

SCHEDULE A – TERMS AND CONDITIONS OF CONTRACT FOR E-BULK DATA PROCESSOR

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1 DEFINITIONS AND INTERPRETATION

- 1.1 In the Contract, unless the context otherwise requires, the following provisions shall have the meanings given to them below:
- a) **“Contract”** means this written agreement between the DBS and the CONTRACTOR consisting of these terms and conditions (Schedule A), the Form of Agreement and the attached Schedule B.
 - b) **“Default”** means any breach of the obligations of the relevant Party (including material breach or breach of a material term) or any default, act, omission, negligence or negligent statement of the relevant Party or its Staff (including servants, agents, suppliers and sub-contractors as well as any consultants and professional advisers and their respective servants, agents, suppliers and sub-contractors) in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.
 - c) **“Data Processor”** shall have the same meaning as set out in the Data Protection Act 1998.
 - d) **“E-Bulk Service”** shall have the meaning set out in paragraph 2 of Schedule B.
 - e) **“Form of Agreement”** means the form of agreement to be read and construed with this Schedule A which forms part of the Contract.
 - f) **“Law”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the CONTRACTOR is bound to comply.
 - g) **“Party”** means a party to the Contract.
 - h) **“Personal Data”** shall have the meaning as set out in the Data Protection Act 1998
 - i) **“Services”** means the services to be supplied as specified in **SCHEDULE B** and paragraph 2 of the Form of Agreement.
 - j) **“Staff”** means all persons employed or engaged by the CONTRACTOR to perform its obligations under the CONTRACT together with the CONTRACTOR’S servants, agents, suppliers and sub-contractors, any consultants and professional advisers (and their respective servants, agents, suppliers and sub-contractors) used in the performance of its obligations under the CONTRACT.
- 1.2 The interpretation and construction of the contract shall be subject to the following provisions:
- a) Words in the singular shall include the plural where the context permits and vice versa;
 - b) Words in any gender shall include the other gender and the neuter where the context permits;
 - c) Words in any gender shall include the other gender and the neuter where the context permits;
 - d) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
 - e) References to “clauses” “paragraphs” and “Schedules” are, unless the context requires otherwise, to clauses and paragraphs of and Schedules to, the Contract;
 - f) Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;

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- g) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - h) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;
 - i) References to “days”, “months” and “years” are to calendar days, calendar months and calendar years (unless the context otherwise requires); and
 - j) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
- 1.3 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and/or the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- a) The clauses of this Schedule A;
 - b) The Form of Agreement
 - c) Schedule B;
 - d) Any other document referred to in the clauses of this Schedule A; and
 - e) Any other document referred to in the Schedule B
 - f) Any other Document referred to in the Form of Agreement.

2 GOVERNING LAW

- 2.1 The DBS and the CONTRACTOR accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

3 CONFLICTS OF INTEREST

- 3.1 The CONTRACTOR shall take appropriate steps to ensure that neither the CONTRACTOR nor any Staff is placed in a position where, in the reasonable opinion of the DBS, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the CONTRACTOR and/or the Staff and/or the duties owed to the DBS under the provisions of the CONTRACT. The CONTRACTOR will disclose to the DBS full particulars of any such conflict of interest which may arise.
- 3.2 The DBS reserves the right to terminate the CONTRACT immediately by notice in writing and/or to take such steps as it deems necessary where, in the reasonable opinion of the DBS, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the DBS and the duties owed to the DBS under the provisions of the CONTRACT. The actions of the DBS pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the DBS.

4 SECURITY OBLIGATIONS OF THE CONTRACTOR

- 4.1 The CONTRACTOR acknowledges and agrees that it acts as a Data Processor in respect of Personal Data processed by it in connection with this Contract.
- 4.2 The CONTRACTOR shall only carry out those actions in respect of the personal data processed on behalf of the DBS as are expressly authorised by the DBS and as set out in Annex 1.
- 4.3 The CONTRACTOR shall take such technical and organisational security measures as are required under its own national law to protect personal data processed by the CONTRACTOR on

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behalf of the DBS against unlawful forms of processing. Such technical and organisational measures shall include, as a minimum standard of protection, compliance with the legal and practical security requirements as set out in **SCHEDULE B**.

5 CONFIDENTIALITY

- 5.1 The CONTRACTOR agrees that it shall maintain all information and data processed by the CONTRACTOR on behalf of the DBS in confidence.
- 5.2 In particular, the CONTRACTOR agrees that, save with the prior written consent of the DBS, it shall not disclose any personal data supplied to the CONTRACTOR by, for, or on behalf of, the DBS to any third party.
- 5.3 The CONTRACTOR shall not make any use of any personal data supplied to it by the DBS otherwise than in connection with the provision of services to the DBS.
- 5.4 The obligations in clauses 5.1, 5.2 and 5.3 above shall continue for a period of five years after the cessation of the provision of services by the CONTRACTOR to the DBS.
- 5.5 Nothing in this Contract shall prevent either Party from complying with any legal obligation imposed by a regulator or court. Both Parties shall however, where possible, discuss together the appropriate response to any request from a regulator or court for disclosure of information.

6 SUB-CONTRACTING

- 6.1 The CONTRACTOR shall not sub-contract any of its rights or obligations under this Contract without the prior written consent of the DBS.
- 6.2 Where the CONTRACTOR, with the consent of the DBS, sub-contracts its obligations under this Contract it shall do so only by way of a written agreement with the relevant sub-contractor which imposes the same obligations in relation to the security of the processing on the sub-contractor as are imposed on the CONTRACTOR under this Contract.
- 6.3 For the avoidance of doubt, where the Sub-Contractor fails to fulfil its obligations under any sub processing agreement, the CONTRACTOR shall remain fully liable to the DBS for the fulfilment of its obligations under this Contract.

7 COMMUNICATION

- 7.1 The DBS reserves the right in its sole discretion to alter the E-Bulk Service and this Contract from time to time. Any such amendments will be communicated promptly to the CONTRACTOR and where requested by the CONTRACTOR, the CONTRACTOR shall be given a reasonable opportunity to reconfigure its systems, policies and/or procedures before it will be classed as being in breach of any such amended agreement.

8 AUDIT

- 8.1 The CONTRACTOR shall grant to the DBS, any statutory auditors of the DBS and their respective agents the right of access to the CONTRACTOR'S records and/or any sites used by the CONTRACTOR when providing the SERVICES.
- 8.2 The CONTRACTOR shall secure similar access to the records and/or sites of any subcontractors when providing the SERVICES.
- 8.3 The CONTRACTOR shall provide assistance at any time for the purposes of carrying out an audit of the CONTRACTOR'S compliance with this Agreement including without limitation:
 - a) The CONTRACTOR'S compliance with Clause 3 herein;
 - b) The CONTRACTOR'S compliance with Clause 4 herein;
 - c) The CONTRACTOR'S compliance with the UK Data Protection Act 1998; and

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d) All activities performed under this AGREEMENT and security and integrity in connection therewith.

8.4 The CONTRACTOR shall comply with any reasonable request from DBS to participate from time to time in the Home Office Supplier Information Assurance Compliance Programme, which requires suppliers to complete a set of questions online and assesses the maturity of their policies and procedures when handling sensitive (personal and protectively marked) data.

9 HEALTH AND SAFETY

9.1 The CONTRACTOR shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons.

9.2 The CONTRACTOR shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the DBS on request.

9.3 The CONTRACTOR shall ensure that any risk assessments or similar documentation are made available to the DBS on request.

10 NATIONAL MINIMUM WAGE

10.1 The CONTRACTOR shall ensure that, where appropriate, the national minimum wage is paid to relevant personnel in accordance with the National Minimum Wage Act 1998.]

11 EQUALITY, DIVERSITY AND NON-DISCRIMINATION

11.1 The CONTRACTOR shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age or any other protected characteristic and without prejudice to the generality of the foregoing the CONTRACTOR shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and or other relevant or equivalent equalities legislation (or any statutory modification or re-enactment thereof).

11.2 The CONTRACTOR shall take all reasonable steps to secure the observance of clause 11.1 by all Staff.

12 LIABILITY AND INDEMNITIES

12.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury caused by its negligence; or

b) Fraud; or

c) Fraudulent misrepresentation; or

d) Any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

12.2 Subject to clauses 12.3 and 12.4, the CONTRACTOR shall indemnify the DBS and keep the DBS indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the CONTRACTOR of its obligations under the contract or the presence of the CONTRACTOR or any Staff on the DBS premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the CONTRACTOR, or any other loss which is caused directly or indirectly by any act or omission of the CONTRACTOR.

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- 12.3 The CONTRACTOR shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the DBS or by breach by the DBS of its obligations under the contract.
- 12.4 Subject always to clause 12.1 and 12.5 the annual aggregate liability of the Contractor for any and all Defaults shall in no event exceed £1,000,000 (one million pounds) in total.
- 12.5 Subject always to clause 12.1, in no event shall either Party be liable to the other for any:
- a) Indirect loss of profits, business, revenue or goodwill; and/or
 - b) Indirect loss of savings (whether anticipated or otherwise); and/or
 - c) Other indirect or consequential loss or damage.

Provided that this clause 12.5 shall not operate to exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the Default of the CONTRACTOR.

13 TERMINATION

- 13.1 The DBS may at any time terminate the Contract by written notice to the CONTRACTOR with effect from the date specified in such notice if the CONTRACTOR commits a Default and if:
- a) The CONTRACTOR has not remedied the Default to the satisfaction of the DBS within 10 working days, or such other period as may be specified by the DBS, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - b) The Default is not, in the opinion of the DBS, capable of remedy; or
 - c) The Default is itself a material breach of the Contract; or the Default when taken together with other Defaults, has or is likely to have a material adverse impact on the DBS.
- 13.2 Within 21 calendar days following termination of this Contract the CONTRACTOR shall, at the direction of the DBS, (a) comply with any other agreement made between the parties concerning the return or destruction of data, or (b) return all personal data passed to the CONTRACTOR by the DBS for processing, or (c) on receipt of instructions from the DBS, destroy all such data unless prohibited from doing so by any applicable law.

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ANNEX 1 – PERSONAL DATA PROCESSING

1. Description of Personal Data

1.1 The Personal Data to be processed under this Contract consists of:

- Applicant surname;
- Applicant forenames;
- Applicant other names;
- Applicant Date of Birth;
- Applicant Place of Birth;
- Applicant Gender and
- Applicant Address

2. Transmission of Personal Data to the CONTRACTOR

2.1 The method of transmission of Personal Data from DBS to the CONTRACTOR is described in the document titled 'Business Message Specification' which is available from the Registered Body whose Personal Data you have access to.

3. Information Classifications

3.1 The DBS applies appropriate classifications to information according to the likely consequences of its compromise. The Personal Data described in paragraph 1 of this Annex 1 of Schedule A is classified as 'PROTECT-PRIVATE'.

3.2 'PROTECT' is a sub-national security marking used to describe any information that links one or more identifiable living person(s) with information about them whose release or loss could cause harm or distress.

3.3 'PRIVATE' signifies that the information has been collected through government services relating to the citizen.

3.4 Information carrying the 'PROTECT – PRIVATE' marking is subject to the provisions of the Data Protection Act 1998 and the CONTRACTOR shall ensure that Personal Data is processed in accordance with the provisions of that Act.

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4. Permitted processing activities

4.1 The activities that the CONTRACTOR is permitted to undertake in relation to the processing of the Personal Data described in paragraph 1 of this Annex 1 of Schedule A are set out below.

- Processing e-results/applicant data on behalf of the DBS and in accordance with the Data Protection Act 1998 and forwarding these results securely to the Registered Body to whom the e-result relates.
- Connection to OCJR network to receive e-Results from DBS.
- Day to day management of IT infrastructure used to process e-results/applicant data, including system maintenance, change control, configuration control, software upgrades, patch management, etc.
- Storing e-results securely on the IT infrastructure.
- Taking secure back-ups of the e-results/applicant data.
- Secure destruction of e-results/applicant data in hard copy.
- Secure destruction of hardware or portable media that has been used to process e-results/applicant data.
- Gathering security audit and monitoring information for user access to the IT infrastructure used to process e-results/applicant data.
- Security incident handling, management and investigation for all security incidents relating to compromise or potential compromise of e-results/applicant data on the IT infrastructure.
- Managing and maintaining disaster recovery and business continuity plans.
- Handling, storing and processing message integrity tokens on behalf of the Registered Bodes for whom they process DBS applications/e-results.

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5. Excluded Processing Activities

5.1 The activities that the CONTRACTOR is expressly excluded from undertaking in relation to the processing of the Personal Data described in paragraph 1 of this Annex 1 of Schedule A are set out below.

- The CONTRACTOR shall not share the e-result/applicant data with anyone other than approved contacts within the relevant Registered Body.
- The CONTRACTOR shall not use the Personal Data for commercial gain or exploitation, other than as expressly permitted under this Contract with DBS and/or any agreement between the CONTRACTOR and the relevant Registered Body or Bodies.
- The CONTRACTOR shall not use the DBS logo to promote it's services to other interested parties.
- Following termination of this contract, the CONTRACTOR shall not retain e-results/applicant data beyond the period specified in paragraph 13.2 of this Schedule A.