute; and/or
- (c) any failure by the Authority to pay any disputed Charges,

unless the Provider is entitled to terminate this Agreement under Clause 27.3(a) (*Termination by the Provider*) for failure to pay undisputed Charges.

6 END OF PILOT REPORT

- 6.1 The Provider must deliver a comprehensive end of pilot report outlining and evidencing sustainable commercial and operating models for effective national roll out of the Services (End of Pilot Report).
- 6.2 The End of Pilot Report will need to be undertaken by the Provider in collaboration with the sister pilot hub provider and the Authority's contract management team, and any other parties as determined by the Authority.
- 6.3 The Provider shall submit initial draft recommendations to the Authority for review by no later than 9 (nine) months after the Effective Date.

7 PERFORMANCE INDICATORS

- 7.1 The Provider shall:
 - (a) provide the Services in such a manner so as to meet or exceed the Key Performance Indicators as applicable in each period as follows:
 - (i) The Rectification Plan Process shall apply throughout the term of this Agreement; and
 - (ii) Service Credits shall not apply until after the Operational Service Commencement Date.
 - (b) comply with the provisions of Schedule 2.2 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

Performance Failures

- 7.2 If in any Service Period :
 - (a) a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Schedule 2.2 ;
 - (b) a Material KPI Failure occurs, the Provider shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause 7.2(a));
 - (c) a KPI Failure occurs, the Provider shall notify the Authority of the action (if any) it will take to rectify the KPI Failure and/or to prevent the KPI Failure from recurring; and/or
 - (d) a Material KPI Failure occurs:
 - (i) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause 9.6 (*Set Off and Withholding*) until the relevant Material KPI Failure is

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rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

- 7.3 Service Credits shall be the Authority's exclusive financial remedy for a KPI Failure except where:
- (a) the Provider has over the previous 12-month period accrued Service Credits in excess of the Service Credit Cap;
 - (b) the KPI Failure:
 - (i) breaches the relevant KPI Service Threshold;
 - (ii) has arisen due to the wilful default by the Provider or any Provider Personnel; or
 - (c) the Provider has fraudulently misreported its performance against any Key Performance Indicator; and/or
 - (d) the Authority is otherwise entitled to or does terminate the relevant Services or this Agreement pursuant to Clause 27.1(b) (*Termination by the Authority*).

Unacceptable KPI

- 7.4 If in any Service Period an Unacceptable KPI occurs:
- (a) the Authority shall (subject to the Service Credit Cap set out in Clause 22.4(b) (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Provider in respect of that Service Period (such sum being "**Compensation for Unacceptable KPI**"); and
 - (b) if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

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

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

Changes to Performance Indicators and related Service Credits

- 7.6 Not more than once in each Contract Year the Authority may, consult with the Provider for a minimum of 1 month and thereafter, on giving the Provider at least 2 months' notice and further to the Authority's sole discretion:
- a) change the Key Performance Indicators; and/or
 - b) change the weighting that applies in respect of one or more specific Key Performance Indicators.

8 SERVICES IMPROVEMENT

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

SECTION C – PAYMENT, TAXATION AND VALUE FOR MONEY PROVISIONS

9 FINANCIAL AND TAXATION MATTERS

Charges and Invoicing

- 9.1 In consideration of the Provider carrying out its obligations under this Agreement, including the provision of the Services, the Authority shall pay the Charges to the Provider in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 4.1 (*Charges and Invoicing*).
- 9.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under 11 (*Records, Reports, Audits and Open Book Data*), 19 (*Freedom of Information*), 20 (*Protection of Personal Data*) and, to the extent specified therein, Clause 25 (*Step-In Rights*).
- 9.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Agreement, the Provider shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

- 9.4 The Charges are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Authority following delivery of a valid VAT invoice.
- 9.5 The Provider shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Authority at any time in respect of the Provider's failure to account for or to pay any VAT relating to payments made to the Provider under this Agreement. Any amounts due under this Clause 9.5 shall be paid in cleared funds by the Provider to the Authority not less than five Working Days before the date upon which the tax or other liability is payable by the Authority.

Set-off and Withholding

- 9.6 The Authority may set off any amount owed by the Provider to the Crown or any part of the Crown (including the Authority) against any amount due to the Provider under this Agreement or under any other agreement between the Provider and the Authority.
- 9.7 If the Authority wishes to:
- (a) set off any amount owed by the Provider to the Crown or any part of the Crown (including the Authority) against any amount due to the Provider pursuant to Clause 9.6; or

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- (b) exercise its right pursuant to Clause 7.2(d)(ii) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

it shall give notice to the Provider within 30 days of receipt of the relevant invoice, setting out the Authority's reasons for withholding or retaining the relevant Charges.

Promoting Tax Compliance

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

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

SECTION D - CONTRACT GOVERNANCE

10 GOVERNANCE

10.1 The Parties shall comply with the provisions of Schedule 2.1 (*Specification*) in relation to the management and governance of this Agreement.

Representatives

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

10.3 The initial Provider Representative shall be the person named as such in Schedule 6.1 (*Key Personnel*). Any change to the Provider Representative shall be agreed in accordance with Clause 13 (*Provider Personnel*).

10.4 The Authority shall notify the Provider of the identity of the initial Authority Representative within 5 Working Days of the Effective Date. The Authority may, by written notice to the Provider, revoke or amend the authority of the Authority Representative or appoint a new Authority Representative.

11 RECORDS, REPORTS, AUDITS & OPEN BOOK DATA

Records

11.1 The Provider shall retain and maintain all the Records (including superseded records):

- (a) in accordance with the requirements of The National Archives and Good Industry Practice;
- (b) in chronological order;
- (c) in a form that is capable of audit; and
- (d) at its own expense.

11.2 The Provider shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.

11.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.

11.4 The Provider shall, during the Term and a period of at least 7 years following the expiry or termination of this Agreement, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all records.

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- 11.5 Records that contain financial information shall be retained and maintained in safe storage by the Provider for a period of at least 7 years after the expiry or termination of this Agreement.

Open Book Data

- 11.6 The Provider acknowledges the importance to the Authority of financial transparency and the Authority's need for complete transparency in the way in which the Charges are calculated.
- 11.7 During the Term, and for a period of 7 years following the end of the Term, the Provider shall:
- a) maintain and retain the Open Book Data; and
 - b) disclose and allow the Authority and/or the Audit agents access to the Open Book Data.

Audits

- 11.8 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Provider and/or its Key Sub-contractors of the Provider's obligations under this Agreement, including for the following purposes:
- a) to verify the integrity and content of any Report;
 - b) to verify the accuracy of the Charges and any other amounts payable by the Authority under this Agreement (and proposed or actual variations to such Charges and payments);
 - c) to verify the Open Book Data;
 - d) to verify the Provider's and each Key Sub-contractor's compliance with this Agreement and applicable Law;
 - e) to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Provider of the purpose or objective of its investigations;
 - f) to identify or investigate any circumstances which may impact upon the financial stability of the Provider, or any Key Sub-contractors or their ability to perform the Services;
 - g) to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - h) to review any books of account and the internal contract management accounts kept by the Provider in connection with this Agreement;

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- i) to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - j) to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - k) to verify the accuracy and completeness of any management information delivered or required by this Agreement;
 - l) to review any performance monitoring reports and/or other records relating to the Provider's performance of the Services and to verify that these reflect the Provider's own internal reports and records;
 - m) to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - n) to review the Provider's compliance with the Standards;
 - o) to review the integrity, confidentiality and security of the Authority Data.
- 11.9 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Provider has not complied with its obligations under this Agreement, or in the event that clauses 11.8 (e), (f), (g) or (j) apply, the Authority may not conduct an audit of the Provider or of the same Key Sub-contractor more than twice in any Contract Year.
- 11.10 Nothing in this Agreement shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Provider and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

CONDUCT OF AUDITS

- 11.11 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Provider that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Services.
- 11.12 Subject to the Authority's obligations of confidentiality, the Provider shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- all information requested by the Authority within the permitted scope of the audit;

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reasonable access to any sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;

- (c) access to the Provider system; and
- (d) access to Provider Personnel.

11.13 The Provider shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Provider's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance with the Performance Indicators.

11.14 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.

11.15 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Provider in which case the Provider shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

USE OF PROVIDER'S INTERNAL AUDIT TEAM

11.16 As an alternative to the Authority's right to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Provider's own internal audit function for any of the purposes set out above at the Authority's cost.

11.17 Following the receipt of a request from the Authority above, the Provider shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:

- (a) the resultant audit reports; and
- (b) all relevant members of the Provider's internal audit team for the purpose of understanding such audit reports.

RESPONSE TO AUDITS

11.18 If an audit undertaken pursuant to Clause 11 identifies that:

- a) the Provider has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Provider to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
- b) there is an error in a Report, the Provider shall promptly rectify the error;
- c) the Authority has overpaid any Charges, other than those overpayments already anticipated elsewhere in this Agreement and specifically in Schedule as part of the annual reconcilisation of the estimated and actual costs the Provider shall pay to the Authority:

- (i) the amount overpaid;
 - (ii) interest on the amount overpaid at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Provider; and
 - (iii) the reasonable costs incurred by the Authority in undertaking the audit, the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
- d) the Authority has underpaid any Charges; the Provider shall not be entitled to increase the Charges paid or payable by the Authority.

12 CHANGE

Change Control Procedure

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

Change in Law

- 12.2 The Provider shall not be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Agreement as the result of:
- (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 12.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 12.2(b)), the Provider shall:
- (a) notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Change is required to the Services, the Charges or this Agreement; and
 - (ii) whether any relief from compliance with the Provider's obligations is required; and
 - (b) provide the Authority with evidence:
 - (i) that the Provider has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (ii) as to how the Specific Change in Law has affected the cost of providing the Services; and

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- (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.

12.4 Any variation in the Charges or relief from the Provider's obligations resulting from a Specific Change in Law (other than as referred to in Clause 12.2(b)) shall be implemented in accordance with the Change Control Procedure.

SECTION E – PROVIDER PERSONNEL AND SUPPLY CHAIN

13 PROVIDER PERSONNEL

13.1 The Provider shall:

- (a) Provide in advance of any admission to End User or Authority Premises a list of the names of all Provider Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;
- (b) ensure that all Provider Personnel:
 - (i) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;
 - (ii) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2.1 (*Specification*) and Schedule 2.3 (*Security Management*); and
 - (iii) comply with all reasonable requirements of the Authority concerning conduct at the Authority and End User Premises, including the security requirements as set out in Schedule 2.3 (*Security Management*);
- (c) retain overall control of the Provider Personnel at all times so that the Provider Personnel shall not be deemed to be employees, agents or contractors of the Authority;
- (d) be liable at all times for all acts or omissions of Provider Personnel, so that any act or omission of a member of any Provider Personnel which results in a Default under this Agreement shall be a Default by the Provider;
- (e) use all reasonable endeavours to minimise the number of changes in Provider Personnel;
- (f) replace (temporarily or permanently, as appropriate) any Provider Personnel as soon as practicable if any Provider Personnel have been removed or are unavailable for any reason whatsoever;
- (g) bear the programme familiarisation and other costs associated with any replacement of any Provider Personnel; and
- (h) procure that the Provider Personnel shall vacate the End User or Authority Premises immediately upon the termination or expiry of this Agreement.

- 13.2 If the Authority reasonably believes that any of the Provider Personnel are unsuitable to undertake work in respect of this Agreement, it may:
- (a) refuse admission to the relevant person(s) to the Authority or End User Premises; and/or
 - (b) direct the Provider to end the involvement in the provision of the Services of the relevant person(s).

Key Personnel

- 13.3 The Provider shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 6.1 (*Key Personnel*) lists the Key Roles and names of the persons who the Provider shall appoint to fill those Key Roles at the Effective Date.
- 13.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Provider, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 13.5 The Provider shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- (a) requested to do so by the Authority;
 - (b) the person concerned resigns, retires or dies or is on maternity or long-term sick leave;
 - (c) the person's employment or contractual arrangement with the Provider or a Sub-contractor is terminated for material breach of contract by the employee; or
 - (d) the Provider obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 13.6 The Provider shall:
- (a) notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Provider shall ensure appropriate temporary cover for that Key Role);
 - (b) where reasonably practicable and using best endeavours, ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - (c) give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
 - (d) ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel

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work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and

- (e) ensure that any replacement for a Key Role:
 - (i) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (ii) is fully competent to carry out the tasks assigned to the Key Personnel whom he or she has replaced.

Employment Indemnity

13.7 The Parties agree that:

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

Income Tax and National Insurance Contributions

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

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

14 SUPPLY CHAIN RIGHTS AND PROTECTIONS

Appointment of Sub-contractors

- 14.1 The Provider shall exercise due skill and care in the selection and appointment of any Sub-contractors to ensure that the Provider is able to:
- (a) manage any Sub-contractors in accordance with Good Industry Practice;
 - (b) comply with its obligations under this Agreement in the delivery of the Services; and
 - (c) assign, novate or otherwise transfer to the Authority or any Replacement Provider any of its rights and/or obligations under each Sub-contract that relates exclusively to this Agreement.
- 14.2 Prior to sub-contracting any of its obligations under this Agreement, the Provider shall notify the Authority in writing of:
- (a) the proposed Sub-contractor's name, registered office and company registration number;
 - (b) the scope of any Services to be provided by the proposed Sub-contractor; and
 - (c) where the proposed Sub-contractor is an Affiliate of the Provider, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 14.3 If requested by the Authority within 10 Working Days of receipt of the Provider's notice issued pursuant to Clause 14.2, the Provider shall also provide:
- (a) a copy of the proposed Sub-contract; and
 - (b) any further information reasonably requested by the Authority.
- 14.4 The Authority may, within 10 Working Days of receipt of the Provider's notice issued pursuant to Clause 14.2 (or, if later, receipt of any further information requested pursuant to Clause 14.3), object to the appointment of the relevant Sub-contractor if it considers that:
- (a) the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
 - (b) the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
 - (c) the proposed Sub-contractor employs unfit persons; and/or
 - (d) the proposed Sub-contractor should be excluded in accordance with

Clause 14.18;

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

14.5 If:

- (a) the Authority has not notified the Provider that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
 - (i) the Provider's notice issued pursuant to Clause 14.1; and
 - (ii) any further information requested by the Authority pursuant to Clause 14.3; and
- (b) the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 14.6 (*Appointment of Key Sub-contractors*),

the Provider may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 3.4 (*Third Party Contracts*).

Appointment of Key Sub-contractors

14.6 Where the Provider wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent to be provided to the Provider where applicable, within 15 days of receipt of the request. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:

- (a) the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
- (b) the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
- (c) the proposed Key Sub-contractor employs unfit persons; and/or
- (d) the proposed Key Sub-contractor should be excluded in accordance with Clause 14.18.

14.7 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 3.3 (*Notified Key Sub-contractors*).

14.8 Except where the Authority has given its prior written consent, the Provider shall ensure that each Key Sub-contract shall include:

- (a) provisions which will enable the Provider to discharge its obligations

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under this Agreement;

- (b) a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
- (c) a provision enabling the Authority to enforce the Key Sub-contract as if it were the Provider;
- (d) a provision enabling the Provider to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Provider without restriction (including any need to obtain any consent or approval) or payment by the Authority;
- (e) obligations no less onerous on the Key Sub-contractor than those imposed on the Provider under this Agreement in respect of:
 - (i) data protection requirements set out in Clause 20 and Schedule 2.3;
 - (ii) FOIA requirements set out in Clause 19 (*Freedom of Information*);
 - (iii) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.4(k) (*Services*);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (v) the conduct of Audits
- (f) provisions enabling the Provider to terminate the Key Sub-contract on notice on terms no more onerous on the Provider than those imposed on the Authority under Clauses 27.1 (*Termination by the Authority*);
- (g) a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Provider under the Key Sub-contract without first seeking the written consent of the Authority;
- (h) a provision enabling the Provider, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause 25 (*Step-in Rights*);
- (i) a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- (j) a provision requiring the Key Sub-contractor to:
 - (i) promptly notify the Provider and the Authority in writing of any of the following of which it is, or ought to be, aware:

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- (A) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
- (B) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,

and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such).

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

Supply chain protection

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

- (a) giving the Provider a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour law;
- (b) requiring the Provider or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- (c) that if the Provider or other party fails to consider and verify an invoice in accordance with sub-paragraph (a), the invoice shall be regarded as valid and undisputed for the purpose of sub-paragraph (c) after a reasonable time has passed;
- (d) requiring the Provider or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding 30 days of verifying that the invoice is valid and undisputed; and
- (e) giving the Authority a right to publish the Provider's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- (f) requiring the Sub-contractor to include a clause to the same effect as this clause 14.10 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Agreement.

14.11 The Provider shall:

- (a) pay any undisputed sums which are due from it to a Sub-contractor within

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30 days of verifying that the invoice is valid and undisputed;

14.12 Notwithstanding any provision of Clauses 18 (*Confidentiality*) and 21 (*Publicity and Branding*), if the Provider notifies the Authority that the Provider has failed to pay a Sub-contractor's undisputed invoice within 30 days of receipt, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

14.13 The Authority may require the Provider to terminate:

- (a) a Sub-contract where:
 - (i) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority's right of termination pursuant to Clause 27.1 (*Termination by the Authority*);
 - (ii) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;
 - (iii) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
 - (iv) the Authority has found grounds for exclusion of the Sub-contractor in accordance with clause 14.18; and
- (b) a Key Sub-contract where there is a Change of Control of the relevant Key Sub-contractor, unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date the Change of Control took place or the date on which the Authority was given notice of the Change of Control.

14.14 NOT USED

14.15 NOT USED

14.16 NOT USED

Retention of Legal Obligations

14.17 Notwithstanding the Provider's right to sub-contract pursuant to this Clause 14, the Provider shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own.

Exclusion of Sub-contractors

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

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

15 COMPLIANCE WITH ANTI-SLAVERY AND HUMAN TRAFFICKING LAWS AND POLICIES

15.1 In performing its obligations under the Agreement, the Provider shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) comply with the Anti-Slavery Policy OR have and maintain throughout the term of this Agreement its own policies and procedures to ensure its compliance; and
- (c) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (d) include in its contracts with its Sub-contractors and Providers anti-slavery and human trafficking provisions that are at least as onerous as those set out in this clause 15 or ensure that each of its Sub-contractors and Providers shall comply with the Anti-Slavery Policy and with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

Due Diligence

- 15.2 The Provider represents and warrants that at the date of this Agreement:
- (a) its responses to the Authority's slavery and human trafficking due diligence questionnaire are complete and accurate; and
 - (b) neither the Provider nor any of its officers, employees or other persons associated with it:
 - i. has been convicted of any offence involving slavery and human trafficking; and
 - ii. having made reasonable enquiries, so far as it is aware OR to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.
- 15.3 The Provider shall implement due diligence procedures for its Sub-contractors, and Providers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.
- 15.4 The Provider shall implement due diligence procedures for its Sub-contractors, and Providers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

Reports

- 15.5 The Provider shall notify the Authority as soon as it becomes aware of:
- (a) any breach, or potential breach, of the Anti-Slavery Policy; or
 - (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Agreement.
- 15.6 The Provider shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 15.7 If the Provider makes a notification to the Authority pursuant to this Clause 15, the Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 11 (Records, Reports, Audit and Open Book Data).
- 15.8 If the Provider breaches this clause 15 the Authority may:

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- (a) give notice requiring the Provider to re move from performance of this Agreement any Provider Party whose acts or omissions caused the Provider to breach this clause 15 and requiring the Provider to pay any costs, expenses, losses or other financial liabilities incurred by the Authority as a result of the breach; and/or
- (b) immediately terminate this Agreement for Default;

15.9 Any notice served by the Authority under clause 15 shall specify the nature of the breach of any anti-slavery or human trafficking law, the identity of the Party who the Authority believes has committed the breach and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

SECTION F - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

16 INTELLECTUAL PROPERTY RIGHTS

- 16.1 Except as expressly set out in this Agreement:
- (a) the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Provider or its licensors..
 - (b) the Provider shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors.
 - (c) the Project Specific IPRs shall vest in the Authority.
- 16.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Clause 16.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).
- 16.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 16.4 For the sake of clarity, Intellectual Property Rights in any updates or amendments made to Software, the Intellectual Property Rights of which belong to the Provider, as a result of this Agreement shall vest in the Provider. The Authority and the Provider shall work together to establish whether the Authority will require the benefit of any such updates and/or amendments by virtue of a licence, the terms of which shall be agreed between the parties.
- 16.5 The Provider agrees to keep the Authority reasonably informed of any third party IPR that is used for the delivery of the Services, the benefit of which cannot be sub-licensed to the Authority. Such identified IPR should be listed by the Provider in Schedule 7.1

17 IPRs INDEMNITY

- 17.1 The Parties shall at all times, during and after the Term, on written demand indemnify each other and each other Indemnified Person, and keep each other and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.
- 17.2 If an IPRs Claim is made, or the Provider or Authority (as the case may be) anticipates that an IPRs Claim might be made, the Provider or Authority (as the case may be) may, at its own expense and sole option, either:
- (a) procure for the Authority or the Provider or other relevant Indemnified Person (as the case may be) the right to continue using the relevant item which is subject to the IPRs Claim; or

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- (b) replace or modify the relevant item with non-infringing substitutes provided that:
 - (i) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified item does not have an adverse effect on any other services;
 - (iii) there is no additional cost to the Authority or the Provider or the relevant Indemnified Person (as the case may be); and
 - (iv) the terms and conditions of this Agreement shall apply to the replaced or modified Services.

17.3 If the Provider or the Authority (as the case may be) elects to procure a licence, but this has not avoided or resolved the IPRs Claim, then:

- (a) the Authority or Provider (as the case may be) may terminate this Agreement (if subsisting) with immediate effect by written notice to the Provider or the Authority (as the case may be); and
- (b) without prejudice to the indemnity set out in Clause 17.1, the Provider or the Authority (as the case may be) shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

18 CONFIDENTIALITY

18.1 For the purposes of this Clause 18, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

18.2 Except to the extent set out in this Clause 18 or where disclosure is expressly permitted elsewhere in this Agreement, the Recipient shall:

- (a) treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (b) not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Agreement or without obtaining the owner's prior written consent;
- (c) not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware

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of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

- 18.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:
- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 19 (*Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;
 - (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (ii) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this Agreement; or
 - (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 18.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 18.5 The Provider may disclose the Confidential Information of the Authority on a confidential basis only to:
- (a) Provider Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Provider's obligations under this Agreement;
 - (b) its auditors; and
 - (c) its professional advisers for the purposes of obtaining advice in relation to this Agreement.

Where the Provider discloses Confidential Information of the Authority pursuant to this Clause 18.5, it shall remain responsible at all times for compliance with

the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

- 18.6 The Authority may disclose the Confidential Information of the Provider:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, Provider or other person engaged by any of the entities described in Clause 18.6(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including the Audit Rights, its step-in rights pursuant to Clause 25 (*Step-In Rights*) and Exit Management rights; or
 - (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause 18.

- 18.7 Nothing in this Clause 18 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

19 TRANSPARENCY AND FREEDOM OF INFORMATION

- 19.1 The Parties acknowledge that
- (a) the content of this Agreement, including any changes to this Agreement agreed from time to time, except for –
 - (i) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Authority; and
 - (ii) Commercially Sensitive Information;

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

- 19.2 Notwithstanding any other provision of this Agreement, the Provider hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Provider on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 19.3 The Provider shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports.
- 19.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Provider.
- 19.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Agreement is being performed, having regard to the context of the wider commercial relationship with the Provider.
- 19.6 The Provider agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to clause 18.6(c)) and Open Book Data) publish such Information. The Provider shall provide to the Authority within 5 working days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 19.7 The Provider acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Provider shall:
 - (a) provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Authority all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within

2 Working Days of receipt;

- (c) provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
- (d) not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.

19.8 The Provider acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Provider. The Authority shall take reasonable steps to notify the Provider of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

20 PROTECTION OF PERSONAL DATA

20.1 The Parties shall review this clause 20 and make any necessary changes in light of the General Data Protection Regulations (Regulation 2016/679) in or around May 2018.

20.2 With respect to the Parties' rights and obligations under this Agreement, the Parties acknowledge that the Authority is a Data Controller and that the Provider is a Data Processor.

20.3 The Provider shall:

- (a) Process the Personal Data only in accordance with instructions from the Authority to perform its obligations under this Agreement;
- (b) ensure that at all times it has in place appropriate technical and organisational measures to guard against unauthorised or unlawful processing of the Personal Data and/or accidental loss, destruction or damage to the Personal Data, including the measures as are set out in Clause 20 (*Authority Data and Security Requirements*);
- (c) not disclose or transfer the Personal Data to any third party or Provider Personnel unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, obtain the prior written consent of the Authority (save where such disclosure or transfer is specifically authorised under this Agreement);

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- (d) take all reasonable steps to ensure the reliability and integrity of any Provider Personnel who have access to the Personal Data and ensure that the Provider Personnel:
 - (i) are aware of and comply with the Provider's duties under this Clause 20 and Clauses 18 (*Confidentiality*) and 20 (*Authority Data and Security Requirements*);
 - (ii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Authority or as otherwise permitted by this Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data (as defined in the DPA);
- (e) notify the Authority within 5 Working Days if it receives:
 - (i) from a Data Subject (or third party on their behalf):
 - (A) a Data Subject Access Request (or purported Data Subject Access Request);
 - (B) a request to rectify, block or erase any Personal Data; or
 - (C) any other request, complaint or communication relating to the Authority's obligations under the DPA;
 - (ii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data; or
 - (iii) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (f) provide the Authority with full cooperation and assistance (within the timescales reasonably required by the Authority) in relation to any complaint, communication or request made as referred to in Clause 20.2(e), including by promptly providing:
 - (i) the Authority with full details and copies of the complaint, communication or request;
 - (ii) where applicable, such assistance as is reasonably requested by the Authority to enable the Authority to comply with the Data Subject Access Request within the relevant timescales set out in the DPA; and
 - (iii) the Authority, on request by the Authority, with any Personal Data it holds in relation to a Data Subject; and
- (g) if requested by the Authority, provide a written description of the

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measures that it has taken and technical and organisational security measures in place, for the purpose of compliance with its obligations pursuant to this Clause 24 and provide to the Authority copies of all documentation relevant to such compliance including, protocols, procedures, guidance, training and manuals.

- 20.4 The Provider shall not Process or otherwise transfer any Personal Data in or to any Restricted Country. If, after the Effective Date, the Provider or any Sub-contractor wishes to Process and/or transfer any Personal Data in or to any Restricted Country, the following provisions shall apply:
- (a) the Provider shall submit a Change Request to the Authority which, if the Authority agrees to such Change Request, shall be dealt with in accordance with the Change Control Procedure.;
 - (b) the Provider shall set out in its Change Request and/or Impact Assessment details of the following:
 - (i) the Personal Data which will be transferred to and/or Processed in any Restricted Country;
 - (ii) the Restricted Country or Countries which the Personal Data will be transferred to and/or Processed in; and
 - (iii) any Sub-contractors or other third parties who will be Processing and/or receiving Personal Data in Restricted Countries;
 - (iv) how the Provider will ensure an adequate level of protection and adequate safeguards in respect of the Personal Data that will be Processed in and/or transferred to Restricted Countries so as to ensure the Authority's compliance with the DPA;
 - (c) in providing and evaluating the Change Request and Impact Assessment, the Parties shall ensure that they have regard to and comply with then-current Authority, Central Government Bodies and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing in and/or transfers of Personal Data to any Restricted Country; and
 - (d) the Provider shall comply with such other instructions and shall carry out such other actions as the Authority may notify in writing, including:
 - (i) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the DPA) into this Agreement or a separate data processing agreement between the Parties; and
 - (ii) procuring that any Sub-contractor or other third party who will be Processing and/or receiving or accessing the Personal Data in any Restricted Country either enters into:

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- (A) a direct data processing agreement with the Authority on such terms as may be required by the Authority; or
- (B) a data processing agreement with the Provider on terms which are equivalent to those agreed between the Authority and the Sub-contractor relating to the relevant Personal Data transfer,

and in each case which the Provider acknowledges may include the incorporation of model contract provisions (which are approved by the European Commission as offering adequate safeguards under the DPA) and technical and organisation measures which the Authority deems necessary for the purpose of protecting Personal Data.

- 20.5 The Provider shall use its reasonable endeavours to assist the Authority to comply with any obligations under the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Authority to breach any of the Authority's obligations under the DPA to the extent the Provider is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.
- 20.5 In case the applicable data protection and ancillary laws change in a way that this Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree to negotiate in good faith to review the Agreement in light of the new legislation.

21 PUBLICITY AND BRANDING

- 21.1 The Provider shall not:
- (a) make any press announcements or publicise this Agreement or its contents in any way; or
 - (b) use the Authority's name or brand in any promotion or marketing or announcement of orders;
- without the prior written consent of the Authority, which shall not be unreasonably withheld or delayed.
- 21.2 Each Party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 21.3 Providers must not sell, or attempt to sell, their own commercial products as part of any communications with End Users pursuant to this Agreement. Sales of products and services outside of service activities (set out in Schedule 2.1 (*Specification*)) must, under no circumstances, be sold under the Authority's or Schools Buying Hub brand (pursuant to Clause 21.4). The Provider shall ensure appropriate separation and safeguards within their organisation and

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systems (if applicable) such that the activities, information and data relating to the hubs is kept entirely separate to any commercial activity being undertaken by the Provider.

- 21.4 The Services provided by the Provider will be branded as 'School Buying Hub – North-West'.
- 21.5 The online services shall be managed in accordance with the Authority's branding guidelines, a copy of which shall be provided to the Provider shortly after the Effective Date.

SECTION G - LIABILITY, INDEMNITIES AND INSURANCE

22 LIMITATIONS ON LIABILITY

Unlimited liability

22.1 Neither Party limits its liability for:

- (a) death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable);
- (b) fraud or fraudulent misrepresentation by it or its employees;
- (c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any liability to the extent it cannot be limited or excluded by Law.

22.2 The Provider's liability in respect of the indemnities in Clause 9.5 (VAT), Clause 13.7 (*Employment Indemnity*), Clause 13.8 (*Income Tax and National Insurance Contributions*), Clause 17 (*IPRs Indemnity*) shall be unlimited.

22.3 The Authority's liability in respect of the indemnities in Clause 13.7 (*Employment Indemnity*) shall be unlimited.

Financial and other limits

22.4 Subject to Clauses 22.1 and 22.2 (*Unlimited Liability*) and Clauses 22.7 and 22.8 (*Consequential losses*):

- (a) the Provider's aggregate liability in respect of loss of or damage to the End User or Authority Premises or other property or assets of the Authority (including technical infrastructure, assets or equipment but excluding any loss or damage to the Authority's Data or any other data) that is caused by Defaults of the Provider occurring in each and any Contract Year shall in no event exceed £10 million;
- (b) the Provider's aggregate liability in respect of all:

Service Credits incurred in any rolling period of 12 months shall be subject to the Service Credit Cap; and

- (c) the Provider's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Agreement as a result of Defaults by the Provider shall in no event exceed:
 - (i) in relation to Defaults occurring in the first Contract Year, an amount equal to 150% of the Estimated Year 1 Charges;
 - (ii) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to 150% of the Charges paid and/or due

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to be paid to the Provider under this Agreement as estimated in the applicable Contract Year;; and

- (iii) in relation to Defaults occurring after the end of the Term, an amount equal to 150% of the Charges paid and/or due to be paid to the Provider in the 12-month period immediately prior to the last day of the Term,

provided that where any Losses referred to in Clause 22.4(c) have been incurred by the Authority as a result of the Provider's abandonment of this Agreement or the Provider's wilful default, wilful breach of a fundamental term of this Agreement or wilful repudiatory breach of this Agreement, the references in such Clause to 150% shall be deemed to be references to 200%.

22.5 Deductions from Charges shall not be taken into consideration when calculating the Provider's liability under Clause 22.4(c).

Consequential Losses

22.6 Subject to Clauses 22.1, 22.2 and 22.3 (*Unlimited Liability*) and Clause 22.8, neither Party shall be liable to the other Party for:

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

Authority Losses

22.7 Notwithstanding Clause 22.7 but subject to Clause 22.4, the Provider acknowledges that the Authority may, amongst other things, recover from the Provider the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Provider:

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

Mitigation

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

23 INSURANCE

The Provider shall comply with the provisions of Schedule 2.4(*Insurance Requirements*) in relation to obtaining and maintaining insurance.

SECTION H – REMEDIES AND RELIEF

24 RECTIFICATION PLAN PROCESS

24.1 In the event that:

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

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

Notification

24.2 If:

- (a) the Provider notifies the Authority pursuant to Clause 24.1 that a Notifiable Default has occurred; or
- (b) the Authority notifies the Provider that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Provider has to rectify),

then, unless the Notifiable Default also constitutes a right to terminate the Agreement and the Authority serves a Termination Notice, the Provider shall comply with the Rectification Plan Process.

24.3 The “**Rectification Plan Process**” shall be as set out in Clauses 24.4 (*Submission of the draft Rectification Plan*) to 24.9 (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

24.4 The Provider shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause 24.2 (*Notification*). The Provider shall submit a draft Rectification Plan even if the Provider disputes that it is responsible for the Notifiable Default.

- 24.5 The draft Rectification Plan shall set out:
- (a) full details of the Notifiable Default that has occurred, including a root cause analysis;
 - (b) the actual or anticipated effect of the Notifiable Default; and
 - (c) the steps which the Provider proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable).
- 24.6 The Provider shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Provider's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Schedule 5.2 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

- 24.7 The Authority may reject the draft Rectification Plan by notice to the Provider if, acting reasonably, it considers that the draft Rectification Plan is inadequate, for example because the draft Rectification Plan:
- (a) is insufficiently detailed to be capable of proper evaluation;
 - (b) will take too long to complete;
 - (c) will not prevent reoccurrence of the Notifiable Default; and/or
 - (d) will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.
- 24.8 The Authority shall notify the Provider whether it consents to the draft Rectification Plan as soon as reasonably practicable. If the Authority rejects the draft Rectification Plan, the Authority shall give reasons for its decision and the Provider shall take the reasons into account in the preparation of a revised Rectification Plan. The Provider shall submit the revised draft of the Rectification Plan to the Authority for review within 5 Working Days (or such other period as agreed between the Parties) of the Authority's notice rejecting the first draft.
- 24.9 If the Authority consents to the Rectification Plan:
- (a) the Provider shall immediately start work on the actions set out in the Rectification Plan; and
 - (b) the Authority may no longer terminate this Agreement in whole or in part on the grounds of the relevant Notifiable Event.

Losses as a result of Default

24.10 The Authority may, amongst other things, recover from the Provider the following losses incurred by the Authority to the extent that they arise as a result of a Default by the Provider:

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

25 STEP-IN RIGHTS

25.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Provider (a "**Step-In Notice**") that it will be taking action under this Clause 25 (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Provider may require any third parties to comply with a confidentiality undertaking equivalent to Clause 18 (*Confidentiality*)). The Step-In Notice shall set out the following:

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

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- 25.2 Following service of a Step-In Notice, the Authority shall:
- (a) take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;
 - (b) keep records of the Required Action taken and provide information about the Required Action to the Provider;
 - (c) co-operate wherever reasonable with the Provider in order to enable the Provider to continue to provide the Services in relation to which the Authority is not assuming control; and
 - (d) act reasonably in mitigating the cost that the Provider will incur as a result of the exercise of the Authority's rights under this Clause 25.
- 25.3 For so long as and to the extent that the Required Action is continuing, then:
- (a) the Provider shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - (b) no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 25.4 shall apply to Deductions from Charges in respect of other Services; and
 - (c) the Authority shall pay to the Provider the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 25.4 If the Provider demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- (a) the degradation of any Services not subject to the Required Action; or
 - (b) the non-Achievement of a deliverable under the Specification or Key Performance Indicators,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Provider shall be entitled to an agreed adjustment of the Charges.
- 25.5 Before ceasing to exercise its step in rights under this Clause 25 the Authority shall deliver a written notice to the Provider (a "**Step-Out Notice**"), specifying:
- (a) the Required Action it has actually taken; and
 - (b) the date on which the Authority plans to end the Required Action (the "**Step-Out Date**") subject to the Authority being satisfied with the Provider's ability to resume the provision of the Services and the Provider's plan developed in accordance with Clause 25.6.

- 25.6 The Provider shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a "**Step-Out Plan**") relating to the resumption by the Provider of the Services, including any action the Provider proposes to take to ensure that the affected Services satisfy the requirements of this Agreement.
- 25.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Provider of its reasons for not approving it. The Provider shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 25.8 The Provider shall bear its own costs in connection with any step-in by the Authority under this Clause 25, provided that the Authority shall reimburse the Provider's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- (a) limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - (b) limbs (e), (f) and (g) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Provider's Default).

26 FORCE MAJEURE

- 26.1 Subject to the remaining provisions of this Clause 26 (and, in relation to the Provider, a Party may claim relief under this Clause 26 from liability for failure to meet its obligations under this Agreement for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Provider in performing its obligations under this Agreement which results from a failure or delay by an agent, Sub-contractor or Provider shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or Provider is itself impeded by a Force Majeure Event from complying with an obligation to the Provider.
- 26.2 The Affected Party shall as soon as reasonably practicable issue a Force Majeure Notice, which shall include details of the Force Majeure Event, its effect on the obligations of the Affected Party and any action the Affected Party proposes to take to mitigate its effect.
- 26.3 If the Provider is the Affected Party, it shall not be entitled to claim relief under this Clause 26 to the extent that consequences of the relevant Force Majeure Event:
- (a) are capable of being mitigated by any of the Services, but the Provider has failed to do so; and/or
 - (b) should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Agreement.

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- 26.4 Subject to Clause 26.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.
- 26.5 The Parties shall at all times following the occurrence of a Force Majeure Event and during its subsistence use their respective reasonable endeavours to prevent and mitigate the effects of the Force Majeure Event. Where the Provider is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 26.6 Where, as a result of a Force Majeure Event:
- (a) an Affected Party fails to perform its obligations in accordance with this Agreement, then during the continuance of the Force Majeure Event:
 - (i) the other Party shall not be entitled to exercise any rights to terminate this Agreement in whole or in part as a result of such failure and
 - (ii) neither Party shall be liable for any Default arising as a result of such failure;
 - (b) the Provider fails to perform its obligations in accordance with this Agreement:
 - (i) the Authority shall not be entitled:
 - (A) during the continuance of the Force Majeure Event to exercise its rights under Clause 25 (*Step-in Rights*) as a result of such failure;
 - (B) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause 7.2(d)(ii) (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause 7.4(a) (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
 - (ii) the Provider shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Agreement during the occurrence of the Force Majeure Event.
- 26.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Agreement.

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- 26.8 Relief from liability for the Affected Party under this Clause 26 shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Agreement and shall not be dependent on the serving of notice under Clause 26.7.

SECTION I – TERMINATION AND EXIT MANAGEMENT

27 TERMINATION RIGHTS

Termination by the Authority

27.1 The Authority may terminate this Agreement by issuing a Termination Notice to the Provider:

- (a) for convenience upon giving two months' notice;
- (b) following each quarterly review during the first 15 months after the Effective Date, or annual review thereafter, which renders the Services no longer viable;
- (c) if a Default occurs;
- (d) if a Force Majeure Event endures for a continuous period of more than 90 days; or
- (e) if the Agreement has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

27.1A In the event that the Authority terminates this Agreement pursuant to clause 27.1(a) (*termination for convenience*), the Authority shall pay the Termination Costs to the Provider within 30 days of the point of termination. The Termination Costs shall not be payable under any other circumstances under this Agreement.

27.2 Where the Authority:

- (a) is terminating this Agreement under Clause 27.1(c), it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or
- (b) has the right to terminate this Agreement under Clause 27.1(b) or Clause 27.1(c), it may, prior to or instead of terminating the whole of this Agreement, serve a Termination Notice requiring the partial termination of this Agreement to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.
- (c) terminates the Agreement under Clause 27.1 (a) or Clause 27.1 (b), the Authority agrees to pay any reasonable and verifiable exit costs associated with termination accrued from the Effective Date to the Operational Service Commencement Date, such costs shall be limited to the estimated costs submitted by the Provider under Schedule 3.1 .

Termination by the Provider

- 27.3 The Provider may, by issuing a Termination Notice to the Authority, terminate:
- (a) this Agreement if the Authority fails to pay an undisputed sum due to the Provider under this Agreement which in aggregate exceeds £72,972.20 and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Provider; or
 - (b) any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than 90 days,

and this Agreement or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 30 Working Days from the date of the issue of the Termination Notice). If the operation of Clause 27.3(b) would result in a Partial Termination, the provisions of Clause 27.4 (*Partial Termination*) shall apply.

Partial Termination

- 27.4 If the Provider notifies the Authority pursuant to Clause 27.3(b) (*Termination by the Provider*) that it intends to terminate this Agreement in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Agreement by serving a Termination Notice to the Provider within 1 month of receiving the Provider's Termination Notice. For the purpose of this Clause 27.4, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 27.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- (a) the Provider shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Provider Termination Event;
 - (b) any adjustment to the Charges (if any) shall be calculated in accordance with the financial model and must be reasonable; and
 - (c) the Provider shall not be entitled to reject the Change.
- 27.6 The Authority reserves the right to terminate this Agreement, or reduce the scope of the Services, upon giving the Provider three months' written notice, at any time if:
- (a) funding for the Services is withdrawn or varied;

- (b) there is a significant change in government policy relating to the delivery of the Services.

28 CONSEQUENCES OF EXPIRY OR TERMINATION

General Provisions on Expiry or Termination

- 28.1 The provisions of Clauses 9.4 and 9.5 (*VAT*), 9.6 and 9.7 (*Set-off and Withholding*), 11 (*Records, Reports, Audits and Open Book Data*), 13.7 (*Employment Indemnity*), 13.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 16 (*Licences Granted by the Provider*), 17 (*IPRs Indemnity*), 18 (*Confidentiality*), 19 (*Freedom of Information*), 20 (*Protection of Personal Data*), 22 (*Limitations on Liability*), 28 (*Consequences of Expiry or Termination*), 35 (*Severance*), 37 (*Entire Agreement*), 38 (*Third Party Rights*), 40 (*Disputes*) and 41 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 4.1 (*Charges and Invoicing*), 5.2 (*Dispute Resolution Procedure*), 5.4 (*Exit Management*) shall survive the termination or expiry of this Agreement.

Exit Management

- 28.2 The Parties shall comply with the provisions of Schedule 5.4 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Provider.
- 28.3 The Authority shall, in its sole discretion and with reasonable notice, provide the Provider with instructions as to the handling and management of any assets and associated warranties (including technical infrastructure or equipment) obtained pursuant to this Agreement prior to the expiry of the Term.

SECTION J - MISCELLANEOUS AND GOVERNING LAW

29 COMPLIANCE

Health and Safety

- 29.1 The Provider shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:
- (a) all applicable Law regarding health and safety; and
 - (b) the Health and Safety Policy whilst at the End User or Authority Premises.
- 29.2 Each Party shall notify the other as soon as practicable of any health and safety incidents or material health and safety hazards at the End User or Authority Premises of which it becomes aware and which relate to or arise in connection with the performance of this Agreement. The Provider shall instruct the Provider Personnel to adopt any necessary associated safety measures in order to manage any such material health and safety hazards.

Equality and Diversity

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

Official Secrets Act and Finance Act

- 29.4 The Provider shall comply with the provisions of:
- (a) the Official Secrets Acts 1911 to 1989; and
 - (b) section 182 of the Finance Act 1989.

30 ASSIGNMENT AND NOVATION

30.1 The Provider shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority, such consent not to be unreasonably withheld.

30.2 The Authority may at its discretion assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:

(a) any Central Government Body; or

(b) to a body other than a Central Government Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority,

and the Provider shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 30.2.

30.3 A change in the legal status of the Authority such that it ceases to be a Central Government Body shall not (subject to Clause 30.4) affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

30.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Agreement to a body which is not a Central Government Body or if a body which is not a Central Government Body succeeds the Authority (any such body a "**Successor Body**"), the Provider shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (i) of the definition of Provider Termination Event (as if references in that limb (i) to the Provider and the Guarantor and references to a Party in the definition of Insolvency Event were references to the Successor Body).

31 WAIVER AND CUMULATIVE REMEDIES

31.1 The rights and remedies under this Agreement may be waived only by notice and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Agreement or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

31.2 Unless otherwise provided in this Agreement, rights and remedies under this Agreement are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

32 RELATIONSHIP OF THE PARTIES

- 32.1 Except as expressly provided otherwise in this Agreement, nothing in this Agreement, nor any actions taken by the Parties pursuant to this Agreement, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise either Party to make representations or enter into any commitments for or on behalf of any other Party.
- 32.2 The Provider may, subject to the End User's prior written consent, act as an authorised representative on behalf of the End User if requested for the purposes of delivering the services as set out in this Agreement.. For the avoidance of doubt, nothing in this Agreement, nor any actions taken by the Parties or the End User pursuant to this Agreement, shall create a principal and agent relationship between the Provider and the End User, or authorise the Provider to make representations or enter into any commitments for or on behalf of the End User.

33 PREVENTION OF FRAUD AND BRIBERY

- 33.1 The Provider represents and warrants that neither it, nor to the best of its knowledge any Provider Personnel, have at any time prior to the Effective Date:
- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 33.2 The Provider shall not during the term of this Agreement:
- (a) commit a Prohibited Act; and/or
 - (b) do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.
- 33.3 The Provider shall during the term of this Agreement:
- (a) establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act; and
 - (b) keep appropriate records of its compliance with its obligations under this clause and make such records available to the Authority on request.

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- 33.4 The Provider shall immediately notify the Authority in writing if it becomes aware of any breach of Clause 33.1 and/or 33.2, or has reason to believe that it has or any of the Provider Personnel have:
- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person or Party directly or indirectly connected with this Agreement has committed or attempted to commit a Prohibited Act.
- 33.5 If the Provider makes a notification to the Authority pursuant to Clause 33.4, the Provider shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause 11 (*Records, Reports, Audits and Open Book Data*).
- 33.6 If the Provider is in Default under Clauses 33.1 and/or 33.2, the Authority may by notice:
- (a) require the Provider to remove from performance of this Agreement any Provider Personnel whose acts or omissions have caused the Default; or
 - (b) immediately terminate this Agreement.
- 33.7 Any notice served by the Authority under Clause 33.6 shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Agreement shall terminate).

34 ENVIRONMENTAL REQUIREMENTS

- 34.1 The Provider shall perform its obligations under the Agreement in accordance with the Authority's environmental policy, which includes requirements to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 34.2 Where the Provider has not been provided with details of the Authority's environmental policy, the Provider should request a copy of the same within 10 Working Days after the Commencement Date.

- 34.3 The Provider shall conduct an annual self-assessment of its corporate social responsibility policy to include equality & diversity and environmental and socio-economic practices. The Provider shall report such findings to the Authority's Representative in such format as the Authority's Representative may request.
- 34.4 The Authority may make available a particular self-assessment tool to assist its Providers (including the Provider) in conducting the self-assessment referred to in Clause 34.3 above and if the Authority does so, the Provider shall use that self-assessment tool.
- 34.5 The Provider shall comply with current Government Buying Standards for the provision of commodity goods and services. These are available at: <http://sd.defra.gov.uk/advice/public/buying/>

35 SEVERANCE

- 35.1 If any provision of this Agreement (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of this Agreement are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of this Agreement shall not be affected.
- 35.2 In the event that any deemed deletion under Clause 35.1 is so fundamental as to prevent the accomplishment of the purpose of this Agreement or materially alters the balance of risks and rewards in this Agreement, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Agreement so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Agreement and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.
- 35.3 If the Parties are unable to agree on the revisions to this Agreement within 5 Working Days of the date of the notice given pursuant to Clause 35.2, the matter shall be dealt with in accordance with Paragraph 4 (*Commercial Negotiation*) of Schedule 5.2 (*Dispute Resolution Procedure*) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Agreement shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Agreement is terminated pursuant to this Clause 35.3.

36 FURTHER ASSURANCES

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

37 ENTIRE AGREEMENT

- 37.1 This Agreement constitutes the entire agreement between the Parties in respect

of its subject matter and supersedes and extinguishes all prior negotiations, arrangements, understanding, course of dealings or agreements made between the Parties in relation to its subject matter, whether written or oral.

- 37.2 Neither Party has been given, nor entered into this Agreement in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Agreement.
- 37.3 Nothing in this Clause 37 shall exclude any liability in respect of misrepresentations made fraudulently.

38 THIRD PARTY RIGHTS

- 38.1 The End Users shall be entitled to directly enforce any provision of this Agreement as if it were the Authority by virtue of the CRTPA.
- 38.2 The provisions of this Agreement confer benefits on persons named in such provisions other than the Parties (each such person a “**Third Party Beneficiary**”) and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.
- 38.3 Subject to Clause 38.1, a person who is not a Party to this Agreement has no right under the CRTPA to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 38.4 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Authority, which may, if given, be given on and subject to such terms as the Authority may determine.
- 38.5 Any amendments or modifications to this Agreement may be made, and any rights created under Clause 38.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

39 NOTICES

- 39.1 Any notices sent under this Agreement must be in writing.
- 39.2 Subject to Clause 39.4, the following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

39.3 Notices shall be sent to the addresses set out below or at such other address as the relevant Party may give notice to the other Party for the purpose of service of notices under this Agreement:

	Provider	Authority
Contact	Adrian Lewis	Jennifer Williams
Address	2buy2.com Limited, Pencoed Technology Centre, Pencoed Technology Park, Pencoed, Bridgend, CF35 5HZ	Schools Commercial Team Deputy Director, Sanctuary Buildings Great Smith Street London SW1P 3BT
Email	Adrian.lewis@2buy2.com	jennifer.williams@education.gov.uk
Email cc	Robert.kissick@2buy2.com	michael.beasley@education.gov.uk

39.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 39.2:

- (a) Step-In Notices;
- (b) Force Majeure Notices;

- (c) notices issued by the Provider pursuant to Clause 27.3 (*Termination by the Provider*);
- (d) Termination Notices; and
- (e) Dispute Notices.

39.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause 39.4 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause 39.2) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.

39.6 This Clause 39 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 5.2 (*Dispute Resolution Procedure*)).

40 DISPUTES

40.1 The Parties shall resolve Disputes arising out of or in connection with this Agreement in accordance with the Dispute Resolution Procedure.

40.2 The Provider shall continue to provide the Services in accordance with the terms of this Agreement until a Dispute has been resolved.

41 GOVERNING LAW AND JURISDICTION

41.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

41.2 Subject to Clause 40 (*Disputes*) and Schedule 5.2 (*Dispute Resolution Procedure*) (including the Authority's right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

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IN WITNESS of which this Agreement has been duly executed by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of
2BUY2.COM LIMITED

Signature:

Name (block capitals):

Position (Director):

Date:

SIGNED for and on behalf of **THE**
SECRETARY OF STATE FOR
EDUCATION

Signature:

Name (block capitals): JENNIFER
WILLIAMS

Position: Deputy Director, Schools
Commercial Team

Date: