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This Award Form creates ~~the~~[this](#) Contract. It summarises the main features of the procurement and includes the Buyer and the Supplier's contact details.

1.	Buyer	<p>[Insert name of the Buyer] [Insert wording where the Buyer is a Crown Body: acting as part of the Crown] (the Buyer).</p> <p>Its offices are on: [Insert address]</p>
2.	Supplier	<p>Name: [Insert name (registered name if registered)]</p> <p>Address: [Insert address registered address if registered]</p> <p>Registration number: [Insert registration number if registered]</p> <p>SID4GOV ID: [Insert SID4GOV ID if you have one]</p>
3.	Contract	<p>This Contract between the Buyer and the Supplier is for the supply of Deliverables, being [Insert general description of the Deliverables] - see Schedule 2 (Specification) for full details.</p> <p>This opportunity is advertised in thethis Contract Notice in Find A Tender, reference [Insert reference number] (FTS Contract Notice).</p>
4.	Contract reference	[Insert Buyer contract reference here, if any]
5.	Deliverables	[Insert general description of the Deliverables] See Schedule 2 (Specification) for further details.
5.	Buyer Cause	<p>[Guidance: you can use this section to amend the definition of "Buyer Cause", which is relevant to Clause 5, which deals with your obligations to the Supplier. You can choose the first option, which requires a specific list of Buyer responsibilities/obligations to be created, or you can choose the second option, which is the previous definition from version 1.0 of this Contract and refers to breaches of your obligations under this Contract more generally. If you intend to choose the first option, it may be helpful to look at Schedule 7 (Authority Responsibilities) of the Model Services Contract as a starting point.]</p> <p>[Any material breach of:</p> <ul style="list-style-type: none">• [Insert specific list of Buyer responsibilities/obligations]

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		<p>And the Buyer shall have no obligation to perform any obligations placed on it in Schedule 2 (Specification) or Schedule 4 (Tender) unless they are specifically identified above.]</p> <p>[or insert]</p> <p>[or insert] the Any material breach of the obligations of the Buyer or any other default, act, omission, negligence or statement of the Buyer, of its employees, servants, agents in connection with or in relation to the subject-matter of the this Contract and in respect of which the Buyer is liable to the Supplier.]</p>
<u>6.</u>	Collaborative working principles	<p>The Collaborative Working Principles [do not] apply to this Contract. [Guidance: delete reference to "[do not]" as relevant]</p> <p>See Clause 3.1.3 for further details.</p>
<u>7.</u>	Financial Transparency Objectives	<p>The Financial Transparency Objectives [do not] apply to this Contract. [Guidance: delete reference to "[do not]" as relevant]</p> <p>See Clause 6.3 for further details.</p> <p>[Guidance: if the Financial Transparency Objectives are selected, this puts obligations on the Supplier to provide Financial Reports, in effect - Open Book Contract Management. Buyers should consider whether this is appropriate and proportionate for their particular procurement, bearing in mind PPN 05/16 - Open book contract management]</p>
<u>8.</u>	Start Date	<p>[Insert Day Month Year]</p> <p>[Guidance: This should be the date on which the provision of Deliverables will commence.]</p> <p>[Guidance:- insert a condition precedent if needed e.g. provision of a signed Guarantee by a backstop date]</p>
<u>9.</u>	Expiry Date	<p>[Insert Day Month Year]</p>
<u>10.</u>	Extension Period	<p>[Insert Not applicable or insert detail about extensions of this Contract]</p> <p>[Further period up to [Insert Day Month Year or describe duration]</p> <p>[Extension exercised where the Buyer gives the Supplier no less than [3 Months'] written notice before the this Contract expires]</p> <p>[Guidance: insert notice and adjust period as appropriate.]</p>

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		<p><i>This can be used to adjust the notice period in Clause 14.2 but the notice period should only be shorter than 3 months in exceptional circumstances. A shorter notice period may be permitted where a Buyer will be unable to provide 3 months' written notice and/or where Suppliers can continue performing thethis Contract for the extension period without incurring costs as a result of a shorter notice period. Buyers should engage with the market before proposing a shorter notice period]</i></p>
11. Ending thethis Contract without a reason		<p>The Buyer shall be able to terminate thethis Contract in accordance with Clause 14.3.</p> <p><i>[Guidance: The following can be used to adjust the notice period in Clause 14.3 but it should only be changed if the Buyer has a legitimate requirement to end thethis Contract sooner or if the Supplier requires more notice so that it can avoid costs and the Buyer is able to provide more notice]</i></p> <p>[Provided that the amount of notice that the Buyer shall give to terminate in Clause 14.3 shall be [Insert].]</p> <p><i>[Guidance: only insert the following if the notice period in Clause 14.3 is shortened or if generally accepted market conditions are such that the Supplier cannot reasonably avoid costs arising from an early termination of the Contract without a reason]</i> Upon any termination in accordance with Clause 14.3, the Buyer shall pay to the Supplier the costs that the Supplier has incurred directly as a result of the early termination of the Contract which are unavoidable, reasonable and not capable of recovery as long as the Supplier provides a fully itemised and costed schedule with evidence. The maximum value of this payment is limited to the total costs which would have been paid to the Supplier as part of the Charges if the Contract had not been terminated.]</p>
12. Incorporated Terms (together these documents form the " the this Contract")		<p>The following documents are incorporated into thethis Contract. Where numbers are missing we are not using these Schedules. If the documentsthere is any conflict, the following order of precedence applies:</p> <p><i>[Guidance: delete the highlighted Schedule 31 (Buyer Specific Terms) if it is not needed for this procurement. Remove the highlighting before publication if Schedule 31 (Buyer Specific Terms) is to be used. Check each Schedule to make sure all placeholders are populated correctly for this procurement.]</i></p>

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	<p>(a) a-This Award Form</p> <p>(b) b-Any Special Terms (see Section 14 (Special Terms) in this Award Form)</p> <p>(c) e-Schedule 31 (Buyer Specific Terms)</p> <p>(d) d-Core Terms</p> <p>(e) e-Schedule 36 (Intellectual Property Rights) <u>[ICT-related IPR clauses are now included in this Schedule, along with more generic IPR clauses. If you are using Schedule 28 (ICT Services) please also see that you should use "Part B" of this Schedule for IPR drafting options]</u></p> <p>(f) f-Schedule 1 (Definitions)</p> <p>(g) g-Schedule 6 (Transparency Reports)</p> <p>(h) h-Schedule 20 (Processing Data)</p> <p>(i) i-The following Schedules (in equal order of precedence):</p> <p><u>[Guidance: delete any highlighted Schedule that is not needed for this procurement. Add any additional Schedule that is needed. Please refer to the Mid-Tier Guidance published on Gov.uk for detailed information on each Schedule to assist with decision making. Remove any highlighting remaining before publication. Check each Schedule to make sure all placeholders are populated correctly for this procurement]</u></p> <p><u>a.</u> a-Schedule 2 (Specification)</p> <p><u>b.</u> b-Schedule 3 (Charges)</p> <p><u>c.</u> e-Schedule 5 (Commercially Sensitive Information)</p> <p><u>d.</u> d-Schedule 7 (Staff Transfer)</p> <p><u>e.</u> e-Schedule 8 (Implementation Plan & Testing)</p> <p><u>f.</u> f-Schedule 9 (Installation Works)</p> <p><u>g.</u> g-Schedule 10 (Service Levels)</p> <p><u>h.</u> h-Schedule 11 (Continuous Improvement)</p> <p><u>i.</u> i-Schedule 12 (Benchmarking)</p> <p><u>j.</u> j-Schedule 13 (Contract Management)</p> <p><u>k.</u> k-Schedule 14 (Business Continuity and Disaster Recovery)</p> <p><u>l.</u> l-Schedule 15 (Minimum Standards of Reliability)</p> <p><u>m.</u> m-Schedule 16 (Security)</p>
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		<p><u>n.</u> n. Schedule 17 (Service Recipients)</p> <p><u>o.</u> o. Schedule 18 (Supply Chain Visibility)</p> <p><u>p.</u> p. Schedule 19 (Cyber Essentials Scheme)</p> <p><u>q.</u> q. Schedule 21 (Variation Form)</p> <p><u>r.</u> r. Schedule 22 (Insurance Requirements)</p> <p><u>s.</u> s. Schedule 23 (Guarantee)</p> <p><u>t.</u> t. Schedule 24 (Financial Difficulties)</p> <p><u>u.</u> u. Schedule 25 (Rectification Plan)</p> <p><u>v.</u> v. Schedule 26 (Sustainability)</p> <p><u>w.</u> w. Schedule 27 (Key Subcontractors)</p> <p><u>x.</u> x. Schedule 28 (ICT Services)</p> <p><u>y.</u> y. Schedule 28A (Agile Development Additional Terms)</p> <p><u>z.</u> z. Schedule 29 (Key Supplier Staff)</p> <p><u>aa.</u> aa. Schedule 30 (Exit Management)</p> <p><u>bb.</u> bb. Schedule 32 (Background Checks)</p> <p><u>cc.</u> cc. Schedule 33 (Scottish Law)</p> <p><u>dd.</u> dd. Schedule 34 (Northern Ireland Law)</p> <p><u>ee.</u> ee. Schedule 35 (Lease Terms)</p> <p><u>ff.</u> ff. Schedule 37 (Corporate Resolution Planning Information)</p> <p><u>(j)</u> (j) Schedule 4 (Tender), unless any part of the Tender offers a better commercial position for the Buyer (as decided by the Buyer, in its absolute discretion), in which case that aspectpart of the Tender will take precedence over the documents above.</p>
<u>13.</u>	Special Terms	<p>Special Term 1 - [Insert terms to revise or supplement Core Terms or Schedules, or enter "N/A" and delete the extra rows below]</p> <p>[Guidance Note: See non-exhaustive list of suggestions below:</p> <ol style="list-style-type: none">Assets, Equipment and Maintenance: Where the Supplier relies on use of specific Buyer or Supplier assets/equipment then consider provisions relating to ownership, transfer, use and maintenance (including valuation, payment and tax treatment).

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		<p>2. Appointment of a Remedial Advisor: Depending on criticality of the Goods and/or Services, consider ability to appoint a remedial advisor to advise the Supplier and support continuity of supply. This could be an earlier remedy prior to step in or termination.</p> <p>3. Appointment of an Expert (Dispute Resolution): Consider if expert determination would be a useful stage in the dispute resolution procedure e.g. for technical such as IT/financial issues. If so then consider if their decision is binding on the parties and processes relating to appointment and decision making.]</p> <p>[Special Term 2 -]</p> <p>[Special Term 3 -]</p>
4	Sustainability	The Supplier agrees, in providing the Deliverables and performing its obligations under the Contract, that it will comply with Schedule 26 (Sustainability).
14.	Buyer's Environmental Policy	<p>[Insert details [Document name] [version] [date] [available online at:]]</p> <p>or insert: [Appended at Schedule [X]]</p>
15.	Social Value Commitment	<p>[Insert - The Supplier agrees, in providing the Deliverables and performing its obligations under thethis Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and provide the Social Value Reports as set out in Schedule 26 (Sustainability)</p> <p>or insert - the Supplier agrees, in providing the Deliverables and performing its obligations under thethis Contract, to deliver the Social Value outcomes in Schedule 4 (Tender) and report on the Social Value KPIs as required by Schedule 10 (Service Levels)]</p>
16.	Buyer's Security Requirements and Security and ICT Policy	<p>[Insert details [Document name] [version] [date] [available online at:]]</p> <p>[Guidance: see the separate Guidance Document about when to use optional Schedule 16 (Security), and when Part A or Part B is most appropriate]</p> <p>Security Requirements: [Insert details – Guidance - where you want the Supplier to store and process data in the cloud, or use cloud platforms to build and host your services, you should</p>

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~~Mid-tier Contract — version 1.1~~

[v.1.2](#)

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		<p>consider requiring the Supplier to (i) document; and (ii) provide on Buyer request how they comply with the 14 Cloud Security Principles available at: https://www.ncsc.gov.uk/collection/cloud/the-cloud-security-principles, both for their own Supplier system and for any cloud services they use]</p> <p>[or insert: as set out in Schedule 16 (Security). Guidance – you will need to review/amend this optional Schedule to ensure it is in line with your security requirements, and include it in this Contract]</p> <p>Security Policy: [Insert details [Document name] [version] [date] [available online at:]] [Guidance: this is relevant for supplier vetting (see clause 7.1.2 of the Core Terms, and the Security Schedule, if used (see Schedule 16). Delete or mark as “Not Used” if not relevant.)]</p> <p>For the purposes of Schedule 16 (Security) the Supplier [is/is not] required to comply with the Security Policy.</p> <p>For the purposes of Supplier Staff vetting, the Supplier [is/is not] required to comply with the Security Policy.</p> <p>ICT Policy: [Insert details [Document name] [version] [date] [available online at:]] [Guidance: this is relevant for the Security Schedule, if used (see Schedule 16), and the ICT Schedule, if used (see Schedule 28). Delete or mark as “Not Used” if not relevant.]</p> <p>For the purposes of Schedule 16 (Security) the Supplier [is/is not] required to comply with the ICT Policy.</p> <p>For the purposes of Schedule 28 (ICT) Supplier [is/is not] required to comply with the ICT Policy.</p>
4	Commercially Sensitive Information	[Insert Not applicable or insert Supplier’s Commercially Sensitive Information: Schedule 5 (Commercially Sensitive Information)]
17.	Charges	<p>[Insert information about the Charges]</p> <p>[Insert Indexation is not applicable] or [Insert Indexation is applicable as detailed in Schedule 3 (Charges)]</p> <p>Details in Schedule 3 (Charges)</p>
18.	Estimated Year 1 Charges	[Insert Estimated Year 1 Charges]
19.	Reimbursable expenses	[Insert None or Insert Recoverable as set out in Schedule 3 (Charges)]

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20.	Payment method	[Insert payment method(s) and necessary details]
21.	Service Levels	[Insert Not applicable] or [Insert Service Credits will accrue in accordance with Schedule 10 (Service Levels)] The Service Credit Cap is: [Insert £value] The Service Period is [Insert duration: [] Month(s)] A Critical Service Level Failure is: [Buyer to define]
2	Insurance	Details in Annex of Schedule 22 (Insurance Requirements).
22.	Liability	<p>[In accordance with Clause 15.1 each Party's total aggregate liability in each Contract Year under thethis Contract (whether in tort, contract or otherwise) is no more than [the greater of £[5 million] or [150]% of the Estimated Yearly Charges]</p> <p>[Guidance: you can change the cap on liability in Clause 15.1 where you have made an appropriate risk assessment and sought the necessary management approvals. Unlimited liability is not permitted in line with the Sourcing Playbook]</p> <p>In accordance with Clause 15.5, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability, being [insert appropriate number in the suggested range of £10 million –20 million]</p> <p>[Guidance: Choice of figure should be in accordance with the sensitivity and volume of data concerned, as well as the likelihood and extent of any potential breach. The range given is a suggestion only and depending on the individual circumstances of the contract, a cap outside of this range may be appropriate. Please refer to the Mid-Tier Guidance published on Gov.uk for further detail on what to consider in determining the Data Protection Liability Cap.</p> <p>This liability cap applies to the Supplier's liability to the Buyer under the contract only – it does not act as a cap on any data protection liability that a Supplier may incur to any third party (e.g. Supplier being fined by the Information Commissioner). But if a Supplier default leads to the Buyer breaching data protection legislation, the amount which a Buyer will be able to recover from the Supplier will be subject to this liability cap.]</p>

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23.	Cyber Essentials Certification	<p>[Guidance: See the [Cyber Essentials PPN] for when to use this schedule, and if used, which level of certification is required</p> <p>If you are unclear on these requirements, please consult security professionals within your organisation or department. Please note that any Subcontractors processing Cyber Essentials Scheme Data will also need to have the equivalent certification - see Schedule 19 for details.]</p> <ul style="list-style-type: none"> • [[Insert] Not required] • [or Insert] Cyber Essentials Scheme [Basic / Plus] Certificate (or equivalent). Details in Schedule 19 (Cyber Essentials Scheme)]
24.	Progress Meetings and Progress Reports	<ul style="list-style-type: none"> • The Supplier shall attend Progress Meetings with the Buyer every [] • The Supplier shall provide the Buyer with Progress Reports every []
25.	Guarantee Guarantor	<p>[Insert] Not applicable</p> <p>or insert The Supplier must have a Guarantor to guarantee theirSupplier's performance <u>will be guaranteed by [Insert name of Guarantor] and has entered into a guarantee</u> using the form in Schedule 23 (Guarantee)]</p>
26.	Virtual Library	<p>In accordance with Paragraph 2.2. of Schedule 30 (Exit Management)</p> <ul style="list-style-type: none"> • the the period in which the Supplier must create and maintain the Virtual Library, is [as set out in that Paragraph] OR [INSERT]or [Insert] alternative time period]; and • the the Supplier shall update the Virtual Library every [INSERT]Insert applicable time period]. <p>OR</p> <p>[Insert] Not applicable]</p>
27.	Supplier Supplier's Contract Manager	<p>[Insert name]</p> <p>[Insert job title]</p> <p>[Insert email address]</p> <p>[Insert phone number]</p>
28.	Supplier Authorised Representative	<p>[Insert name]</p> <p>[Insert job title]</p>

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	e	[Insert email address] [Insert phone number]
29.	Supplier Compliance Officer	[Insert name] [Insert job title] [Insert email address] [Insert phone number]
30.	Supplier Data Protection Officer	[Insert name] [Insert job title] [Insert email address] [Insert phone number]
31.	Supplier Marketing Contact	[Insert name] [Insert job title] [Insert email address] [Insert phone number]
32.	Key Subcontractors	<p>Key Subcontractor 1</p> <p>Name (Registered name if registered): [insert name]</p> <p>Registration number (if registered): [insert number]</p> <p>Role of Subcontractor: [insert role]</p> <p>[Guidance: copy above lines as needed]</p>
33.	Buyer Authorised Representative	[Insert name] [Insert job title] [Insert email address] [Insert phone number]

For and on behalf of the Supplier:		For and on behalf of the Buyer <u>[Insert wording where the Buyer is a Crown Body: acting as part of the Crown]:</u>	
Signature:		Signature:	
Name:		Name:	
Role:		Role:	

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v.1.2

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Date:		Date:	
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~~Mid-tier Contract — version 1.1~~

[v.1.2](#)

Core Terms – Mid-tier

Contents

1.	Definitions used in the contract	1
2.	How the contract works	1
3.	What needs to be delivered	2
4.	Pricing and payments	4
5.	The buyer's obligations to the supplier	5
6.	Record keeping and reporting	5 <u>6</u>
7.	Supplier staff	7
8.	Supply chain	7 <u>8</u>
9.	Rights and protection	9
10.	Intellectual Property Rights (IPRs)	10
11.	Rectifying issues	14 <u>11</u>
12.	Escalating issues	14 <u>11</u>
13.	Step-in rights	15 <u>12</u>
14.	Ending the contract	16 <u>13</u>
15.	How much you can be held responsible for	19 <u>16</u>
16.	Obeying the law	20 <u>17</u>
17.	Insurance	20 <u>17</u>
18.	Data protection <u>and security</u>	20 <u>17</u>
19.	What you must keep confidential	21 <u>18</u>
20.	When you can share information	23 <u>20</u>
21.	Invalid parts of the contract	23 <u>20</u>
22.	No other terms apply	24 <u>20</u>
23.	Other people's rights in the <u>this</u> Contract	24 <u>21</u>
24.	Circumstances beyond your control	24 <u>21</u>
25.	Relationships created by the contract	24 <u>22</u>
26.	Giving up contract rights	24 <u>22</u>

~~Core Terms—Mid-tier~~

~~Crown Copyright 2022~~

~~Version: v1.1~~

Core Terms – Mid-Tier, Crown Copyright 2023, [Subject to Contract]

27.	Transferring responsibilities	25 <u>22</u>
28.	Changing the contract	26 <u>23</u>
29.	How to communicate about the contract	27 <u>24</u>
30.	Dealing with claims	27 <u>24</u>
31.	Preventing fraud, bribery and corruption	28 <u>25</u>
32.	Equality, diversity and human rights	29 <u>26</u>
33.	Health and safety	29 <u>26</u>
34.	Environment	30 <u>27</u>
35.	Tax	30 <u>27</u>
36.	Conflict of interest	31 <u>28</u>
37.	Reporting a breach of the contract	31 <u>28</u>
38.	Further Assurances	31 <u>28</u>
39.	Resolving disputes	32 <u>29</u>
40.	Which law applies	33 <u>29</u>

1. Definitions used in the contract

Interpret this Contract using Schedule 1 (Definitions).

2. How the contract works

- 2.1 If the Buyer decides to buy Deliverables under ~~the~~this Contract it must state its requirements using the Award Form. If allowed by the Regulations, the Buyer can:
- 2.1.1 make changes to the Award Form;
 - 2.1.2 create new Schedules;
 - 2.1.3 exclude optional template Schedules; and
 - 2.1.4 use Special Terms in the Award Form to add or change terms.
- 2.2 The Contract:
- 2.2.1 is between the Supplier and the Buyer; and
 - 2.2.2 includes Core Terms, Schedules and any other changes or items in the completed Award Form.
- 2.3 The Supplier acknowledges it has all the information required to perform its obligations under ~~the~~this Contract before entering into it. When information is provided by the Buyer no warranty of its accuracy is given to the Supplier.
- 2.4 The Supplier acknowledges that, subject to the Allowable Assumptions set out in Annex 2 of Schedule 3 (Charges) (if any), it has satisfied itself of all details relating to:
- 2.4.1 the Buyer's requirements for the Deliverables;
 - 2.4.2 the Buyer's operating processes and working methods; and
 - 2.4.3 the ownership and fitness for purpose of the Buyer Assets,
- and it has advised the Buyer in writing of:
- 2.4.4 each aspect, if any, of the Buyer's requirements for the Deliverables, operating processes and working methods that is not suitable for the provision of the Services;
 - 2.4.5 the actions needed to remedy each such unsuitable aspect; and
 - 2.4.6 a timetable for and, to the extent that such costs are to be payable to the Supplier, the costs of those actions,
- and such actions, timetable and costs are fully reflected in this Contract.

- 2.5 The Supplier won't be excused from any obligation, or be entitled to additional Costs or Charges because it failed to either:
- 2.5.1 verify the accuracy of the Due Diligence Information; and
- 2.5.2 properly perform its own adequate checks.
- 2.6 The Buyer will not be liable for errors, omissions or misrepresentation of any information.
- 2.7 The Supplier warrants and represents that all statements made and documents submitted as part of the procurement of Deliverables are and remain true and accurate.

3. What needs to be delivered

3.1 All deliverables

3.1.1 The Supplier must provide Deliverables:

- (a) ~~a)~~ that comply with the Specification, the Tender Response and ~~the~~this Contract;
- (b) ~~b)~~ using reasonable skill and care;
- (c) ~~c)~~ using Good Industry Practice;
- (d) ~~d)~~ using its own policies, processes and internal quality control measures as long as they don't conflict with ~~the~~this Contract;
- (e) ~~e)~~ on the dates agreed; and
- (f) ~~f)~~ that comply with Law.

3.1.2 The Supplier must provide Deliverables with a warranty of at least 90 days from Delivery against all obvious defects or for such other period as specified in the Award Form.

3.1.3 Where the Award Form states that the Collaborative Working Principles will apply, the Supplier must co-operate and provide reasonable assistance to any Buyer Third Party notified to the Supplier by the Buyer from time to time and act at all times in accordance with the following principles:

- (a) ~~a)~~ proactively leading on, mitigating and contributing to the resolution of problems or issues irrespective of its contractual obligations, acting in accordance with the principle of "fix first, settle later";

- (b) ~~b)~~ being open, transparent and responsive in sharing relevant and accurate information with Buyer Third Parties;
- (c) ~~c)~~ where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with Buyer Third Parties;
- (d) ~~d)~~ providing reasonable cooperation, support, information and assistance to Buyer Third Parties in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
- (e) ~~e)~~ identifying, implementing and capitalising on opportunities to improve deliverables and deliver better solutions and performance throughout the relationship lifecycle.

3.2 Goods clauses

3.2.1 All Goods delivered must be new, or as new if recycled, unused and of recent origin.

~~3.2.2 All manufacturer warranties covering the Goods must be assignable to the Buyer on request and for free.~~

3.2.2 ~~3.2.3~~ The Supplier transfers ownership of the Goods on Delivery or payment for those Goods, whichever is earlier.

3.2.3 ~~3.2.4~~ Risk in the Goods transfers to the Buyer on Delivery of the Goods, but remains with the Supplier if the Buyer notices damage following Delivery and lets the Supplier know within three (3) Working Days of Delivery.

3.2.4 ~~3.2.5~~ The Supplier warrants that it has full and unrestricted ownership of the Goods at the time of transfer of ownership.

3.2.5 ~~3.2.6~~ The Supplier must deliver the Goods on the date and to the specified location during the Buyer's working hours.

3.2.6 ~~3.2.7~~ The Supplier must provide sufficient packaging for the Goods to reach the point of Delivery safely and undamaged.

3.2.7 ~~3.2.8~~ All deliveries must have a delivery note attached that specifies the order number, type and quantity of Goods.

3.2.8 ~~3.2.9~~ The Supplier must provide all tools, information and instructions the Buyer needs to make use of the Goods.

- 3.2.9 ~~3.2.10~~ The Supplier must indemnify the Buyer against the costs of any Recall of the Goods and give notice of actual or anticipated action about the Recall of the Goods.
- 3.2.10 ~~3.2.11~~ The Buyer can cancel any order or part order of Goods which has not been Delivered. If the Buyer gives less than fourteen (14) days' notice then it will pay the Supplier's reasonable and proven costs already incurred on the cancelled order as long as the Supplier uses all reasonable endeavours to minimise these costs.
- 3.2.11 ~~3.2.12~~ The Supplier must at its own cost repair, replace, refund or substitute (at the Buyer's option and request) any Goods that the Buyer rejects because they don't conform with Clause 3. If the Supplier doesn't do this it will pay the Buyer's costs including repair or re-supply by a third party.
- 3.2.12 The Buyer will not be liable for any actions, claims and Losses incurred by the Supplier or any third party during Delivery of the Goods unless and to the extent that it is caused by negligence or other wrongful act of the Buyer or its servant or agent. If the Buyer suffers or incurs any Loss or injury (whether fatal or otherwise) occurring in the course of Delivery or installation then the Supplier shall indemnify the Buyer from any losses, charges, costs or expenses which arise as a result of or in connection with such Loss or injury where it is attributable to any act or omission of the Supplier or any of its Subcontractors or Supplier Staff.

3.3 Services clauses

- 3.3.1 Late Delivery of the Services will be a Default of ~~the~~this Contract.
- 3.3.2 The Supplier must co-operate with the Buyer and third party suppliers on all aspects connected with the Delivery of the Services and ensure that Supplier Staff comply with any reasonable instructions of the Buyer or third party suppliers.
- 3.3.3 The Supplier must at its own risk and expense provide all Supplier Equipment required to Deliver the Services. Any equipment provided by the Buyer to the Supplier for supplying the Services remains the property of the Buyer and is to be returned to the Buyer on expiry or termination of this Contract.
- 3.3.4 The Supplier must allocate sufficient resources and appropriate expertise to ~~the~~this Contract.

- 3.3.5 The Supplier must take all reasonable care to ensure performance does not disrupt the Buyer's operations, employees or other contractors.
- 3.3.6 On completion of the Services, the Supplier is responsible for leaving the Buyer Premises in a clean, safe and tidy condition and making good any damage that it has caused to the Buyer Premises or Buyer Assets, other than fair wear and tear.
- 3.3.7 ~~3.3.6~~ The Supplier must ensure all Services, and anything used to Deliver the Services, are of good quality and free from defects.
- 3.3.8 ~~3.3.7~~ The Buyer is entitled to withhold payment for partially or undelivered Services, but doing so does not stop it from using its other rights under ~~the~~this Contract.

4. Pricing and payments

- 4.1 In exchange for the Deliverables, the Supplier must invoice the Buyer for the Charges in the Award Form.
- 4.2 All Charges:
 - 4.2.1 exclude VAT, which is payable on provision of a valid VAT invoice; and
 - 4.2.2 include all costs connected with the Supply of Deliverables.
- 4.3 The Buyer must pay the Supplier the Charges within thirty (30) days of receipt by the Buyer of a valid, undisputed invoice, in cleared funds using the payment method and details stated in the invoice or in the Award Form.
- 4.4 A Supplier invoice is only valid if it:
 - 4.4.1 includes all appropriate references including ~~the~~this Contract reference number and other details reasonably requested by the Buyer; and
 - 4.4.2 includes a detailed breakdown of Delivered Deliverables and Milestone(s) (if any).
- 4.5 The Buyer may retain or set-off payment of any amount owed to it by the Supplier under this Contract or any other agreement between the Supplier and the Buyer if notice and reasons are provided.
- 4.6 The Supplier must ensure that all Subcontractors are paid, in full, within thirty (30) days of receipt of a valid, undisputed invoice. If this does not happen, the Buyer can publish the details of the late payment or non-payment.

- 4.7 The Supplier has no right of set-off, counterclaim, discount or abatement unless they're ordered to do so by a court.

5. The buyer's obligations to the supplier

- 5.1 If Supplier Non-Performance arises from a Buyer Cause:
- 5.1.1 the Buyer cannot terminate ~~the~~this Contract under Clause 14.4.1;
 - 5.1.2 the Supplier is entitled to reasonable and proven additional expenses and to relief from Delay Payments, liability and Deduction under this Contract;
 - 5.1.3 the Supplier is entitled to additional time needed to make the Delivery;
 - 5.1.4 the Supplier cannot suspend the ongoing supply of Deliverables.
- 5.2 Clause 5.1 only applies if the Supplier:
- 5.2.1 gives notice to the Buyer of the Buyer Cause within ten (10) Working Days of becoming aware;
 - 5.2.2 demonstrates that the Supplier Non-Performance only happened because of the Buyer Cause; and
 - 5.2.3 mitigated the impact of the Buyer Cause.

6. Record keeping and reporting

- 6.1 The Supplier must attend Progress Meetings with the Buyer and provide Progress Reports when specified in the Award Form.
- 6.2 The Supplier must keep and maintain full and accurate records and accounts in respect of ~~the~~this Contract during the Contract Period and for seven (7) years after the End Date and in accordance with the UK GDPR or the EU GDPR as the context requires, including the records and accounts which the Buyer has a right to Audit.
- 6.3 Where the Award Form states that the Financial Transparency Objectives apply, the Supplier must co-operate with the Buyer to achieve the Financial Transparency Objectives and, to this end, will provide a Financial Report to the Buyer:
- 6.3.1 on or before the ~~Start~~Effective Date;
 - 6.3.2 at the end of each Contract Year; and
 - 6.3.3 within six (6) Months of the end of the Contract Period,

- 6.3.4 and the Supplier must meet with the Buyer if requested within ten (10) Working Days of the Buyer receiving a Financial Report.
- 6.4 If the Supplier becomes aware of an event that has occurred or is likely to occur in the future which will have a material effect on the:
- 6.4.1 Supplier's currently incurred or forecast future Costs; and
- 6.4.2 forecast Charges for the remainder of ~~the~~this Contract,
- 6.4.3 then the Supplier must notify the Buyer in writing as soon as practicable setting out the actual or anticipated effect of the event.
- 6.5 The Buyer or an Auditor can Audit the Supplier.
- 6.6 ~~6.5~~The Supplier must allow any Auditor access to their premises and the Buyer will use reasonable endeavours to ensure that any Auditor:
- 6.6.1 ~~6.5.1~~complies with the Supplier's operating procedures; and
- 6.6.2 ~~6.5.2~~does not unreasonably disrupt the Supplier or its provision of the Deliverables.
- 6.7 ~~6.6~~During an Audit, the Supplier must provide information to the Auditor and reasonable co-operation at their request including access to:
- 6.7.1 ~~6.6.1~~all information within the permitted scope of the Audit;
- 6.7.2 ~~6.6.2~~any Sites, equipment and the Supplier's ICT system used in the performance of ~~the~~this Contract; and
- 6.7.3 ~~6.6.3~~the Supplier Staff.
- 6.8 ~~6.7~~The Parties will bear their own costs when an Audit is undertaken unless the Audit identifies a ~~material~~Material Default by the Supplier, in which case the Supplier will repay the Buyer's reasonable costs in connection with the Audit.
- 6.9 ~~6.8~~The Supplier must comply with the Buyer's reasonable instructions following an Audit, including:
- 6.9.1 ~~6.8.1~~correcting any identified Default;
- 6.9.2 ~~6.8.2~~rectifying any error identified in a Financial Report; and
- 6.9.3 ~~6.8.3~~repaying any Charges that the Buyer has overpaid.
- 6.10 ~~6.9~~If the Supplier is not providing any of the Deliverables, or is unable to provide them, it must immediately:

6.10.1 ~~6.9.1~~ tell the Buyer and give reasons;

6.10.2 ~~6.9.2~~ propose corrective action; and

6.10.3 ~~6.9.3~~ provide a deadline for completing the corrective action.

6.11 ~~6.10~~ Except where an Audit is imposed on the Buyer by a regulatory body or where the Buyer has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Buyer may not conduct an Audit of the Supplier or of the same Key Subcontractor more than twice in any Contract Year.

7. Supplier staff

7.1 The Supplier Staff involved in the performance of ~~the~~this Contract must:

7.1.1 be appropriately trained and qualified;

7.1.2 be vetted using Good Industry Practice and the Security Policy (is used); and

7.1.3 comply with all conduct requirements when on the Buyer's Premises.

7.2 Where the Buyer decides one of the Supplier's Staff is not suitable to work on ~~the~~this Contract, the Supplier must replace them with a suitably qualified alternative.

~~7.3 If requested, the Supplier must replace any person whose acts or omissions have caused the Supplier to breach Clauses 31.1 to 31.4.~~

7.3 ~~7.4~~ The Supplier must provide a list of Supplier Staff needing to access the Buyer's Premises and say why access is required.

7.4 ~~7.5~~ The Supplier indemnifies the Buyer against all claims brought by any person employed or engaged by the Supplier caused by an act or omission of the Supplier or any Supplier Staff.

7.5 The Buyer indemnifies the Supplier against all claims brought by any person employed or engaged by the Buyer caused by an act or omission of the Buyer or any of the Buyer's employees, agents, consultants and contractors.

8. Supply chain

8.1 Appointing Subcontractors

8.1.1 The Supplier must exercise due skill and care when it selects and appoints Subcontractors to ensure that the Supplier is able to:

- (a) ~~a)~~ manage Subcontractors in accordance with Good Industry Practice;
- (b) ~~b)~~ comply with its obligations under this Contract; and
- (c) ~~c)~~ assign, novate or transfer its rights and/or obligations under the ~~Sub-Contract~~ Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.

8.2 Mandatory provisions in Sub-Contracts

8.2.1 ~~The Supplier will ensure that all Sub-Contracts~~ For Sub-Contracts in the Supplier's supply chain entered into ~~after the Effective Date~~ wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract ~~contain provisions that:~~

- (a) where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions that; or
- (b) where such Sub-Contracts are entered into before the Effective Date, the Supplier will take all reasonable endeavours to ensure that they all contain provisions that:

- ~~a) allow the Supplier to terminate the Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;~~
- ~~b) require the Supplier to pay all Subcontractors in full, within 30 days of receiving a valid, undisputed invoice; and~~
- ~~c) allow the Buyer to publish the details of the late payment or non-payment if this 30 day limit is exceeded.~~

~~8.2.2 The Supplier will take reasonable endeavours to ensure that all Sub-Contracts in the Supplier's supply chain entered into before the Effective Date but made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract contain provisions that:~~

- (c) ~~a)~~ allow the Supplier to terminate the ~~Sub-Contract~~ Sub-Contract if the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law;
- (d) ~~b)~~ require the Supplier to pay all Subcontractors in full, within thirty (30) days of receiving a valid, undisputed invoice; and

- (e) ~~e)~~ allow the Buyer to publish the details of the late payment or non-payment if this thirty (30-) day limit is exceeded.

8.3 When Sub-Contracts can be ended

8.3.1 At the Buyer's request, the Supplier must terminate any Sub-Contracts in any of the following events:

- (a) ~~a)~~ there is a Change of Control of a Subcontractor which isn't pre-approved by the Buyer in writing;
- (b) ~~b)~~ the acts or omissions of the Subcontractor have caused or materially contributed to a right of termination under Clause 14.4;
- (c) ~~c)~~ a Subcontractor or its Affiliates embarrasses or brings into disrepute or diminishes the public trust in the Buyer;
- (d) ~~d)~~ the Subcontractor fails to comply with its obligations in respect of environmental, social, equality or employment Law; and/or
- (e) ~~e)~~ the Buyer has found grounds to exclude the Subcontractor in accordance with Regulation 57 of the Public Contracts Regulations 2015.

8.4 Competitive terms

8.4.1 If the Buyer can get more favourable commercial terms for the supply at cost of any materials, goods or services used by the Supplier to provide the Deliverables and that cost is reimbursable by the Buyer, then the Buyer may require the Supplier to replace its existing commercial terms with the more favourable terms offered for the relevant items.

8.4.2 If the Buyer uses Clause 8.4.1- then the Charges must be reduced by an agreed amount by using the Variation Procedure.

8.5 Ongoing responsibility of the Supplier

~~8.5.1~~ The Supplier is responsible for all acts and omissions of its Subcontractors and those employed or engaged by them as if they were its own.

9. Rights and protection

9.1 The Supplier warrants and represents that:

- 9.1.1 it has full capacity and authority to enter into and to perform ~~the~~this Contract;
- 9.1.2 ~~the~~this Contract is ~~executed~~entered into by its authorised representative;
- 9.1.3 it is a legally valid and existing organisation incorporated in the place it was formed;
- 9.1.4 there are no known legal or regulatory actions or investigations before any court, administrative body or arbitration tribunal pending or threatened against it or its Affiliates that might affect its ability to perform ~~the~~this Contract;
- 9.1.5 all necessary rights, authorisations, licences and consents (including in relation to IPRs) are in place to enable the Supplier to perform its obligations under ~~the~~this Contract and for the Buyer to receive the Deliverables;
- 9.1.6 it doesn't have any contractual obligations which are likely to have a material adverse effect on its ability to perform ~~the~~this Contract;
- 9.1.7 it is not impacted by an Insolvency Event or a Financial Distress Event; and
- 9.1.8 neither it nor, to the best of its knowledge the Supplier Staff, have committed a Prohibited Act prior to the ~~Start~~Effective Date or been subject to an investigation relating to a Prohibited Act.
- 9.2 The warranties and representations in Clauses 2.7 and 9.1 are repeated each time the Supplier provides Deliverables under ~~the~~this Contract.
- 9.3 The Supplier indemnifies the Buyer against each of the following:
 - 9.3.1 wilful misconduct of the Supplier, Subcontractor and Supplier Staff that impacts ~~the~~this Contract; and
 - 9.3.2 non-payment by the Supplier of any tax or National Insurance.
- 9.4 All claims indemnified under this Contract must use Clause 30.
- ~~9.5 The Buyer can terminate the Contract for breach of any warranty or indemnity where they are entitled to do so.~~
- 9.5 The description of any provision of this Contract as a warranty does not prevent the Buyer from exercising any termination right that it may have for Default of that clause by the Supplier.
- 9.6 If the Supplier becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Buyer.

- 9.7 All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer's benefit by the Supplier for free.

10. Intellectual Property Rights (IPRs)

- 10.1 The Parties agree that the terms set out in Schedule 36 (Intellectual Property Rights) shall apply to this Contract.
- 10.2 If there is an IPR Claim, the Supplier indemnifies the Buyer against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result.
- 10.3 If an IPR Claim is made or anticipated the Supplier must at its own expense and the Buyer's sole option, either:
- 10.3.1 obtain for the Buyer the rights to continue using the relevant item without infringing any third party IPR; or
 - 10.3.2 replace or modify the relevant item with substitutes that don't infringe IPR without adversely affecting the functionality or performance of the Deliverables.
- 10.4 ~~10.1~~ If the Buyer requires that the Supplier procures a licence in accordance with ~~Schedule 36~~ Clause 10.3.1 or to modify or replace an item pursuant to ~~Schedule 36~~ Clause 10.3.2, but this has not avoided or resolved the IPR Claim, then the Buyer may terminate this Contract by written notice with immediate effect and the consequences of termination set out in Clauses 14.5.1 shall apply.

11. Rectifying issues

- 11.1 If there is a Notifiable Default, the Supplier must notify the Buyer within three (3) Working Days of the Supplier becoming aware of the Notifiable Default and the Buyer may request that the Supplier provide a Rectification Plan within ten (10) Working Days of the Buyer's request alongside any additional documentation that the Buyer requires.
- 11.2 When the Buyer receives a requested Rectification Plan it can either:
- 11.2.1 reject the Rectification Plan or revised Rectification Plan giving reasons; or
 - 11.2.2 accept the Rectification Plan or revised Rectification Plan (without limiting its rights) in which case the Supplier must immediately start work on the actions in the Rectification Plan at its own cost.
- 11.3 Where the Rectification Plan or revised Rectification Plan is rejected, the Buyer:

- 11.3.1 will give reasonable grounds for its decision; and
- 11.3.2 may request that the Supplier provides a revised Rectification Plan within five (5) Working Days.

12. Escalating issues

12.1 If the Supplier fails to:

- 12.1.1 submit a Rectification Plan or a revised Rectification Plan within the timescales set out in Clauses 11.1 or 11.3; and
- 12.1.2 adhere to the timescales set out in an accepted Rectification Plan to resolve the Notifiable Default.

or if the Buyer otherwise rejects a Rectification Plan, the Buyer can require the Supplier to attend an Escalation Meeting on not less than five (5) Working Days' notice. The Buyer will determine the location, time and duration of the Escalation Meeting(s) and the Supplier must ensure that the Supplier Authorised Representative is available to attend.

12.2 The Escalation Meeting(s) will continue until the Buyer is satisfied that the Notifiable Default has been resolved, however, where an Escalation Meeting(s) has continued for more than five (5) Working Days, either Party may treat the matter as a Dispute to be handled through the Dispute Resolution Procedure.

12.3 If the Supplier is in Default of any of its obligations under this Clause 12, the Buyer shall be entitled to terminate this Agreement and the consequences of termination set out in ~~Clause~~Clauses 14.5.1 shall apply as if the contract were terminated under Clause 14.4.1.

13. Step-in rights

13.1 If a Step-In Trigger Event occurs, the Buyer may give notice to the Supplier that it will be taking action in accordance with this Clause 13.1 and setting out:

- 13.1.1 whether it will be taking action itself or with the assistance of a third party;
- 13.1.2 what Required Action the Buyer will take during the Step-In Process;
- 13.1.3 when the Required Action will begin and how long it will continue for;
- 13.1.4 whether the Buyer will require access to the Sites; and
- 13.1.5 what impact the Buyer anticipates that the Required Action will have on the Supplier's obligations to provide the Deliverables.

- 13.2 For as long as the Required Action is taking place:
- 13.2.1 the Supplier will not have to provide the Deliverables that are the subject of the Required Action;
 - 13.2.2 no Deductions will be applicable in respect of Charges relating to the Deliverables that are the subject of the Required Action; and
 - 13.2.3 the Buyer will pay the Charges to the Supplier after subtracting any applicable Deductions and the Buyer's costs of taking the Required Action.
- 13.3 The Buyer will give notice to the Supplier before it ceases to exercise its rights under the Step-In Process and within twenty (20) Working Days of this notice the Supplier will develop a draft Step-Out Plan for the Buyer to approve.
- 13.4 If the Buyer does not approve the draft ~~Step-Out~~Step-Out Plan, the Buyer will give reasons and the Supplier will revise the draft ~~Step-Out~~Step-Out Plan and ~~re-submit~~re-submit it for approval.
- 13.5 The Supplier shall bear its own costs in connection with any step-in by the Buyer under this ~~Clause 13~~Clause 13, provided that the Buyer shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Buyer under:
- 13.5.1 limbs (f) or (g) of the definition of a Step-In Trigger Event; or
 - 13.5.2 limbs (h) and (i) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Buyer serving a notice under Clause 13.1 is identified as not being the result of the Supplier's Default).

14. Ending the contract

- 14.1 The Contract takes effect on the ~~Start~~Effective Date and ends on the End Date or earlier if terminated under this Clause 14 or if required by Law.
- 14.2 The Buyer can extend ~~the~~this Contract for the Extension Period by giving the Supplier written notice before ~~the~~this Contract expires as described in the Award Form.
- 14.3 **Ending the contract without a reason**
- The Buyer has the right to terminate ~~the~~this Contract at any time without reason ~~or (unless the Award Form states something different) liability~~ by giving the Supplier not less than ninety (90) days' notice (unless a

different notice period is set out in the Award Form) and if it's terminated ~~Clauses 14.5.1b) to 14.5.1h)~~ Clause 14.6.3 applies.

14.4 **When the Buyer can end ~~the~~this Contract**

14.4.1 If any of the following events happen, the Buyer has the right to immediately terminate ~~the~~this Contract by issuing a Termination Notice to the Supplier and the consequences of termination in Clause 14.5.1 shall apply:

- (a) ~~a)~~ there's a Supplier Insolvency Event;
- (b) ~~b)~~ the Supplier fails to notify the Buyer in writing of any Occasion of Tax ~~Non-Compliance~~ Non-Compliance or fails to provide details of proposed mitigating factors which, in the reasonable opinion of the Buyer, are acceptable;
- (c) ~~c)~~ there's a Notifiable Default that is not corrected in line with an accepted Rectification Plan;
- (d) ~~d)~~ the Buyer rejects a Rectification Plan or the Supplier does not provide it within ten (10) days of the request;
- (e) ~~e)~~ there's any ~~material~~ Material Default of ~~the~~this Contract;
~~f) a Default that occurs and then continues to occur on one or more occasions within 6 Months following the Buyer serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract;~~
- (f) ~~g)~~ there's any ~~material~~ Material Default of any Joint Controller Agreement relating to ~~the~~this Contract;
- (g) ~~h)~~ there's a Default of Clauses ~~2.7, 10, 2.8, 12, 18, 19, 31, 36, or~~ Schedule 19 (Cyber Essentials) 28 (ICT Services) (where applicable) ~~or Schedule 36 (Intellectual Property Rights) relating to the Contract;~~
- (h) ~~i)~~ the performance of the Supplier causes a Critical Service Level Failure to occur;
- (i) ~~j)~~ there's a consistent repeated failure to meet the Service Levels in Schedule 10 (Service Levels);
- (j) ~~k)~~ there's a Change of Control of the Supplier which isn't pre-approved by the Buyer in writing;
- (k) ~~l)~~ the Buyer discovers that the Supplier was in one of the situations in 57 (1) or 57(2) of the Regulations at the time ~~the~~this Contract was awarded;

- (l) ~~m)~~ the Supplier or its Affiliates embarrass or bring the Buyer into disrepute or diminish the public trust in them;
~~or~~
- (m) ~~n)~~ the Supplier fails to comply with its legal obligations in the fields of environmental, social, equality or employment Law when providing the Deliverables; or

~~14.4.2 The Buyer also has the right to terminate the Contract in accordance with Clauses 9.5 and 24.3, Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) and Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable).~~

- (n) the Supplier fails to enter into or to comply with an Admission Agreement under Part D of Schedule 7 (Staff Transfer).

14.4.2 ~~14.4.3~~ If any of the events in 73 (1) (a) or (b) of the Regulations happen, the Buyer has the right to immediately terminate ~~the this~~ Contract and Clauses ~~14.5.1b~~ 14.5.1(b) to ~~14.5.1h~~ applies 14.5.1(g) apply.

14.5 What happens if the contract ends

14.5.1 Where the Buyer terminates ~~the this~~ Contract under Clauses ~~14.4.1 and 9.5,~~ 10.4 and 12.3, Paragraph 7 of Part D of Schedule 7 (Staff Transfer), Paragraph 2.2 of Schedule 12 (Benchmarking) (where applicable) Paragraph 4.1 of Schedule 37 (Corporate Resolution Planning) (where applicable) ~~or~~ Paragraph 7 of Schedule 24 (Financial Difficulties) (where applicable) ~~or Paragraphs 3.1.12.2 or 3.3.1.2 of Part A of Schedule 26 (Sustainability)~~ all of the following apply:

- (a) ~~a)~~ The Supplier is responsible for the Buyer's reasonable costs of procuring Replacement Deliverables for the rest of the Contract Period.
- (b) ~~b)~~ The Buyer's payment obligations under the terminated Contract stop immediately.
- (c) ~~c)~~ Accumulated rights of the Parties are not affected.
- (d) ~~d)~~ The Supplier must promptly delete or return the Government Data except where required to retain copies by Law.
- (e) ~~e)~~ The Supplier must promptly return any of the Buyer's property provided under the terminated Contract.

- (f) ~~f)~~ The Supplier must, at no cost to the Buyer, co-operate fully in the handover and re-procurement (including to a Replacement Supplier).
- (g) ~~g)~~ The Supplier must repay to the Buyer all the Charges that it has been paid in advance for Deliverables that it has not provided as at the date of termination or expiry.

14.5.2 If either Party terminates this Contract under Clause 24.3:

- (a) each party must cover its own Losses; and
- (b) Clauses 14.5.1(b) to 14.5.1(g) apply.

14.5.3 ~~h)~~ The following Clauses survive the termination ~~of the~~ or expiry of this Contract: 3.2.10, 4, 6, 7, 27.4, 7.5, 10, 14.5, 14.6.3, 15, 18, 19, 20, 21, 22, 23, 35.3.2, 39, 40, Schedule 1 (Definitions), Schedule 3 (Charges), Schedule 7 (Staff Transfer), Schedule 30 (Exit Management)) (if used), Schedule 36 (Intellectual Property Rights) and any Clauses and Schedules which are expressly or by implication intended to continue.

~~14.5.2 If either Party terminates the Contract under Clause 24.3:~~

- ~~a) each party must cover its own Losses; and~~
- ~~b) Clauses 14.5.1b) to 14.5.1h) applies.~~

14.6 When the Supplier (and the Buyer) can end the contract

- 14.6.1 The Supplier can issue a Reminder Notice if the Buyer does not pay an undisputed invoice on time. The Supplier can terminate ~~the~~ this Contract if the Buyer fails to pay an undisputed invoiced sum due and worth over 10% of the total Contract Value within thirty (30) days of the date of the Reminder Notice.
- 14.6.2 The Supplier also has the right to terminate ~~the~~ this Contract in accordance with Clauses 24.3 and 27.5.
- 14.6.3 Where the Buyer terminates ~~the~~ this Contract under Clause 14.3 or the Supplier terminates ~~the~~ this Contract under Clause 14.6.1 or 27.5:
 - (a) ~~a)~~ the Buyer must promptly pay all outstanding Charges incurred to the Supplier;
 - (b) ~~b)~~ the Buyer must pay the Supplier reasonable committed and unavoidable Losses as long as the Supplier provides a fully itemised and costed schedule with evidence – the maximum value of this payment is limited to the total sum

payable to the Supplier if ~~the~~this Contract had not been terminated; and

(c) ~~e)~~ Clauses 14.5.1(b)) to 14.5.1(~~h~~g) apply.

14.7 Partially ending and suspending the contract

14.7.1 Where the Buyer has the right to terminate ~~the~~this Contract it can terminate or suspend (for any period), all or part of it. If the Buyer suspends ~~the~~this Contract it can provide the Deliverables itself or buy them from a third party.

14.7.2 The Buyer can only partially terminate or suspend ~~the~~this Contract if the remaining parts of ~~the~~this Contract can still be used to effectively deliver the intended purpose.

14.7.3 The Parties must agree any necessary Variation required by this Clause 14.7 using the Variation Procedure, but the Supplier may not either:

(a) ~~a)~~ reject the Variation; or

(b) ~~b)~~ increase the Charges, except where the right to partial termination is under Clause 14.3.

14.7.4 The Buyer can still use other rights available, or subsequently available to it if it acts on its rights under this Clause 14.7.

15. How much you can be held responsible for?

15.1 Each Party's total aggregate liability in each Contract Year under ~~the~~this Contract (whether in tort, contract or otherwise) is no more than the greater of £5 million or 150% of the Estimated Yearly Charges unless specified otherwise in the Award Form.

15.2 Neither Party is liable to the other for:

15.2.1 any indirect Losses; and or

15.2.2 Loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).

15.3 In spite of Clause 15.1, neither Party limits or excludes any of the following:

15.3.1 its liability for death or personal injury caused by its negligence, or that of its employees, agents or Subcontractors;

15.3.2 its liability for bribery or fraud or fraudulent misrepresentation by it or its employees; and

15.3.3 any liability that cannot be excluded or limited by Law.

- 15.4 In spite of Clause 15.1, the Supplier does not limit or exclude its liability for any indemnity given under Clauses 7.4, 7.5, ~~9.3, 10.2.1, 16.3~~ 9.3.2, 10.2, 35.3.2 or Schedule 7 (Staff Transfer) of ~~the~~this Contract.
- 15.5 In spite of Clause 15.1, The Buyer does not limit or exclude its liability for any indemnity given under Clause 7 or Schedule 7 (Staff Transfer) of this Contract.
- 15.6 ~~15.5~~ In spite of Clause 15.1, but subject to Clauses 15.2 and 15.3, the Supplier's total aggregate liability in each Contract Year under Clause 18.8.5 is no more than the Data Protection Liability Cap.
- 15.7 ~~15.6~~ Each Party must use all reasonable endeavours to mitigate any Loss or damage which it suffers under or in connection with ~~the~~this Contract, including any indemnities.
- 15.8 ~~15.7~~ When calculating the Supplier's liability under Clause 15.1 the following items will not be taken into consideration:
- 15.8.1 ~~15.7.1~~ Deductions; and
- 15.8.2 ~~15.7.2~~ any items specified in Clause 15.4.
- 15.9 ~~15.8~~ If more than one Supplier is party to ~~the~~this Contract, each Supplier Party is fully responsible for both their own liabilities and the liabilities of the other Suppliers.

16. Obeying the law

- 16.1 The Supplier shall comply with the provisions of Schedule 26 (Sustainability).
- 16.2 The Supplier shall comply with the provisions of:
- 16.2.1 the Official Secrets Acts 1911 to 1989; and
- 16.2.2 section 182 of the Finance Act 1989.
- 16.3 The Supplier indemnifies the Buyer against any costs resulting from any Default by the Supplier relating to any applicable Law to do with this Contract.
- 16.4 The Supplier must appoint a Compliance Officer who must be responsible for ensuring that the Supplier complies with Law, Clause 16.1 and Clauses 31 to 36.

17. Insurance

The Supplier must, at its own cost, obtain and maintain the Required Insurances in Schedule 22 (Insurance Requirements).

18. Data protection and security

- 18.1 The Supplier must process Personal Data and ensure that Supplier Staff process Personal Data only in accordance with Schedule 20 (Processing Data).
- 18.2 The Supplier must not remove any ownership or security notices in or relating to the Government Data.
- 18.3 The Supplier must make accessible back-ups of all Government Data, stored in an agreed off-site location and send the Buyer copies ~~every 6 Months~~ via a secure encrypted method upon reasonable request.
- 18.4 The Supplier must ensure that any Supplier ~~system~~, Subcontractor and Subprocessor system (including any cloud services or end user devices used by the Supplier, Subcontractor and Subprocessor) holding any Government Data, including back-up data, is a secure system that complies with the Cyber Essentials Schedule (if used), the Security Schedule (if used), the Security Policy, and ~~any applicable Security Management Plan~~ the security requirements specified in the Award Form. and otherwise as required by Data Protection Legislation.
- 18.5 If at any time the Supplier suspects or has reason to believe that the Government Data is corrupted, lost or sufficiently degraded, then the Supplier must immediately notify the Buyer and suggest remedial action.
- 18.6 If the Government Data is corrupted, lost or sufficiently degraded so as to be unusable the Buyer may either or both:
- 18.6.1 tell the Supplier to restore or get restored Government Data as soon as practical but no later than five (5) Working Days from the date that the Buyer receives notice, or the Supplier finds out about the issue, whichever is earlier; and
- 18.6.2 restore the Government Data itself or using a third party.
- 18.7 The Supplier must pay each Party's reasonable costs of complying with Clause 18.6 unless the Buyer is ~~entirely~~ at fault.
- 18.8 The Supplier:
- 18.8.1 must provide the Buyer with all Government Data in an agreed ~~open~~-format (provided it is secure and readable) within ten (10) Working Days of a written request;
- 18.8.2 must have documented processes to guarantee prompt availability of Government Data if the Supplier stops trading;

- 18.8.3 must securely destroy all Storage Media that has held Government Data at the end of life of that media using Good Industry Practice, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
- 18.8.4 securely erase all Government Data and any copies it holds when asked to do so by the Buyer ~~unless~~ (and certify to the Buyer that it has done so) unless and to the extent required by Law to retain it other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
- 18.8.5 indemnifies the Buyer against any and all Losses incurred if the Supplier breaches Clause 18 or any Data Protection Legislation.

19. What you must keep confidential

- 19.1 Each Party must:
 - 19.1.1 keep all Confidential Information it receives confidential and secure;
 - 19.1.2 not disclose, use or exploit the Disclosing Party's Confidential Information without the Disclosing Party's prior written consent, except for the purposes anticipated under ~~the~~ this Contract; and
 - 19.1.3 immediately notify the Disclosing Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information.
- 19.2 In spite of Clause 19.1, a Party may disclose Confidential Information which it receives from the Disclosing Party in any of the following instances:
 - 19.2.1 where disclosure is required by applicable Law, a regulatory body or a court with the relevant jurisdiction if the Recipient Party notifies the Disclosing Party of the full circumstances, the affected Confidential Information and extent of the disclosure;
 - 19.2.2 if the Recipient Party already had the information without obligation of confidentiality before it was disclosed by the Disclosing Party;
 - 19.2.3 if the information was given to it by a third party without obligation of confidentiality;

- 19.2.4 if the information was in the public domain at the time of the disclosure;
 - 19.2.5 if the information was independently developed without access to the Disclosing Party's Confidential Information;
 - 19.2.6 on a confidential basis, to its auditors or for the purpose of regulatory requirements;
 - 19.2.7 on a confidential basis, to its professional advisers on a need-to-know basis; and
 - 19.2.8 to the Serious Fraud Office where the Recipient Party has reasonable grounds to believe that the Disclosing Party is involved in activity that may be a criminal offence under the Bribery Act 2010.
- 19.3 The Supplier may disclose Confidential Information on a confidential basis to Supplier Staff on a need-to-know basis to allow the Supplier to meet its obligations under ~~the~~this Contract. The Supplier Staff ~~must enter into a direct confidentiality agreement with the Buyer at its request.~~shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.
- 19.4 The Buyer may disclose Confidential Information in any of the following cases:
- 19.4.1 on a confidential basis to the employees, agents, consultants and contractors of the Buyer;
 - 19.4.2 on a confidential basis to any other ~~Central Government~~Crown Body, any successor body to a ~~Central Government~~Crown Body or any company that the Buyer transfers or proposes to transfer all or any part of its business to;
 - 19.4.3 if the Buyer (acting reasonably) considers disclosure necessary or appropriate to carry out its public functions;
 - 19.4.4 where requested by Parliament; ~~and~~
 - 19.4.5 under Clauses 4.6 and 20-; and
 - 19.4.6 on a confidential basis under the audit rights in Clauses 6.5 to 6.9 (inclusive), Clause 13 (Step-in rights), Schedule 7 and Schedule 30 (if used).
- 19.5 For the purposes of Clauses 19.2 to 19.4 references to disclosure on a confidential basis means disclosure under a confidentiality agreement or arrangement including terms as strict as those required in Clause 19.

- 19.6 Transparency Information and any ~~Information~~information which is exempt from disclosure by Clause 20 is not Confidential Information.
- 19.7 The Supplier must not make any press announcement or publicise ~~the~~this Contracts or any part of them in any way, without the prior written consent of the Buyer and must use all reasonable endeavours to ensure that Supplier Staff do not either.

20. When you can share information

- 20.1 The Supplier must tell the Buyer within forty eight (48) hours if it receives a Request For Information.
- 20.2 In accordance with a reasonable timetable and in any event within five (5) Working Days of a request from the Buyer, the Supplier must give the Buyer full co-operation and information needed so the Buyer can:
- 20.2.1 publish the Transparency Information; and
- ~~20.2.2 comply with any Freedom of Information Act (FOIA) request; and~~
- 20.2.2 ~~20.2.3~~ comply with any ~~Environmental~~Request for Information Regulations (EIR) request.
- 20.3 To the extent that it is allowed and practical to do so, the Buyer will use reasonable endeavours to notify the Supplier of a FOIA request and may talk to the Supplier to help it decide whether to publish information under Clause 20.1. However, the extent, content and format of the disclosure is the Buyer's decision in its absolute discretion.

21. Invalid parts of the contract

- ~~21.1~~ If any provision or part of the provision of this Contract is ~~prohibited by Law or judged by a court to be unlawful, void or becomes invalid, illegal or unenforceable, it must be read as if it was removed from the Contract as much as required and rendered ineffective as far as possible without affecting the rest of the Contract, whether it's valid or enforceable.~~ for any reason, such provision or part-provision shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Contract.
- ~~21.2~~ If any removal ~~under Clause 21.1~~ is so fundamental that it prevents the purpose ~~of the Contract~~ from being achieved or it materially changes the balance of risk and rewards between ~~the Parties~~, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to rectify these issues and to amend the Contract accordingly so that, ~~as amended, it is valid and enforceable, preserves the balance of risks~~

~~and rewards in this Contract and, to the extent that it is reasonably possible, achieves the Parties' original commercial intention.~~

~~21.3 If the Parties cannot agree on what amendments are required within 5 Working Days, the matter will be dealt with via commercial negotiation as set out in Clause 39.2 and, if there is no resolution within 30 Working Days of the matter being referred, the Contract will terminate automatically and immediately with costs lying where they fall.~~

22. No other terms apply

The provisions incorporated into ~~the~~this Contract are the entire agreement between the Parties. The Contract replaces all previous statements, or agreements whether written or oral. No other provisions apply.

23. Other people's rights in ~~the~~this Contract

23.1 The provisions of Paragraphs 2.1 and 2.3 of Part A, Paragraphs 2.1, 2.3 and 3.1 of Part B, Paragraphs 1.2, 1.4 and 1.7 of Part C, Part D and Paragraphs 1.4, 1.7, 2.3, 2.5 and 2.10 of Part E of Schedule 7 (Staff Transfer) and the provisions of Paragraph 3.1, 6.1, 7.2, 8.2, 8.5, 8.6 and 8.9 of Schedule 30 (Exit Management) (together "Third Party Provisions") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "Third Party Beneficiary") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the Contracts (Rights of Third Parties) Act ("CRTPA").

23.2 ~~No~~Subject to Clause 23.1, no third parties may use the ~~Contracts (Rights of Third Parties) Act (CRTPA)~~ to enforce any term of ~~the~~this Contract unless stated (referring to CRTPA) in ~~the~~this Contract. This does not affect third party rights and remedies that exist independently from CRTPA.

23.3 No Third Party Beneficiary may enforce, or take any step to enforce, any Third Party Provision without the prior written consent of the Buyer, which may, if given, be given on and subject to such terms as the Buyer may determine.

23.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 23.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

24. Circumstances beyond your control

- 24.1 Any Party affected by a Force Majeure Event is excused from performing its obligations under ~~the~~this Contract while the inability to perform continues, if it both:
- 24.1.1 provides a Force Majeure Notice to the other Party; and
- 24.1.2 uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- 24.2 Any failure or delay by the Supplier to perform its obligations under this Contract that is due to a failure or delay by an agent, Subcontractor or supplier will only be considered a Force Majeure Event if that third party is itself prevented from complying with an obligation to the Supplier due to a Force Majeure Event.
- 24.3 Either party can partially or fully terminate ~~the~~this Contract if the provision of the Deliverables is materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

25. Relationships created by the contract

The Contract does not create a partnership, joint venture or employment relationship. The Supplier must represent themselves accordingly and ensure others do so.

26. Giving up contract rights

A partial or full waiver or relaxation of the terms of ~~the~~this Contract is only valid if it is stated to be a waiver in writing to the other Party.

27. Transferring responsibilities

- 27.1 The Supplier cannot assign, novate or in any other way dispose of ~~the~~this Contract or any part of it without the Buyer's written consent.
- 27.2 Subject to Schedule 27 (Key Subcontractors), the Supplier cannot sub-contract ~~the~~this Contract or any part of it without the Buyer's prior written consent. The Supplier shall provide the Buyer with information about the Subcontractor as it reasonably requests. The decision of the Buyer to consent or not will not be unreasonably withheld or delayed. If the Buyer does not communicate a decision to the Supplier within ten (10) Working Days of the request for consent then its consent will be deemed to have been given.- The Buyer may reasonably withhold its consent to the appointment of a Subcontractor if it considers that:
- 27.2.1 the appointment of a proposed Subcontractor may prejudice the provision of the Deliverables or may be contrary to its interests;

- 27.2.2 the proposed Subcontractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- 27.2.3 the proposed Subcontractor employs unfit persons.
- 27.3 The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.
- 27.4 When the Buyer uses its rights under Clause 27.3 the Supplier must enter into a novation agreement in the form that the Buyer specifies.
- 27.5 The Supplier can terminate ~~the~~this Contract novated under Clause 27.3 to a private sector body that is experiencing an Insolvency Event.
- 27.6 The Supplier remains responsible for all acts and omissions of the Supplier Staff as if they were its own.
- 27.7 If at any time the Buyer asks the Supplier for details about Subcontractors, the Supplier must provide details of Subcontractors at all levels of the supply chain including:
 - 27.7.1 their name;
 - 27.7.2 the scope of their appointment;
 - 27.7.3 the duration of their appointment; and
 - 27.7.4 a copy of the Sub-Contract.

28. Changing the contract

- 28.1 Either Party can request a Variation to ~~the~~this Contract which is only effective if agreed in writing, including where it is set out in the Variation Form, and signed by both Parties.
- 28.2 The Supplier must provide an Impact Assessment either:
 - 28.2.1 with the Variation Form, where the Supplier requests the Variation; and
 - 28.2.2 within the time limits included in a Variation Form requested by the Buyer.
- 28.3 If the Variation to ~~the~~this Contract cannot be agreed or resolved by the Parties, the Buyer can either:
 - 28.3.1 agree that ~~the~~this Contract continues without the Variation; and
 - 28.3.2 refer the Dispute to be resolved using Clause 39 (Resolving Disputes).

- 28.4 The Buyer is not required to accept a Variation request made by the Supplier.
- 28.5 The Supplier may only reject a Variation requested by the Buyer if the Supplier:
- 28.5.1 reasonably believes that the Variation would materially and adversely affect the risks to the health and safety of any person or that it would result in the Deliverables being provided in a way that infringes any Law; or
 - 28.5.2 demonstrates to the Buyer's reasonable satisfaction that the Variation is technically impossible to implement and that neither the Tender nor the Specification state that the Supplier has the required technical capacity or flexibility to implement the Variation.
- 28.6 If there is a General Change in Law, the Supplier must bear the risk of the change and is not entitled to ask for an increase to the Charges.
- 28.7 If there is a Specific Change in Law or one is likely to happen during ~~the~~this Contract Period the Supplier must give the Buyer notice of the likely effects of the changes as soon as reasonably practical. They must also say if they think any Variation is needed either to the Deliverables, the Charges or ~~the~~this Contract and provide evidence:
- 28.7.1 that the Supplier has kept costs as low as possible, including in Subcontractor costs; and
 - 28.7.2 of how it has affected the Supplier's costs.
- 28.8 Any change in the Charges or relief from the Supplier's obligations because of a Specific Change in Law must be implemented using Clauses 28.1 to 28.4.

29. How to communicate about the contract

- 29.1 All notices under ~~the~~this Contract must be in writing and are considered effective on the Working Day of delivery as long as they're delivered before 5:00pm on a Working Day. Otherwise the notice is effective on the next Working Day. An email is effective at ~~9am~~9:00am on the first Working Day after sending unless an error message is received.
- 29.2 Notices to the Buyer must be sent to the Buyer Authorised Representative's address or email address in the Award Form.
- 29.3 This Clause does not apply to the service of legal proceedings or any documents in any legal action, arbitration or dispute resolution.

30. Dealing with claims

- 30.1 If a Beneficiary is notified of a Claim then it must notify the Indemnifier as soon as reasonably practical and no later than ten (10) Working Days.
- 30.2 At the Indemnifier's cost the Beneficiary must both:
 - 30.2.1 allow the Indemnifier to conduct all negotiations and proceedings to do with a Claim; and
 - 30.2.2 give the Indemnifier reasonable assistance with the claim if requested.
- 30.3 The Beneficiary must not make admissions about the Claim without the prior written consent of the Indemnifier which cannot be unreasonably withheld or delayed.
- 30.4 The Indemnifier must consider and defend the Claim diligently using competent legal advisors and in a way that doesn't damage the Beneficiary's reputation.
- 30.5 The Indemnifier must not settle or compromise any Claim without the Beneficiary's prior written consent which it must not unreasonably withhold or delay.
- 30.6 Each Beneficiary must use all reasonable endeavours to minimise and mitigate any losses that it suffers because of the Claim.
- 30.7 If the Indemnifier pays the Beneficiary money under an indemnity and the Beneficiary later recovers money which is directly related to the Claim, the Beneficiary must immediately repay the Indemnifier the lesser of either:
 - 30.7.1 the sum recovered minus any legitimate amount spent by the Beneficiary when recovering this money; and
 - 30.7.2 the amount the Indemnifier paid the Beneficiary for the Claim.

31. Preventing fraud, bribery and corruption

- 31.1 The Supplier must not during the Contract Period:
 - 31.1.1 commit a Prohibited Act or any other criminal offence in the Regulations 57(1) and 57(2);
 - 31.1.2 do or allow anything which would cause the Buyer, including any of their employees, consultants, contractors, Subcontractors or agents to breach any of the Relevant Requirements or incur any liability under them.
- 31.2 The Supplier must during the Contract Period:

- 31.2.1 create, maintain and enforce adequate policies and procedures to ensure it complies with the Relevant Requirements to prevent a Prohibited Act and require its Subcontractors to do the same;
 - 31.2.2 keep full records to show it has complied with its obligations under this Clause 31 and give copies to the Buyer on request; and
 - 31.2.3 if required by the Buyer, within twenty (20) Working Days of the Start Effective Date of ~~the~~this Contract, and then annually, certify in writing to the Buyer, that they have complied with this Clause 31, including compliance of Supplier Staff, and provide reasonable supporting evidence of this on request, including its policies and procedures.
- 31.3 The Supplier must immediately notify the Buyer if it becomes aware of any ~~breach~~Default of Clauses 31.1 or has any reason to think that it, or any of the Supplier Staff, have either:
- 31.3.1 been investigated or prosecuted for an alleged Prohibited Act;
 - 31.3.2 been debarred, suspended, proposed for suspension or debarment, or are otherwise ineligible to take part in procurement programmes or contracts because of a Prohibited Act by any government department or agency;
 - 31.3.3 received a request or demand for any undue financial or other advantage of any kind related to ~~the~~this Contract; and
 - 31.3.4 suspected that any person or Party directly or indirectly related to ~~the~~this Contract has committed or attempted to commit a Prohibited Act.
- 31.4 If the Supplier notifies the Buyer as required by Clause 31.3, the Supplier must respond promptly to their further enquiries, co-operate with any investigation and allow the Audit of any books, records and relevant documentation.
- 31.5 If the Supplier is in Default under Clause 31.1 the Buyer may:
- 31.5.1 require the Supplier to remove any Supplier Staff from providing the Deliverables if their acts or omissions have caused the Default; and
 - 31.5.2 immediately terminate this agreement in accordance with Clause 14.4.1 and the consequences of termination in Clauses 14.5.1 shall apply.
- 31.6 In any notice the Supplier gives under Clause 31.4 it must specify the:

- 31.6.1 Prohibited Act;
- 31.6.2 identity of the Party who it thinks has committed the Prohibited Act; and
- 31.6.3 action it has decided to take.

32. Equality, diversity and human rights

- 32.1 The Supplier must follow all applicable equality Law when they perform their obligations under ~~the~~this Contract, including:
 - 32.1.1 protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise; and
 - 32.1.2 any other requirements and instructions which the Buyer reasonably imposes related to equality Law.
- 32.2 The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Equality and Human Rights Commission (or any successor organisation) when working on ~~the~~this Contract.

33. Health and safety

- 33.1 The Supplier must perform its obligations meeting the requirements of:
 - 33.1.1 all applicable Law regarding health and safety; and
 - 33.1.2 the Buyer's current health and safety policy while at the Buyer's Premises, as provided to the Supplier.
- 33.2 The Supplier and the Buyer must as soon as possible notify the other of any health and safety incidents or material hazards they're aware of at the Buyer Premises that relate to the performance of ~~the~~this Contract.

34. Environment

- 34.1 When working on Site the Supplier must perform its obligations under the Buyer's current Environmental Policy, which the Buyer must provide.
- 34.2 The Supplier must ensure that Supplier Staff are aware of the Buyer's Environmental Policy.

35. Tax

- 35.1 The Supplier must not breach any tax or social security obligations and must enter into a binding agreement to pay any late contributions due,

including where applicable, any interest or any fines. The Buyer cannot terminate ~~the~~this Contract where the Supplier has not paid a minor tax or social security contribution.

35.2 Where the Charges payable under ~~the~~this Contract are or are likely to exceed £5 million at any point during the relevant Contract Period, and an Occasion of Tax Non-Compliance occurs, the Supplier must notify the Buyer of it within five (5) Working Days including:

35.2.1 the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and any mitigating factors that it considers relevant; and

35.2.2 other information relating to the Occasion of Tax Non-Compliance that the Buyer may reasonably need.

35.3 Where the Supplier or any Supplier Staff are liable to be taxed or to pay National Insurance contributions in the UK relating to payment received under ~~the~~this Contract, the Supplier must both:

35.3.1 comply with the Income Tax (Earnings and Pensions) Act 2003 and all other statutes and regulations relating to income tax, the Social Security Contributions and Benefits Act 1992 (including IR35) and National Insurance contributions; and

35.3.2 indemnify the Buyer against any Income Tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made during or after the Contract Period in connection with the provision of the Deliverables by the Supplier or any of the Supplier Staff.

35.4 If any of the Supplier Staff are Workers who receive payment relating to the Deliverables, then the Supplier must ensure that its contract with the Worker contains the following requirements:

35.4.1 the Buyer may, at any time during the Contract Period, request that the Worker provides information which demonstrates they comply with Clause 35.3.1, or why those requirements do not apply, the Buyer can specify the information the Worker must provide and the deadline for responding;

35.4.2 the Worker's contract may be terminated at the Buyer's request if the Worker fails to provide the information requested by the Buyer within the time specified by the Buyer;

35.4.3 the Worker's contract may be terminated at the Buyer's request if the Worker provides information which the Buyer considers isn't good enough to demonstrate how it complies

with Clause 35.3.1 or confirms that the Worker is not complying with those requirements; and

35.4.4 the Buyer may supply any information they receive from the Worker to HMRC for revenue collection and management.

36. Conflict of interest

36.1 The Supplier must take action to ensure that neither the Supplier nor the Supplier Staff are placed in the position of an actual, potential or perceived Conflict of Interest.

36.2 The Supplier must promptly notify and provide details to the Buyer if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

36.3 The Buyer will consider whether there are any appropriate measures that can be put in place to remedy an actual, perceived or potential Conflict of Interest. If, in the reasonable opinion of the Buyer, such measures do not or will not resolve an actual or potential Conflict of Interest, the Buyer may terminate its Contract immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 14.5.1(b) to 14.5.1(g) shall apply.

37. Reporting a breach of the contract

37.1 As soon as it is aware of it the Supplier and Supplier Staff must report to the Buyer any actual or suspected ~~breach of~~:

37.1.1 breach of Law;

37.1.2 Default of Clause 16.1; and

37.1.3 Default of Clauses 31 to 36.

37.2 The Supplier must not retaliate against any of the Supplier Staff who in good faith reports a breach or Default listed in Clause 37.1 to the Buyer or a Prescribed Person.

38. Further Assurances

Each Party will, at the request and cost of the other Party, do all things which may be reasonably necessary to give effect to the meaning of this Contract.

39. Resolving disputes

39.1 If there is a Dispute, the senior representatives of the Parties who have authority to settle the Dispute will, within twenty eight (28) days of a written request from the other Party, meet in good faith to resolve the Dispute by commercial negotiation.

- 39.2 If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure current at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by CEDR. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.4 to 39.6.
- 39.3 Unless the Buyer refers the Dispute to arbitration using Clause 39.5, the Parties irrevocably agree that the courts of England and Wales have the exclusive jurisdiction to:
- 39.3.1 determine the Dispute;
 - 39.3.2 grant interim remedies; and
 - 39.3.3 grant any other provisional or protective relief.
- 39.4 The Supplier agrees that the Buyer has the exclusive right to refer any Dispute to be finally resolved by arbitration under the London Court of International Arbitration Rules current at the time of the Dispute. There will be only one arbitrator. The seat or legal place of the arbitration will be London and the proceedings will be in English.
- 39.5 The Buyer has the right to refer a Dispute to arbitration even if the Supplier has started or has attempted to start court proceedings under Clause 39.4, unless the Buyer has agreed to the court proceedings or participated in them. Even if court proceedings have started, the Parties must do everything necessary to ensure that the court proceedings are stayed in favour of any arbitration proceedings if they are started under Clause 39.5.
- 39.6 The Supplier cannot suspend the performance of ~~the~~this Contract during any Dispute.

40. Which law applies

This Contract and any issues or Disputes arising out of, or connected to it, are governed by English law.

Schedule 1 (Definitions)

1. Definitions

- 1.1 In ~~the~~this Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this Schedule 1 (Definitions) or the relevant Schedule in which that capitalised expression appears.
- 1.2 If a capitalised expression does not have an interpretation in this Schedule or any other Schedule, it shall, in the first instance, be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise, it shall be interpreted in accordance with the dictionary meaning.
- 1.3 In ~~the~~this Contract, unless the context otherwise requires:
- ~~1.3.1 the singular includes the plural and vice versa;~~
- 1.3.1 ~~1.3.2~~ reference to a gender includes the other gender and the neuter;
- 1.3.2 ~~1.3.3~~ references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body;
- 1.3.3 ~~1.3.4~~ a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023);
- 1.3.4 ~~1.3.5~~ 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**";
- 1.3.5 ~~1.3.6~~ 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;
- 1.3.6 ~~1.3.7~~ references to "**representations**" shall be construed as references to present facts, to "**warranties**" as references to present and future facts and to "**undertakings**" as references to obligations under ~~the~~this Contract;
- 1.3.7 ~~1.3.8~~ references to "**Clauses**" and "**Schedules**" are, unless otherwise provided, references to the clauses and schedules of the Core Terms and references in any Schedule to parts, paragraphs, annexes and tables are, unless otherwise provided, references to the parts, paragraphs, annexes and tables of the Schedule in which these references appear;

- 1.3.8 ~~1.3.9~~ references to **"Paragraphs"** are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; ~~and~~
- 1.3.9 ~~1.3.10~~ references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified; ~~;~~
- ~~1.3.11 the headings in the Contract are for ease of reference only and shall not affect the interpretation or construction of the Contract; and~~
- 1.3.10 ~~1.3.12~~ where the Buyer is a Crown Body ~~it~~ the Supplier shall be treated as contracting with the Crown as a whole; ~~and~~
- 1.3.11 ~~1.3.13~~ Any reference in this Contract which immediately before IP Completion Day (or such later date when relevant EU law ceases to have effect pursuant to Section 1A of the European Union (Withdrawal) Act 2018) is a reference to (as it has effect from time to time):
- ~~(i) any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement ("**EU References**") which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 and which shall be read on and after IP Completion Day as a reference to the EU References as they form part of domestic law by virtue of Section 3 of the European Union (Withdrawal) Act 2018 as modified by domestic law from time to time; and~~
- ~~(ii) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred.~~

- 1.4 In ~~the~~ this Contract, unless the context otherwise requires, the following words shall have the following meanings:

- "Achieve"** in respect of a Test, to successfully pass such Test without any Test Issues and in respect of a Milestone, the issue of a Satisfaction Certificate in respect of that Milestone and **"Achieved"**, **"Achieving"** and **"Achievement"** shall be construed accordingly;
- "Additional FDE Group Member"** means any entity (if any) specified as an Additional FDE Group Member in Part A of Annex 3 of Schedule 24 (Financial Difficulties);
- "Affected Party"** the party seeking to claim relief in respect of a Force Majeure Event;
- "Affiliates"** in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by,

	or is under direct or indirect common Control of that body corporate from time to time;
"Allowable Assumptions"	means the assumptions (if any) set out in Annex 2 of Schedule 3 (Charges);
"Annex"	extra information which supports a Schedule;
"Approval"	the prior written consent of the Buyer and "Approve" and "Approved" shall be construed accordingly;
<u>"Associates"</u>	means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;
"Audit"	the Buyer's right to: <ul style="list-style-type: none">(a) verify the integrity and content of any Financial Report;(b) verify the accuracy of the Charges and any other amounts payable by the Buyer under a Contract (including proposed or actual variations to them in accordance with thethis Contract);(c) verify the costs of the Supplier (including the costs of all Subcontractors and any third party suppliers) in connection with the provision of the Services;(d) verify the Open Book Data;(e) verify the Supplier's and each Subcontractor's compliance with the applicable Law;(f) identify or investigate actual or suspected breach of Clauses 3 to 37 and/or Schedule 26 (Sustainability), impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Buyer shall have no obligation to inform the Supplier of the purpose or objective of its investigations;(g) identify or investigate any circumstances which may impact upon the financial stability of the Supplier, any Guarantor, and/or any Subcontractors or their ability to

	provide the Deliverables;
	(h) obtain such information as is necessary to fulfil the Buyer's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
	(i) review any books of account and the internal contract management accounts kept by the Supplier in connection with the this Contract;
	(j) carry out the Buyer's internal and statutory audits and to prepare, examine and/or certify the Buyer's annual and interim reports and accounts;
	(k) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Buyer has used its resources;
"Auditor"	(a) the Buyer's internal and external auditors;
	(b) the Buyer's statutory or regulatory auditors;
	(c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
	(d) HM Treasury or the Cabinet Office;
	(e) any party formally appointed by the Buyer to carry out audit or similar review functions; and
	(f) successors or assigns of any of the above;
"Award Form"	the document outlining the Incorporated Terms and crucial information required for the this Contract, to be executed by the Supplier and the Buyer;
"Beneficiary"	a Party having (or claiming to have) the benefit of an indemnity under this Contract;
"Buyer"	the public sector purchaser identified as such in the Order Form;
"Buyer Assets"	the Buyer's infrastructure, data, software, materials, assets, equipment or other property owned by and/or licensed or leased to the Buyer

	and which is or may be used in connection with the provision of the Deliverables which remain the property of the Buyer throughout the term of the <u>this</u> Contract;
"Buyer Authorised Representative"	the representative appointed by the Buyer from time to time in relation to the <u>this</u> Contract initially identified in the Award Form;
"Buyer Cause"	has the meaning given to it in the Award Form;
"Buyer Data"	means the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Buyer's or End User's Confidential Information, and which: (a) are supplied to the Supplier by or on behalf of the Buyer, or End User; or (b) the Supplier is required to generate, process, store or transmit pursuant to this Contract; or (c) any Personal Data for which the Buyer or End User is the Controller;
"Buyer Existing IPR"	means any and all IPR that are owned by or licensed to the Buyer, and where the Buyer is a Central Government <u>Crown</u> Body, any Crown IPR, and which are or have been developed independently of the <u>this</u> Contract (whether prior to the Start <u>Effective</u> Date or otherwise) <u>[Guidance: include the following wording where Part B of Schedule 36 (Intellectual Property Rights) is used]</u> [but excluding Buyer Software];
"Buyer Premises"	premises owned, controlled or occupied by the Buyer which are made available for use by the Supplier or its Subcontractors for the provision of the Deliverables (or any of them);
<u>"Buyer Property"</u>	<u>the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;</u>
<u>"Buyer Software"</u>	<u>any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;</u>
<u>"Buyer System"</u>	<u>the Buyer's computing environment (consisting of hardware, software and/or telecommunications</u>

	<p><u>networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;</u></p>
"Buyer Third Party"	means any supplier to the Buyer (other than the Supplier), which is notified to the Supplier from time to time;
"Buyer's Confidential Information"	<p>(a) all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, property rights, trade secrets, Know-How and IPR of the Buyer (including all Buyer Existing IPR and New IPR);</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered confidential which comes (or has come) to the Buyer's attention or into the Buyer's possession in connection with the<u>this</u> Contract; and</p> <p>information derived from any of the above;</p>
"Central Government Body"	<p>a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <p>(a) Government Department;</p> <p>(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);</p> <p>(c) Non-Ministerial Department; or</p> <p>(d) Executive Agency;</p>
"Change in Law"	any change in Law which impacts on the supply of the Deliverables and performance of the <u>this</u> Contract which comes into force after the Start <u>Effective</u> Date;
"Change of Control"	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Charges"	the prices (exclusive of any applicable VAT), payable to the Supplier by the Buyer under the <u>this</u>

	Contract, as set out in the Award Form, for the full and proper performance by the Supplier of its obligations under the this Contract less any Deductions;
"Claim"	any claim which it appears that a Beneficiary is, or may become, entitled to indemnification under this Contract;
"Commercially Sensitive Information"	the Confidential Information listed in the Award Form Schedule 5 (Commercially Sensitive Information) (if any) comprising of commercially sensitive information relating to the Supplier, its IPR or its business or which the Supplier has indicated to the Buyer that, if disclosed by the Buyer, would cause the Supplier significant commercial disadvantage or material financial loss;
"Comparable Supply"	the supply of Deliverables to another Buyer of the Supplier that are the same or similar to the Deliverables;
"Compliance Officer"	the person(s) appointed by the Supplier who is responsible for ensuring that the Supplier complies with its legal obligations;
"Confidential Information"	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the Buyer or the Supplier, including IPRs, together with information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as " confidential ") or which ought reasonably to be considered to be confidential;
"Conflict of Interest"	a conflict between the financial or personal duties of the Supplier or the Supplier Staff and the duties owed to the Buyer under the this Contract, in the reasonable opinion of the Buyer;
"Contract"	the contract between the Buyer and the Supplier, which consists of the terms set out and referred to in the Award Form;
"Contract Period"	the term of the this Contract from the earlier of the: (a) Start Date; or (b) the Effective Date, (c)- until the End Date;

"Contract Value"	the higher of the actual or expected total Charges paid or payable under the this Contract where all obligations are met by the Supplier;
"Contract Year"	a consecutive period of twelve (12) Months commencing on the Start Effective Date or each anniversary thereof;
"Control"	control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Controller"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Core Terms"	the Buyer's terms and conditions which apply to and comprise one part of the this Contract set out in the document called "Core Terms" ;
"Costs"	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Deliverables:</p> <ul style="list-style-type: none">(a) the cost to the Supplier or the Key Subcontractor (as the context requires), calculated per Work Day, of engaging the Supplier Staff, including:<ul style="list-style-type: none">(i) base salary paid to the Supplier Staff;(ii) employer's National Insurance contributions;(iii) pension contributions;(iv) car allowances;(v) any other contractual employment benefits;(vi) staff training;(vii) work place accommodation;(viii) work place IT equipment and tools reasonably necessary to provide the Deliverables (but not including items included within limb (b) below); and(ix) reasonable recruitment costs, as agreed with the Buyer;(b) costs incurred in respect of Supplier Assets which would be treated as capital costs

according to generally accepted accounting principles within the UK, which shall include the cost to be charged in respect of Supplier Assets by the Supplier to the Buyer or (to the extent that risk and title in any Supplier Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those Supplier Assets;

- (c) operational costs which are not included within (a) or (b) above, to the extent that such costs are necessary and properly incurred by the Supplier in the provision of the Deliverables; and
- (d) Reimbursable Expenses to the extent these have been specified as allowable in the Award Form and are incurred in delivering any Deliverables;

but excluding:

- (a) ~~(e)~~ Overhead;
- (b) ~~(f)~~ financing or similar costs;
- (c) ~~(g)~~ maintenance and support costs to the extent that these relate to maintenance and/or support Deliverables provided beyond the Contract Period whether in relation to Supplier Assets or otherwise;
- (d) ~~(h)~~ taxation;
- (e) ~~(i)~~ fines and penalties;
- (f) ~~(j)~~ amounts payable under Schedule 12 (Benchmarking) where such Schedule is used; and
- (g) ~~(k)~~ non-cash items (including depreciation, amortisation, impairments and movements in provisions);

"COTS Software" or "Commercial off the shelf Software"

non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;

"Critical Service Level Failure"

has the meaning given to it in the Award Form;

"Crown Body"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales Welsh Government), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown IPR"	means any IPR which is owned by or licensed to the Crown, and which are or have been developed independently of the this Contract (whether prior to the Start Effective Date or otherwise);
"CRTPA"	the Contract Rights of Third Parties Act 1999;
<u>"Data Loss Event"</u>	<u>any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.</u>
"Data Protection Impact Assessment"	an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Legislation"	(i) the UK GDPR, (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; and (iv) (to the extent that it applies) the EU GDPR;
"Data Protection Liability Cap"	has the meaning given to it in the Award Form;
"Data Protection Officer"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"Deductions"	all Service Credits, Delay Payments (if applicable), or any other deduction which the Buyer is paid or is payable to the Buyer under the this Contract;
"Default"	any breach of the obligations of the Supplier

(including abandonment of ~~the~~this Contract in breach of its terms) or any other default (including ~~material default~~Material Default), act, omission, negligence or statement of the Supplier, of its Subcontractors or any Supplier Staff howsoever arising in connection with or in relation to the subject-matter of ~~the~~this Contract and in respect of which the Supplier is liable to the Buyer;

<u>"Defect"</u>	<p><u>any of the following:</u></p> <p>(a) <u>any error, damage or defect in the manufacturing of a Deliverable; or</u></p> <p>(b) <u>any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or</u></p> <p>(c) <u>any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; or</u></p> <p>(d) <u>any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;</u></p>
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"Delay Payments" the amounts (if any) payable by the Supplier to the Buyer in respect of a delay in respect of a Milestone as specified in the Implementation Plan;

"Deliverables" Goods ~~and/or~~, Services or software that may be ordered and/or developed under ~~the~~this Contract including the Documentation;

"Delivery" delivery of the relevant Deliverable or Milestone in accordance with the terms of ~~the~~this Contract as confirmed and accepted by the Buyer by the either (a) confirmation in writing to the Supplier; or (b) where Schedule 8 (Implementation Plan and

	Testing) is used issue by the Buyer of a Satisfaction Certificate. "Deliver" and "Delivered" shall be construed accordingly;
"Dependent Parent Undertaking"	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
"Disaster"	the occurrence of one or more events which, either separately or cumulatively, mean that the Deliverables, or a material part thereof will be unavailable (or could reasonably be anticipated to be unavailable) for the period specified in the Award Form (for the purposes of this definition the "Disaster Period");
"Disclosing Party"	the Party directly or indirectly providing Confidential Information to the other Party in accordance with Clause 19 (What you must keep confidential);
"Dispute"	any claim, dispute or difference (whether contractual or non-contractual) arising out of or in connection with the this Contract or in connection with the negotiation, existence, legal validity, enforceability or termination of the this Contract, whether the alleged liability shall arise under English law or under the law of some other country and regardless of whether a particular cause of action may successfully be brought in the English courts;
"Dispute Resolution Procedure"	the dispute resolution procedure set out in Clause 39 (Resolving disputes);
"Documentation"	descriptions of the Services and Service Levels, technical specifications, user manuals, training manuals, operating manuals, process definitions and procedures, system environment descriptions and all such other documentation (whether in hardcopy or electronic form) is required to be supplied by the Supplier to the Buyer under the this

	Contract as:
	(a) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Buyer to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide the Deliverables
	(b) is required by the Supplier in order to provide the Deliverables; and/or
	(c) has been or shall be generated for the purpose of providing the Deliverables;
"DOTAS"	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions;
"DPA 2018"	The Data Protection Act 2018;
"Due Diligence Information"	any information supplied to the Supplier by or on behalf of the Buyer prior to the Start Effective Date;
"Effective Date"	the date on which the final Party has signed the this Contract;
"EIR"	the Environmental Information Regulations 2004;
"Employment Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;
"End Date"	the earlier of: (a) the Expiry Date as extended by the Buyer under Clause 14.2; or (b) if the this Contract is terminated before the date specified in (a) above, the date of termination of the this Contract;
"End User"	means a party that is accessing the Deliverables provided pursuant to this Contract (including the Buyer where it is accessing services on its own account as a user);
"Environmental"	to conserve energy, water, wood, paper and other

"Policy"	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, including any written environmental policy of the Buyer;
"Equality and Human Rights Commission"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Escalation Meeting"	means a meeting between the Supplier Authorised Representative and the Buyer Authorised Representative to address issues that have arisen during the Rectification Plan Process;
"Estimated Year 1 Charges"	the anticipated total Charges payable by the Buyer in the first Contract Year specified in the Award Form;
"Estimated Yearly Charges"	means for the purposes of calculating each Party's annual liability under Clause 15.1: <ul style="list-style-type: none">(a) in the first Contract Year, the Estimated Year 1 Charges; or(b) in any subsequent Contract Years, the Charges paid or payable in the previous Contract Year; or(c) after the end of thethis Contract, the Charges paid or payable in the last Contract Year during the Contract Period;
"EU"	European Union
"EU GDPR"	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;
"Existing IPR"	any and all IPR that are owned by or licensed to either Party and which are or have been developed independently of the this Contract (whether prior to the Start Date or otherwise);
"Exit Plan"	has the meaning given to it in Paragraph 4.1 of Schedule 30 (Exit Plan);
"Expiry Date"	the date of the end of the this Contract as stated in the Award Form;

““Extension Period””	such period or periods beyond which the Initial Period may be extended, specified in the Award Form;
““FDE Group””	the Supplier and any Additional FDE Group Member;
"Financial Distress Event"	<p>The occurrence of one or more the following events:</p> <ul style="list-style-type: none">(a) the credit rating of any FDE Group entity drops below the applicable Credit Rating Threshold of the relevant Rating Agency;(b) any FDE Group entity issues a profits warning to a stock exchange or makes any other public announcement, in each case about a material deterioration in its financial position or prospects;(c) there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of any FDE Group entity;(d) any FDE Group entity commits a material breach of covenant to its lenders;(e) a Key Subcontractor notifies the Buyer that the Supplier has not paid any material sums properly due under a specified invoice and not subject to a genuine dispute;(f) any FDE Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than <u>nine (9)</u> months after its accounting reference date without an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;(g) any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Buyer which the Buyer (acting reasonably) considers to be adequate;(h) the directors and/or external auditors of any FDE Group entity conclude that a material uncertainty exists in relation to that FDE Group entity’s going concern in

the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;

- (i) any of the following:
- (i) any FDE Group entity makes a public announcement which contains commentary with regards to that FDE Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
 - (ii) commencement of any litigation against any FDE Group entity with respect to financial indebtedness greater than £5m or obligations under a service contract with a total contract value greater than £5m;
 - (iii) non-payment by any FDE Group entity of any financial indebtedness;
 - (iv) any financial indebtedness of any FDE Group entity becoming due as a result of an event of default;
 - (v) the cancellation or suspension of any financial indebtedness in respect of any FDE Group entity; or
 - (vi) an external auditor of any FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE Group entity,

in each case which the Buyer reasonably believes (or would be likely reasonably to believe) could directly impact on the continued provision of the Deliverables in accordance with ~~the~~[this](#) Contract; or

- (j) any **[one]** of the Financial Indicators set out in Part C of Annex 2 of Schedule 24 for any of the FDE Group entities failing to meet the required Financial Target Threshold;

"Financial Report"

a report provided by the Supplier to the Buyer that:

- (a) to the extent permitted by Law, provides a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
- (b) to the extent permitted by Law, provides detail a true and fair reflection of the costs and expenses to be incurred by Key Subcontractors (as requested by the Buyer);
- (c) is in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Buyer to the Supplier on or before the ~~Start~~[Effective](#) Date for the purposes of this Contract; and
- (d) is certified by the Supplier's Chief Financial Officer or Director of Finance;

"Financial Transparency Objectives"

means:

- (a) the Buyer having a clear analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Staff in providing the Services and the Supplier Profit Margin so that it can understand any payment sought by the Supplier;
- (b) the Parties being able to understand Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;
- (c) the Parties being able to understand the quantitative impact of any Variations that affect ongoing Costs and identifying how these could be mitigated and/or reflected in the Charges;
- (d) the Parties being able to review, address issues with and ~~re-forecast~~[re-forecast](#) progress in relation to the provision of the Services;
- (e) the Parties challenging each other with ideas for efficiency and improvements; and
- (f) enabling the Buyer to demonstrate that it is achieving value for money for the tax payer relative to current market prices;

"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
"Force Majeure Event"	<p>any event, circumstance, matter or cause affecting the performance by either the Buyer or the Supplier of its obligations arising from:</p> <ul style="list-style-type: none">(a) acts, events, omissions, happenings or non-happenings beyond the reasonable control of the Affected Party which prevent or materially delay the Affected Party from performing its obligations under a Contract;(b) riots, civil commotion, war or armed conflict, acts of terrorism, nuclear, biological or chemical warfare;(c) acts of a Crown Body, local government or regulatory bodies;(d) fire, flood or any disaster; or(e) an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding:<ul style="list-style-type: none">(i) any industrial dispute relating to the Supplier, the Supplier Staff (including any subsets of them) or any other failure in the Supplier or the Subcontractor's supply chain;(ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and(iii) any failure of delay caused by a lack of funds, <p>and which is not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party;</p>
"Force Majeure Notice"	a written notice served by the Affected Party on the other Party stating that the Affected Party believes that there is a Force Majeure Event;

"General Anti-Abuse Rule"	(a) the legislation in Part 5 of the Finance Act 2013 and ; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid National Insurance contributions;
"General Change in Law"	a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
"Goods"	goods made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form ;
"Good Industry Practice"	<u>At any time the</u> standards, practices, methods and procedures conforming to the Law and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected <u>at such time</u> from a skilled and experienced person or body engaged within the relevant industry or business sector;
"Government"	the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Government Data"	<u>(a)</u> the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any of the Buyer's Confidential Information, and which: <u>(i)</u> (a) are supplied to the Supplier by or on behalf of the Buyer; <u>and/or</u> <u>(ii)</u> (b) the Supplier is required to generate, process, store or transmit pursuant to the <u>this</u> Contract; <u>or</u> <u>(b)</u> <u>any Personal Data for which the Buyer is Controller</u> ;
"Government	the Government's preferred method of purchasing

Procurement Card"	and payment for low value goods or services https://www.gov.uk/government/publications/government-procurement-card--2 ;
"Guarantor"	the person (if any) who has entered into a guarantee in the form set out in Schedule 23 (Guarantee) in relation to this Contract;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"HMRC"	Her <u>His</u> Majesty's Revenue and Customs;
<u>"ICT Environment"</u>	<u>the Buyer System and the Supplier System;</u>
"ICT Policy"	the Buyer's policy in respect of information and communications technology, referred to in the Award Form <u>(if used)</u> , which is in force as at the Start <u>Effective</u> Date (a copy of which has been supplied to the Supplier), as updated from time to time in accordance with the Variation Procedure;
"Impact Assessment"	an assessment of the impact of a Variation request by the Buyer completed in good faith, including: <ul style="list-style-type: none">(a) details of the impact of the proposed Variation on the Deliverables and the Supplier's ability to meet its other obligations under the<u>this</u> Contract;(b) details of the cost of implementing the proposed Variation;(c) details of the ongoing costs required by the proposed Variation when implemented, including any increase or decrease in the Charges (as applicable), any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;(d) a timetable for the implementation, together with any proposals for the testing of the Variation; and(e) such other information as the Buyer may reasonably request in (or in response to) the Variation request;
"Implementation Plan"	the plan for provision of the Deliverables set out in Schedule 8 (Implementation Plan and Testing)

	where that Schedule is used or otherwise as agreed between the Supplier and the Buyer;
"Incorporated Terms"	the contractual terms applicable to the this Contract specified in the Award Form;
"Indemnifier"	a Party from whom an indemnity is sought under this Contract;
"Independent Controller"	a party which is Controller of the same Personal Data as the other Party and there is no element of joint control with regards to that Personal Data;
"Indexation"	the adjustment of an amount or sum in accordance with the Award Form this Contract ;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000;
"Information Commissioner"	the UK's independent authority which deals with ensuring information relating to rights in the public interest and data privacy for individuals is met, whilst promoting openness by public bodies;
"Initial Period"	the initial term of the this Contract specified in the Award Form;
"Insolvency Event"	with respect to any person, means: <ul style="list-style-type: none">(a) that person suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or:<ul style="list-style-type: none">(i) (being a company or an LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or(ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;(b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a

moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, an LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;

- (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
- (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person's assets and such attachment or process is not discharged within fourteen (14) days;
- (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- (f) where that person is a company, an LLP or a partnership:
 - (i) a petition is presented (which is not dismissed within fourteen (14) days of its service), a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that person other than for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (ii) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is filed at Court or given or if an administrator is appointed, over that person;
 - (iii) (being a company or an LLP) the holder of a qualifying floating charge

over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or

- (iv) (being a partnership) the holder of an agricultural floating charge over the assets of that person has become entitled to appoint or has appointed an agricultural receiver; or

- (g) ~~(a)~~ any event occurs, or proceeding is taken, with respect to that person in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned above;

"Installation Works"

all works which the Supplier is to carry out at the beginning of the Contract Period to install the Goods in accordance with ~~the~~[this](#) Contract;

"Intellectual Property Rights" or "IPR"

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, goodwill, designs, Know-How, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction;

"Invoicing Address"

~~the address to which the Supplier shall invoice the Buyer as specified in the Award Form;~~

"IP Completion Day"

has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;

"
=

"IPR Claim"

any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR [\(excluding COTS Software where Part B of Schedule 36 \(Intellectual](#)

	<p>Property Rights) is used), used to provide the Deliverables or otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Buyer in the fulfilment of its obligations under thethis Contract;</p>
"IR35"	<p>the off-payroll rules requiring individuals who work through their company pay the same tax and National Insurance contributions as an employee which can be found online at: https://www.gov.uk/guidance/ir35-find-out-if-it-applies;</p>
"Joint Controller Agreement"	<p>the agreement (if any) entered into between the Buyer and the Supplier substantially in the form set out in Annex 2 of Schedule 20 (Processing Data);</p>
"Joint Control"	<p>where two (2) or more Controllers jointly determine the purposes and means of Processing;</p>
"Joint Controllers"	<p>where two or more Controllers jointly determine the purposes and means of Processinghas the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;</p>
"Key Staff"	<p>the persons who the Supplier shall appoint to fill key roles in connection with the Services as listed in Annex 1 of Schedule 29 (Key Supplier Staff);</p>
"Key Sub-Contract"	<p>each Sub-Contract with a Key Subcontractor;</p>
"Key Subcontractor"	<p>any Subcontractor:</p> <ul style="list-style-type: none">(a) which is relied upon to deliver any work package within the Deliverables in their entirety; and/or(b) which, in the opinion of the Buyer performs (or would perform if appointed) a critical role in the provision of all or any part of the Deliverables; and/or(c) with a Sub-Contract with thethis Contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under thethis Contract, <p>and the Supplier shall list all such Key Subcontractors in section 29 of the Award Form;</p>
"Know-How"	<p>all ideas, concepts, schemes, information,</p>

	knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Deliverables but excluding know-how already in the other Party's possession before the StartEffective Date;
"Law"	any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, right within the meaning of the European Union (Withdrawal) Act 2018 as amended by European Union (Withdrawal Agreement) Act 2020, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;
"Law Enforcement Processing"	processing under Part 3 of the DPA 2018;
"Losses"	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;
<u>"Malicious Software"</u>	<u>any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;</u>
<u>"Material Default"</u>	<u>a single serious Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied)</u>
"Marketing Contact"	shall be the person identified in the Award Form;
"Milestone"	an event or task described in the Implementation Plan;
"Milestone Date"	the target date set out against the relevant Milestone in the Implementation Plan by which the

	Milestone must be Achieved;
"Month"	a calendar month and "Monthly" shall be interpreted accordingly;
"National Insurance"	contributions required by the Social Security Contributions and Benefits Act 1992 and made in accordance with the Social Security (Contributions) Regulations 2001 (SI 2001/1004);
"New IPR"	<p>(a) IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the<u>this</u> Contract and updates and amendments of these items including database schema; and/or</p> <p>(b) IPR in or arising as a result of the performance of the Supplier's obligations under the<u>this</u> Contract and all updates and amendments to the same;</p> <p>but shall not include the Supplier's Existing IPR. Unless otherwise agreed in writing, any New IPR should be recorded in Schedule 36 and updated regularly <u>[Guidance: include the following wording where Part B of Schedule 36 (Intellectual Property Rights) is used] [or Specially Written Software];</u></p>
"New IPR Item"	means a deliverable, document, product or other item within which New IPR subsists;
"Notifiable Default"	means: <p>(a) the Supplier commits a material<u>Material</u> Default; and/or</p> <p>(b) the performance of the Supplier is likely to cause or causes a Critical Service Level Failure;</p>
"Object Code"	<u>software and/or data in machine-readable complied object code form;</u>
"Occasion of Tax Non-Compliance"	where: <p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the</p>

Halifax Abuse Principle or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime in any jurisdiction; and/or
- (b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion;

"Open Book Data"

complete and accurate financial and non-financial information which is sufficient to enable the Buyer to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of ~~the~~[this](#) Contract, including details and all assumptions relating to:

- (a) the Supplier's Costs broken down against each Good and/or Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all Deliverables;
- (b) operating expenditure relating to the provision of the Deliverables including an analysis showing:
 - (i) the unit costs and quantity of Goods and any other consumables and bought-in Deliverables;
 - (ii) ~~(ii)~~ manpower resources broken down into the number and grade/role of all Supplier Staff (free of any contingency) together with a list of agreed rates against each manpower grade;

- (iv) ~~(iii)~~ a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier Profit Margin; and
- (v) ~~(iv)~~ Reimbursable Expenses, if allowed under the Award Form;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Deliverables;
- (e) the Supplier Profit achieved over the Contract Period and on an annual basis;
- (f) confirmation that all methods of Cost apportionment and Overhead allocation are consistent with and not more onerous than such methods applied generally by the Supplier;
- (g) an explanation of the type and value of risk and contingencies associated with the provision of the Deliverables, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period;

"Open Licence"

means any material that is published for use, with rights to access ~~and~~, copy, modify and publish, by any person for free, under a generally recognised open licence including Open Government Licence as set out at <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/> and the Open Standards Principles documented at <https://www.gov.uk/government/publications/open-standards-principles/open-standards-principles>, and includes the Open Source publication of Software;

"Open Source"

computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;

"Open Licence Publication Material"

means items created pursuant to ~~the~~this Contract which the Buyer may wish to publish as Open Licence which are supplied in a format suitable for

	publication under Open Licence;
"Overhead"	those amounts which are intended to recover a proportion of the Supplier's or the Key Subcontractor's (as the context requires) indirect corporate costs (including financing, marketing, advertising, research and development and insurance costs and any fines or penalties) but excluding allowable indirect costs apportioned to facilities and administration in the provision of Supplier Staff and accordingly included within limb (a) of the definition of "Costs";
"Parent Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Parliament"	takes its natural meaning as interpreted by Law;
"Party"	the Buyer or the Supplier and "Parties" shall mean both of them where the context permits;
"Personal Data"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Personal Data Breach"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Prescribed Person"	a legal adviser, an MP or an appropriate body which a whistle-blower may make a disclosure to as detailed in "Whistleblowing: list of prescribed people and bodies" , 24 November 2016, available online at: https://www.gov.uk/government/publications/blowing-the-whistle-list-of-prescribed-people-and-bodies-2/whistleblowing-list-of-prescribed-people-and-bodies ;
"Processing"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor"	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;
"Processor Personnel"	all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Subprocessor engaged in the performance of its obligations under the this Contract;
"Progress Meeting"	a meeting between the Buyer Authorised Representative and the Supplier Authorised Representative;
"Progress"	a report provided by the Supplier indicating the

Report"	steps taken to achieve Milestones or delivery dates;
"Prohibited Acts"	<p>(a) to directly or indirectly offer, promise or give any person working for or engaged by the Buyer or any other public body a financial or other advantage to:</p> <ul style="list-style-type: none">(i) induce that person to perform improperly a relevant function or activity; or(ii) reward that person for improper performance of a relevant function or activity; <p>(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with thethis Contract; or</p> <p>(c) committing any offence:</p> <ul style="list-style-type: none">(i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or(ii) under legislation or common law concerning fraudulent acts; or(iii) defrauding, attempting to defraud or conspiring to defraud the Buyer or other public body; or <p>(d) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;</p>
"Protective Measures"	<p>technical and organisational measures which must take account of:</p> <ul style="list-style-type: none">(a) the nature of the data to be protected(b) harm that might result from Data Loss Event;(c) state of technological development(d) the cost of implementing any measures <p><u>technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation</u> including pseudonymising and encrypting</p>

	<p>Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 16 (Security);</p>
"Public Sector Body "	<p>means a formally established organisation that is (at least in part) publicly funded to deliver a public or government service;</p>
"Recall"	<p>a request by the Supplier to return Goods to the Supplier or the manufacturer after the discovery of safety issues or defects (including defects in the IPR rights) that might endanger health or hinder performance;</p>
"Recipient Party"	<p>the Party which receives or obtains directly or indirectly Confidential Information;</p>
"Rectification Plan"	<p>the Supplier's plan (or revised plan) to rectify its breach using the template in Schedule 25 (Rectification Plan) which shall include:</p> <ul style="list-style-type: none">(a) full details of the Notifiable Default that has occurred, including a root cause analysis;(b) the actual or anticipated effect of the Notifiable Default; and(c) the steps which the Supplier proposes to take to rectify the Notifiable Default (if applicable) and to prevent such Notifiable Default from recurring, including timescales for such steps and for the rectification of the Notifiable Default (where applicable);
"Rectification Plan Process"	<p>the process set out in Clause 11;</p>
"Regulations"	<p>the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2015 (as the context requires);</p>
"Reimbursable Expenses"	<p>the reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Buyer's</p>

	<p>expenses policy current from time to time, but not including:</p> <ul style="list-style-type: none">(a) travel expenses incurred as a result of Supplier Staff travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Buyer otherwise agrees in advance in writing; and(b) subsistence expenses incurred by Supplier Staff whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
"Relevant Requirements"	all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	HMRC, or, if applicable, the tax authority in the jurisdiction in which the Supplier is established;
"Reminder Notice"	a notice sent in accordance with Clause 14.6.1 given by the Supplier to the Buyer providing notification that payment has not been received on time;
"Replacement Deliverables"	any deliverables which are substantially similar to any of the Deliverables and which the Buyer receives in substitution for any of the Deliverables, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Supplier"	any third party provider of Replacement Deliverables appointed by or at the direction of the Buyer from time to time or where the Buyer is providing Replacement Deliverables for its own account, shall also include the Buyer;
"Request For Information"	a request for information or an apparent request relating to the this Contract for the provision of the Deliverables or an apparent request for such information under the FOIA or the EIRs;
"Required Action"	means the action the Buyer will take and what Deliverables it will control during the Step-In Process;
"Required Insurances"	the insurances required by Schedule 22 (Insurance Requirements);

"Satisfaction Certificate"	the certificate (materially in the form of the document contained in Annex 2 of Part B of Schedule 8 (Implementation Plan and Testing) or as agreed by the Parties where Schedule 8 is not used in this Contract) granted by the Buyer when the Supplier has Achieved a Milestone or a Test;
"Schedules"	any attachment to the this Contract which contains important information specific to each aspect of buying and selling;
"Security Management Plan"	the Supplier's security management plan prepared pursuant to Schedule 16 (Security) (if applicable);
"Security Policy"	the Buyer's security policy, referred to in the Award Form (if used) , in force as at the StartEffective Date (a copy of which has been supplied to the Supplier), as updated from time to time and notified to the Supplier;
"Serious Fraud Office"	the UK Government body named as such as may be renamed or replaced by an equivalent body from time to time;
"Service Credits"	any service credits specified in the Annex to Part A of Schedule 10 (Service Levels) being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Levels"	any service levels applicable to the provision of the Deliverables under the this Contract (which, where Schedule 10 (Service Levels) is used in this Contract, are specified in the Annex to Part A of such Schedule);
"Service Period"	has the meaning given to it in the Award Form;
"Services"	services made available by the Supplier as specified in Schedule 2 (Specification) and in relation to a Contract as specified in the Award Form ;
"Sites"	any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: (a) the Deliverables are (or are to be) provided; or (b) the Supplier manages, organises or otherwise directs the provision or the use of

the Deliverables;

- (c) those premises at which any Supplier Equipment or any part of the Supplier System is located (where ICT Services are being provided);

"SME" an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium enterprises;

"Social Value" the additional social benefits that can be achieved in the delivery of ~~the~~[this](#) Contract set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used);

"Social Value KPIs" the Social Value priorities set out in Schedule 2 (Specification) and either (i) Schedule 10 (Service Levels) (where used) or (ii) Part C of Schedule 26 (Sustainability) (where Schedule 10 (Service Levels) is not used);

"Social Value Report" the report the Supplier is required to provide to the Buyer pursuant to Paragraph 1 of Part C of Schedule 26 (Sustainability) where Schedule 10 (Service Levels) is not used;

"Software" [any software including Specially Written Software, COTS Software and software that is not COTS Software;](#)

"Software Supporting Materials" [has the meaning given to it in Schedule 36 \(Intellectual Property Rights\);](#)

"Source Code" [computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;](#)

"Special Terms" any additional terms and conditions set out in the Award Form incorporated into ~~the~~[this](#) Contract;

"Special IPR Terms Specially" any ~~additional terms and conditions relating to IPR set out in the~~ Award Form incorporated into the

<u>Written Software</u>	Contract software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Subcontractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR ;
"Specific Change in Law"	a Change in Law that relates specifically to the business of the Buyer and which would not affect a Comparable Supply where the effect of that Specific Change in Law on the Deliverables is not reasonably foreseeable at the Start <u>Effective</u> Date;
"Specification"	the specification set out in Schedule 2 (Specification), as may, in relation to the Contract, be supplemented by the Award Form ;
"Standards"	any: <ul style="list-style-type: none">(a) standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with;(b) standards detailed in the specification in Schedule 2 (Specification);(c) standards detailed by the Buyer in the Award Form or agreed between the Parties from time to time;(d) relevant Government codes of practice and guidance applicable from time to time;
"Start Date"	the date specified on the Award Form;
"Step-In Process"	the process set out in Clause 13;
"Step-In Trigger Event"	means: <ul style="list-style-type: none">(a) the Supplier's level of performance constituting a Critical Service Level Failure;(b) the Supplier committing a material<u>Material</u>

Default which is irremediable;

- (c) where a right of termination is expressly reserved in this Contract;
- (d) an Insolvency Event occurring in respect of the Supplier or any Guarantor ~~required under the Award Form~~;
- (e) a Default by the Supplier that is materially preventing or materially delaying the provision of the Deliverables or any material part of them;
- (f) the Buyer considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this agreement;
- (g) the Buyer being advised by a regulatory body that the exercise by the Buyer of its rights under Clause 13 is necessary;
- (h) the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Deliverables; and/or
- (i) a need by the Buyer to take action to discharge a statutory duty;

"Step-Out Plan"

means the Supplier's plan that sets out how the Supplier will resume the provision of the Deliverables and perform all its obligations under ~~the~~[this](#) Contract following the completion of the Step-In Process;

"Storage Media"

the part of any device that is capable of storing and retrieving data;

"Sub-Contract"

any contract or agreement (or proposed contract or agreement), other than ~~the~~[this](#) Contract, pursuant to which a third party:

- (a) provides the Deliverables (or any part of them);
- (b) provides facilities or services necessary for the provision of the Deliverables (or any part of them); and/or
- (c) is responsible for the management, direction or control of the provision of the Deliverables (or any part of them);

"Subcontractor"	any person other than the Supplier, who is a party to a Sub-Contract and the servants or agents of that person;
"Subprocessor"	any third Party appointed to process Personal Data on behalf of the Supplier <u>Processor</u> related to the <u>this</u> Contract;
"Subsidiary Undertaking"	has the meaning set out in section 1162 of the Companies Act 2006;
"Supplier"	the person, firm or company identified in the Award Form;
"Supplier Assets"	all assets and rights used by the Supplier to provide the Deliverables in accordance with the <u>this</u> Contract but excluding the Buyer Assets;
"Supplier Authorised Representative"	the representative appointed by the Supplier named in the Award Form, or later defined in a Contract;
"Supplier Equipment"	the Supplier's hardware, computer and telecoms devices, equipment, plant, materials and such other items supplied and used by the Supplier (but not hired, leased or loaned from the Buyer) in the performance of its obligations under this Contract;
"Supplier Existing IPR"	any and all IPR that are owned by or licensed to the Supplier and which are or have been developed independently of the <u>this</u> Contract (whether prior to the Start <u>Effective</u> Date or otherwise);
"Supplier Existing IPR Licence"	means a licence to be offered by the Supplier to the Supplier Existing IPR as set out in Para 1.3 of Schedule 36. (<u>Intellectual Property Rights</u>);
"Supplier Group"	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
"Supplier New and Existing IPR Licence"	<u>means a licence to be offered by the Supplier to the New IPR and Supplier Existing IPR as set out in Schedule 36 (Intellectual Property Rights);</u> <u>[Guidance: include the following wording where Part B of Schedule 36 (Intellectual Property Rights) is used] [but excluding Buyer Software].</u>
"Supplier	where the Supplier has failed to:

Non-Performance"	<p>(a) Achieve a Milestone by its Milestone Date;</p> <p>(b) provide the Goods and/or Services in accordance with the Service Levels ; and/or</p> <p>(c) comply with an obligation under thethis Contract;</p>
"Supplier Profit"	in relation to a period, the difference between the total Charges (in nominal cash flow terms but excluding any Deductions and total Costs (in nominal cash flow terms) in respect of the this Contract for the relevant period;
"Supplier Profit Margin"	in relation to a period or a Milestone (as the context requires), the Supplier Profit for the relevant period or in relation to the relevant Milestone divided by the total Charges over the same period or in relation to the relevant Milestone and expressed as a percentage;
"Supplier Staff"	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Subcontractor engaged in the performance of the Supplier's obligations under the this Contract;
<u>"Supplier System"</u>	<u>the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);</u>
"Supplier's Confidential Information"	<p>(a) any information, however it is conveyed, that relates to the business, affairs, developments, IPR of the Supplier (including the Supplier Existing IPR) trade secrets, Know-How, and/or personnel of the Supplier;</p> <p>(b) any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential and which comes (or has come) to the Supplier's attention or into the Supplier's possession in connection with thethis Contract;</p> <p><u>(c) Informationinformation</u> derived from any of (a) and (b) above;</p>
"Supplier's	the person identified in the Award Form appointed

Contract Manager"	by the Supplier to oversee the operation of the this Contract and any alternative person whom the Supplier intends to appoint to the role, provided that the Supplier informs the Buyer prior to the appointment;
"Supply Chain Information Report Template"	the document at Annex 1 of Schedule 18 (Supply Chain Visibility);
"Supporting Documentation"	sufficient information in writing to enable the Buyer to reasonably assess whether the Charges, Reimbursable Expenses and other sums due from the Buyer under the this Contract detailed in the information are properly payable;
"Tender Response"	the tender submitted by the Supplier to the Buyer and annexed to or referred to in Schedule 4 (Tender);
"Termination Assistance"	the activities to be performed by the Supplier pursuant to the Exit Plan, and other assistance required by the Buyer pursuant to the Termination Assistance Notice;
<u>"Termination Assistance Period"</u>	<u>the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of Schedule 30 (Exit Management);</u>
"Termination Assistance Notice"	has the meaning given to it in Paragraph 5.1 of Schedule 30 (Exit Management);
"Termination Notice"	a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate the this Contract on a specified date and setting out the grounds for termination;
"Test Issue"	any variance or non-conformity of the Deliverables or Deliverables from their requirements as set out in the this Contract;
"Test Plan"	a plan: <ul style="list-style-type: none">(a) for the Testing of the Deliverables; and(b) setting out other agreed criteria related to the achievement of Milestones;
"Tests and"	any tests required to be carried out pursuant to

"Testing"	the this Contract as set out in the Test Plan or elsewhere in the this Contract and "Tested" shall be construed accordingly;
"Third Party IPR"	Intellectual Property Rights owned by a third party which is or will be used by the Supplier for the purpose of providing the Deliverables;
"Third Party IPR Licence"	means a licence to the Third Party IPR as set out in Paragraph 1.6 of Schedule 36 (Intellectual Property Rights);
"Transparency Information"	the Transparency Reports and the content of the this Contract, including any changes to this Contract agreed from time to time, except for – (a) any information which is exempt from disclosure in accordance with the provisions of the FOIA, which shall be determined by the Buyer; and (b) Commercially Sensitive Information;
"Transparency Reports"	the information relating to the Deliverables and performance pursuant to the this Contract which the Supplier is required to provide to the Buyer in accordance with the reporting requirements in Schedule 6 (Transparency Reports);
"UK GDPR"	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, together with the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018 ;
"Variation"	means a variation to the this Contract;
"Variation Form"	the form set out in Schedule 21 (Variation Form);
"Variation Procedure"	the procedure set out in Clause 28 (Changing the contract);
"VAT"	value added tax in accordance with the provisions of the Value Added Tax Act 1994;

"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;
"Verification Period"	has the meaning given to it in the table in Annex 2 of Schedule 3 (Charges);
"Work Day"	7.5 Work Hours, whether or not such hours are worked consecutively and whether or not they are worked on the same day;
"Work Hours"	the hours spent by the Supplier Staff properly working on the provision of the Deliverables including time spent travelling (other than to and from the Supplier's offices, or to and from the Sites) but excluding lunch breaks;
"Worker"	any one of the Supplier Staff which the Buyer, in its reasonable opinion, considers is an individual to which Procurement Policy Note 08/15 (Tax Arrangements of Public Appointees) (https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees) applies in respect of the Deliverables; and
"Working Day"	any day other than a Saturday or Sunday or public holiday in England and Wales unless specified otherwise by the Parties in the Award Form.

Schedule 3 (Charges)

1. Definitions

[Delete Paragraph 1 if the Maximum Permitted Profit Margin is not to apply (Paragraph 5.5).]

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Anticipated Contract Life Profit Margin" the anticipated Supplier Profit Margin over the Contract Period;

"Maximum Permitted Profit Margin" means the Anticipated Contract Life Profit Margin plus 5%;

2. How Charges are calculated

2.1 The Charges:

2.1.1 shall be calculated in accordance with the terms of this Schedule;

2.1.2 **[Delete if not applicable:** cannot be increased except as specifically permitted by this Schedule and in particular shall only be subject to Indexation where specifically stated in the Award Form; and]

2.2 **[Delete if not applicable:** Any variation to the Charges payable under a Contract must be agreed between the Supplier and the Buyer and implemented using the procedure set out in this Schedule.

3. The pricing mechanisms

~~3.1~~ The pricing mechanisms and prices set out in Annex 1 shall be available for use in calculation of Charges in ~~the~~[this](#) Contract.

4. Are costs and expenses included in the Charges

4.1 **[Delete if Paragraph 5 is not used: Except as expressly set out in Paragraph 5 below, or otherwise stated in the Award Form]** the Charges shall include all costs and expenses relating to the provision of Deliverables. No further amounts shall be payable in respect of matters such as:

4.1.1 incidental expenses such as travel, subsistence and lodging, document or report reproduction, shipping, desktop or office equipment costs, network or data interchange costs or other telecommunications charges; or

4.1.2 costs incurred prior to the commencement of ~~the~~[this](#) Contract.

5. When the Supplier can ask to change the Charges

- 5.1 The Charges will be fixed for the first **[Insert: number]** years following the Start Date (the date of expiry of such period is a "Review Date"). After this Charges can only be adjusted on each following yearly anniversary (the date of each such anniversary is also a "Review Date").
- 5.2 The Supplier shall give the Buyer at least three (3) Months' notice in writing prior to a Review Date where it wants to request an increase. If the Supplier does not give notice in time then it will only be able to request an increase prior to the next Review Date.
- 5.3 Any notice requesting an increase shall include:
- 5.3.1 a list of the Charges to be reviewed;
- 5.3.2 for each of the Charges under review, written evidence of the justification for the requested increase including:
- (a) ~~a~~ [a breakdown of the profit and cost components that comprise the relevant part of the Charges;]
- [Guidance Note: Consider requesting a breakdown of the cost and profit elements for each line item (or similar groups of line items) in the Charges as part of the initial procurement. This provides a benchmark against which future price reviews can be checked]**
- (b) ~~b~~ [details of the movement in the different identified cost components of the relevant Charge;]
- (c) ~~c~~ [reasons for the movement in the different identified cost components of the relevant Charge;]
- (d) ~~d~~ [evidence that the Supplier has attempted to mitigate against the increase in the relevant cost components; and]
- (e) ~~e~~ [evidence that the Supplier's profit component of the relevant Charge is no greater than that applying to Charges using the same pricing mechanism as at the ~~Start~~Effective Date.]
- [Guidance Note: Add anything else the Buyer expects to see from Suppliers. This assumes the Supplier will not be entitled to an increase in the profit element. It may be argued by suppliers that general inflationary pressure devalues the profit element and it too should be increased by ~~a measure such as the Consumer Price Index (CPI)~~ an appropriate price index.]**
- 5.4 The Buyer shall consider each request for a price increase. The Buyer may grant Approval to an increase at its sole discretion.
- 5.5 [Any Approval granted by the Buyer pursuant to Paragraph 5.4 shall be on the condition that the change to the Charges will not result in the Supplier Profit Margin exceeding the Maximum Permitted Profit Margin.]

5.6 Where the Buyer approves an increase then it will be implemented from the first (1st) Working Day following the relevant Review Date or such later date as the Buyer may determine at its sole discretion and Annex 1 shall be updated accordingly.

6. Other events that allow the Supplier to change the Charges

6.1 The Charges can also be varied (and Annex 1 will be updated accordingly) due to:

6.1.1 a Specific Change in Law in accordance with Clauses 28.6 to 28.8;

6.1.2 ~~[Delete if there is no Benchmarking Schedule:~~ a benchmarking review in accordance with Schedule 12 (Benchmarking)];

6.1.3 a request from the Supplier, which it can make at any time, to decrease the Charges;

6.1.4 ~~[Delete 6.1.5 if Paragraph 7 is not used:~~ indexation, where Annex 1 states that a particular Charge or any component is “subject to Indexation” in which event Paragraph 7 below shall apply; and]

6.1.5 verification of the Allowable Assumptions in accordance with Paragraph 9.

7. ~~[Delete Paragraph if not applicable: When the Charges are linked to inflation]~~ [Guidance: see Paragraph 4.4 of the MSC Guidance document for further guidance regarding indexation. Financial Transparency Objectives can be a helpful compliment to Indexation (where proportionate to use)]

7.1 Where ~~[Insert if other items are subject to variation: any amounts]~~ [the Charges] are stated to be “subject to Indexation” they shall be adjusted in line with changes in the ~~Consumer Price Index (“CPI”)~~ [Insert name of appropriate price index (or indices) published by the Office of National Statistics or other reputable source] (the “Index”) pursuant to Paragraph 7.4. All other costs, expenses, fees and charges shall not be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier.

7.2 The following costs, expenses, fees or charges included in the Charges shall not be subject to adjustment under this Paragraph 7 and shall not be included in the relevant amount or sum for the purposes of Paragraph 7.1:

7.2.1 Any costs charged by the Supplier to the Buyer in respect of Supplier Assets or Buyer Assets (including capital costs and installation, maintenance and support costs) which are incurred by the Supplier prior to the relevant adjustment date but which remain to be recovered through the Charges.

7.3 ~~7.2~~ Charges shall not be indexed during the first ~~[Insert: number]~~ years following the Start Date (the “Non-Indexation Period”).

7.4 ~~7.3~~ Where Annex 1 states a Charge is subject to Indexation then it will be indexed on the date which is ~~[Insert: number] years~~ one year after the ~~Start~~

Schedule 3 (Charges)

Crown Copyright 2022

~~Date~~end of the Non-Indexation Period to reflect the percentage change in the ~~GPI since the Start Date. They shall be indexed~~Index during the one year period immediately following the end of the Non-Indexation Period. Subsequent adjustments shall take place on each following yearly anniversary to reflect the percentage change in the ~~GPI~~Index since the previous change.

7.5 ~~7.4~~ Where the ~~GPI~~ Index:

7.5.1 ~~7.4.1~~ used to carry out an indexation calculation is updated (for example due to it being provisional) then the indexation calculation shall also be updated unless the Buyer and the Supplier agree otherwise; or

7.5.2 ~~7.4.2~~ is no longer published, the Buyer and the Supplier shall agree a fair and reasonable appropriate replacement that will have substantially index which shall cover to the maximum extent possible the same effect economic activities as the original index.]

8. **[Delete Paragraph if not applicable: When you will be reimbursed for travel and subsistence**

8.1 **Expenses shall only be recoverable where:**

8.1.1 **the Time and Materials pricing mechanism is used; and**

8.1.2 **the Award Form states that recovery is permitted; and**

8.1.3 **they are Reimbursable Expenses and are supported by Supporting Documentation.**

8.2 **The Buyer shall provide a copy of their current expenses policy to the Supplier upon request.]**

9. **[Delete Paragraph if not applicable: Allowable Assumptions**

[Buyer Guidance: Buyers may consider using this paragraph if the Supplier has any concerns about the information provided or the operating environment. The Allowable Assumptions provisions allow the Supplier to set out any identifiable risks and ensures that the contract price changes only if those risks materialise. Any change will need to be carefully considered by the Buyer because it may affect the legitimacy of the procurement process and any contract modification will need to be lawful under the Public Contracts Regulations 2015.

If bidders have not had the opportunity to complete their Due Diligence process it may take longer to negotiate the contract, or produce cost escalation and lead to commercial disputes post contract signing. Buyers should always try to provide the required information before using the Allowable Assumptions mechanisms. The Allowable Assumptions should only be used in exceptional circumstances, for example, when the information is not available at the requisite time.

Please refer to the sections on Due Diligence and Allowable Assumptions in the latest version of the Model Services Contract Guidance on Gov.uk for information on how Buyers should approach this]

- 9.1 Before the end of its associated Verification Period, the Supplier will determine whether each Allowable Assumption is accurate.
- 9.2 The Buyer will provide the Supplier with reasonable assistance when it is determining if an Allowable Assumption is accurate.
- 9.3 Within [ten \(10\)](#) Working Days following the end of a Verification Period, the Supplier will send a written report to the Buyer setting out its verification results for the relevant Allowable Assumption, including whether the Charges or Implementation Plan (if applicable) require adjustment.
- 9.4 Each Allowable Assumption will be deemed to be accurate if the Supplier cannot show has an impact on the Charges or the Implementation Plan to the reasonable satisfaction of the Buyer.
- 9.5 If the Supplier can show that an Allowable Assumption has an impact on either the Charges or the Implementation Plan (if applicable) then:
 - 9.5.1 the Supplier will take all reasonable steps to mitigate the impact of the Allowable Assumption;
 - 9.5.2 the Supplier may propose a reasonable Variation arising as a direct result of such impact and such Variation shall be limited by any constraints set out in the table in Annex 2.]

Annex 1: Rates and Prices

[Guidance Note: The below format is an example of how rates and prices could be set out for a requirement and it ties into the preceding paragraphs of this Schedule 3 (Charges). Should a Buyer wish to set out their own format for rates and prices, the preceding paragraphs of this Schedule 3 (Charges) will need to be reviewed to ensure they are consistent with the new format.]

Table 1: Time and Materials

The Supplier (and its Subcontractor) shall not be entitled to include any uplift for risks or contingencies within its day rates

The rates below shall [not] be subject to variation by way of Indexation

Staff Grade	Day Rate (£)

Table 2: Fixed/Firm Prices

[Guidance Note: if you wish to use indexation - select Fixed Prices below and include the following:]

The rates below shall be subject to variation by way of Indexation.

[Guidance Note: if you don't wish to use indexation - select Firm Prices below and include the following:]

The rates below shall ~~[not]~~ be subject to variation by way of Indexation.

Type of Charge	<u>[Fixed/Firm]</u> Charge (£)
[e.g. M3]	
[e.g. SC3]	

Table 3: Volume Based Prices

The rates below shall [not] be subject to variation by way of Indexation

Charge Number	Unit	Number of units per Service Period	Charge per unit (£)
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Schedule 3 (Charges)

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[e.g. SC1]		[] - []	[]
		[] - []	[]
[e.g. SC2]		[] - []	[]
		[] - []	[]

[Schedule 3 \(Charges\), Crown Copyright 2023.](#) [Subject to Contract]

Schedule 3 (Charges)

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Annex 2: Allowable Assumptions

[Buyer Guidance: Delete Annex if Paragraph 9 not used]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Ref	Description	Potential time impact if not accurate	Potential cost impact if not accurate	How it will be tested	Maximum impact period	Verification period

Schedule 5 (Commercially Sensitive Information)

1. What is the Commercially Sensitive Information?

- 1.1 In this Schedule the Parties have sought to identify the Supplier's Confidential Information that is genuinely commercially sensitive and the disclosure of which would be the subject of an exemption under the FOIA and the EIRs.
- 1.2 Where possible, the Parties have sought to identify when any relevant ~~Information~~[information](#) will cease to fall into the category of ~~Information~~[information](#) to which this Schedule applies in the table below and in the Award Form (which shall be deemed incorporated into the table below).
- 1.3 Without prejudice to the Buyer's obligation to disclose ~~Information~~[information](#) in accordance with FOIA or Clause 20 (When you can share information), the Buyer will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following ~~Information~~[information](#):

No.	Date	Item(s)	Duration of Confidentiality
	[insert date]	[insert details]	[insert duration]

Schedule 6 (Transparency Reports)

[Buyer Guidance: If Schedule 34 (Northern Ireland Law) is used then this Schedule 6 should not be used]

- 1.1 The Supplier recognises that the Buyer is subject to PPN 01/17 (Updates to transparency principles v1.1 (<https://www.gov.uk/government/publications/procurement-policy-note-0117-update-to-transparency-principles>)). The Supplier shall comply with the provisions of this Schedule in order to assist the Buyer with its compliance with its obligations under that PPN.
- 1.2 Without prejudice to the Supplier's reporting requirements set out in ~~the~~[this](#) Contract, within three (3) Months of the ~~Start~~[Effective](#) Date the Supplier shall submit to the Buyer for Approval (such Approval not to be unreasonably withheld or delayed) draft Transparency Reports consistent with the content requirements and format set out in the Annex of this Schedule.
- 1.3 If the Buyer rejects any proposed Transparency Report submitted by the Supplier, the Supplier shall submit a revised version of the relevant report for further Approval within five (5) days of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the Buyer. If the Parties fail to agree on a draft Transparency Report the Buyer shall determine what should be included. Any other disagreement in connection with Transparency Reports shall be treated as a Dispute.
- 1.4 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Buyer at the frequency referred to in the Annex of this Schedule.

Annex A: List of Transparency Reports

Title	Content	Format	Frequency
[Performance]	[]	[]	[]
[Charges]	[]	[]	[]
[Key Subcontractors]	[]	[]	[]
[Technical]	[]	[]	[]
[Performance management]	[]	[]	[]

[Guidance: If you are using this Contract to procure steel, PPN 04/2023: Procuring Steel in Government Contracts may apply. If this PPN applies, you are required to collect data on steel and report on this to BEIS. In this instance, you should consider inserting the example contract clauses accompanying this PPN (amending as required), or an equivalent clause. The PPN applies to all Central Government Departments, Executive Agencies, and Non Departmental Public Bodies when conducting procurements covered by Part 2 of the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016, the Defence and Security Public Contracts Regulations 2011, and the Concessions Contracts Regulations 2016, where steel is being procured directly or indirectly.]

The data requirement aspects relate to projects/programmes:

- (i) [] with a value of £10 million or more; and
- (ii) [] a value of less than £10 million where it is anticipated that the project will require in excess of 500 tonnes of steel.]

Schedule 8 (Implementation Plan and Testing)

Part A - Implementation

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Delay"	(a) a delay in the Achievement of a Milestone by its Milestone Date; or (b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
"Deliverable Item"	an item or feature in the supply of the Deliverables delivered or to be delivered by the Supplier at or before a Milestone Date listed in the Implementation Plan;
"Implementation Period"	has the meaning given to it in Paragraph <u>7.1</u> ;
"Milestone Payment"	a payment identified in the Implementation Plan to be made following the issue of a Satisfaction Certificate in respect of Achievement of the relevant Milestone;

2. Agreeing and following the Implementation Plan

- 2.1 A draft of the Implementation Plan is set out in the Annex to this Schedule. The Supplier shall provide a further draft Implementation Plan **Insert number of days** days after the ~~Start~~Effective Date.
- 2.2 The draft Implementation Plan:
- 2.2.1 must contain information at the level of detail necessary to manage the implementation stage effectively and as the Buyer may otherwise require; and
 - 2.2.2 it shall take account of all dependencies known to, or which should reasonably be known to, the Supplier.
- 2.3 Following receipt of the draft Implementation Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the Implementation Plan. If the Parties are unable to agree the contents of the Implementation Plan within twenty (20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

- 2.4 The Supplier shall provide each of the Deliverable Items identified in the Implementation Plan by the date assigned to that Deliverable Item in the Implementation Plan so as to ensure that each Milestone identified in the Implementation Plan is Achieved on or before its Milestone Date.
- 2.5 The Supplier shall monitor its performance against the Implementation Plan and Milestones (if any) and report to the Buyer on such performance.

3. Reviewing and changing the Implementation Plan

- 3.1 Subject to Paragraph 4.3, the Supplier shall keep the Implementation Plan under review in accordance with the Buyer's instructions and ensure that it is updated on a regular basis.
- 3.2 The Buyer shall have the right to require the Supplier to include any reasonable changes or provisions in each version of the Implementation Plan.
- 3.3 Changes to any Milestones, Milestone Payments and Delay Payments shall only be made in accordance with the Variation Procedure.
- 3.4 Time in relation to compliance with the Implementation Plan shall be of the essence and failure of the Supplier to comply with the Implementation Plan shall be a ~~material~~[Material](#) Default.

4. Security requirements before the Start Date

- 4.1 The Supplier shall note that it is incumbent upon them to understand the lead-in period for security clearances and ensure that all Supplier Staff have the necessary security clearance in place before the Start Date. The Supplier shall ensure that this is reflected in their Implementation Plan.
- 4.2 The Supplier shall ensure that all Supplier Staff and Subcontractors do not access the Buyer's IT systems, or any IT systems linked to the Buyer, unless they have satisfied the Buyer's security requirements.
- 4.3 The Supplier shall be responsible for providing all necessary information to the Buyer to facilitate security clearances for Supplier Staff and Subcontractors in accordance with the Buyer's requirements.
- 4.4 The Supplier shall provide the names of all Supplier Staff and Subcontractors and inform the Buyer of any alterations and additions as they take place throughout the Contract Period.
- 4.5 The Supplier shall ensure that all Supplier Staff and Subcontractors requiring access to the Buyer Premises have the appropriate security clearance. It is the Supplier's responsibility to establish whether or not the level of clearance will be sufficient for access. Unless prior approval has been received from the Buyer, the Supplier shall be responsible for meeting the costs associated with the provision of security cleared escort services.
- 4.6 If a property requires Supplier Staff or Subcontractors to be accompanied by the Buyer's Authorised Representative, the Buyer must be given reasonable notice of such a requirement, except in the case of emergency access.

5. What to do if there is a Delay

- 5.1 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay under this Contract it shall:
- 5.1.1 notify the Buyer as soon as practically possible and no later than within two (2) Working Days from becoming aware of the Delay or anticipated Delay;
 - 5.1.2 include in its notification an explanation of the actual or anticipated impact of the Delay;
 - 5.1.3 comply with the Buyer's instructions in order to address the impact of the Delay or anticipated Delay; and
 - 5.1.4 use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay.

6. Compensation for a Delay

- 6.1 If Delay Payments have been included in the Implementation Plan and a Milestone has not been achieved by the relevant Milestone Date, the Supplier shall pay to the Buyer such Delay Payments (calculated as set out by the Buyer in the Implementation Plan) and the following provisions shall apply:
- 6.1.1 the Supplier acknowledges and agrees that any Delay Payment is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to Achieve the corresponding Milestone;
 - 6.1.2 Delay Payments shall be the Buyer's exclusive financial remedy for the Supplier's failure to Achieve a Milestone by its Milestone Date except where:
 - (a) ~~a)~~ the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 (When the Buyer can end the contract); or
 - (b) ~~b)~~ the delay exceeds the number of days (the "**Delay Period Limit**") specified in the Implementation Plan commencing on the relevant Milestone Date;
 - 6.1.3 the Delay Payments will accrue on a daily basis from the relevant Milestone Date until the date when the Milestone is Achieved;
 - 6.1.4 no payment or other act or omission of the Buyer shall in any way affect the rights of the Buyer to recover the Delay Payments or be deemed to be a waiver of the right of the Buyer to recover any such damages; and
 - 6.1.5 Delay Payments shall not be subject to or count towards any limitation on liability set out in Clause 15 (How much you can be held responsible for).

7. **[Implementation Plan]**

- 7.1 **The Implementation Period will be a [six (6)] Month period.**
- 7.2 **During the Implementation Period, the incumbent supplier shall retain full responsibility for all existing services until the Start Date or as otherwise formally agreed with the Buyer. The Supplier's full service obligations shall formally be assumed on the Start Date as set out in Award Form.**
- 7.3 **In accordance with the Implementation Plan, the Supplier shall:**
- 7.3.1 **work cooperatively and in partnership with the Buyer and incumbent supplier, where applicable, to understand the scope of Services to ensure a mutually beneficial handover of the Services;**
 - 7.3.2 **work with the incumbent supplier and Buyer to assess the scope of the Services and prepare a plan which demonstrates how they will mobilise the Services;**
 - 7.3.3 **liaise with the incumbent supplier to enable the full completion of the Implementation Period activities; and**
 - 7.3.4 **produce an Implementation Plan, to be agreed by the Buyer, for carrying out the requirements within the Implementation Period including, key Milestones and dependencies.**
- 7.4 **The Implementation Plan will include detail stating:**
- 7.4.1 **how the Supplier will work with the incumbent supplier and the Buyer Authorised Representative to capture and load up information such as asset data; and**
 - 7.4.2 **a communications plan, to be produced and implemented by the Supplier, but to be agreed with the Buyer, including the frequency, responsibility for and nature of communication with the Buyer and end users of the Services.**
- 7.5 **In addition, the Supplier shall:**
- 7.5.1 **appoint a Supplier Authorised Representative who shall be responsible for the management of the Implementation Period, to ensure that the Implementation Period is planned and resourced adequately, and who will act as a point of contact for the Buyer;**
 - 7.5.2 **mobilise all the Services specified in the Specification within ~~the~~this Contract;**
 - 7.5.3 **produce an Implementation Plan report for each Buyer Premises to encompass programmes that will fulfil all the Buyer's obligations to landlords and other tenants:**
 - (a) ~~a)~~ the format of reports and programmes shall be in accordance with the Buyer's requirements and particular attention shall be paid to establishing the operating requirements of the occupiers when preparing these programmes which are subject to the Buyer's approval; and**

- (b) ~~b)~~ the Parties shall use reasonable endeavours to agree the contents of the report but if the Parties are unable to agree the contents within twenty (20) Working Days of its submission by the Supplier to the Buyer, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 7.5.4 manage and report progress against the Implementation Plan;
- 7.5.5 construct and maintain an Implementation risk and issue register in conjunction with the Buyer detailing how risks and issues will be effectively communicated to the Buyer in order to mitigate them;
- 7.5.6 attend progress meetings (frequency of such meetings shall be as set out in the Award Form) in accordance with the Buyer's requirements during the Implementation Period. Implementation meetings shall be chaired by the Buyer and all meeting minutes shall be kept and published by the Supplier; and
- 7.5.7 ensure that all risks associated with the Implementation Period are minimised to ensure a seamless change of control between incumbent supplier and the Supplier.]

Annex 1: Implementation Plan

The Implementation Plan is set out below and the Milestones to be Achieved are identified below:

Milestone	Deliverable Items	Duration	Milestone Date	Buyer Responsibilities	Milestone Payments	Delay Payments
[]	[]	[]	[]	[]	[]	[]

The Milestones will be Achieved in accordance with this Part A of this Schedule
For the purposes of Paragraph 6.1.2b) the Delay Period Limit shall be **[insert number of days]**.

Part B - Testing

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Component"	any constituent parts of the Deliverables;
"Material Test Issue"	a Test Issue of Severity Level 1 or Severity Level 2;
"Satisfaction Certificate"	a certificate materially in the form of the document contained in Annex 2 issued by the Buyer when a Deliverable and/or Milestone has satisfied its relevant Test Success Criteria;
"Severity Level"	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
"Test Issue Management Log"	a log for the recording of Test Issues as described further in Paragraph 8.1 of this Schedule;
"Test Issue Threshold"	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
"Test Reports"	the reports to be produced by the Supplier setting out the results of Tests;
"Test Specification"	the specification that sets out how Tests will demonstrate that the Test Success Criteria have been satisfied, as described in more detail in Paragraph 6.2 of this Schedule;
"Test Strategy"	a strategy for the conduct of Testing as described further in Paragraph 3.2 of this Schedule;
"Test Success Criteria"	in relation to a Test, the test success criteria for that Test as referred to in Paragraph 5 of this Schedule;
"Test Witness"	any person appointed by the Buyer pursuant to Paragraph 9 of this Schedule; and

"Testing Procedures"	the applicable testing procedures and Test Success Criteria set out in this Schedule.
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2. How testing should work

- 2.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, Test Specification and the Test Plan.
- 2.2 The Supplier shall not submit any Deliverable for Testing:
 - 2.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 2.2.2 until the Buyer has issued a Satisfaction Certificate in respect of any prior, dependant Deliverable(s); and
 - 2.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).
- 2.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 2.4 Prior to the issue of a Satisfaction Certificate, the Buyer shall be entitled to review the relevant Test Reports and the Test Issue Management Log.

3. Planning for testing

- 3.1 The Supplier shall develop the final Test Strategy as soon as practicable after the ~~Start~~[Effective](#) Date but in any case, no later than twenty (20) Working Days after the ~~Start~~[Effective](#) Date.
- 3.2 The final Test Strategy shall include:
 - 3.2.1 an overview of how Testing will be conducted in relation to the Implementation Plan;
 - 3.2.2 the process to be used to capture and record Test results and the categorisation of Test Issues;
 - 3.2.3 the procedure to be followed should a Deliverable fail a Test, fail to satisfy the Test Success Criteria or where the Testing of a Deliverable produces unexpected results, including a procedure for the resolution of Test Issues;
 - 3.2.4 the procedure to be followed to sign off each Test;
 - 3.2.5 the process for the production and maintenance of Test Reports and a sample plan for the resolution of Test Issues;
 - 3.2.6 the names and contact details of the Buyer and the Supplier's Test representatives;
 - 3.2.7 a high level identification of the resources required for Testing including Buyer and/or third party involvement in the conduct of the Tests;

- 3.2.8 the technical environments required to support the Tests; and
- 3.2.9 the procedure for managing the configuration of the Test environments.

4. Preparing for Testing

- 4.1 The Supplier shall develop Test Plans [for the relevant Testing as specified in the Implementation Plan](#) and submit these for Approval as soon as practicable but in any case, no later than twenty (20) Working Days prior to the ~~start-date for~~[of](#) the relevant [Testing as specified in the Implementation Plan](#)~~Test~~.
- 4.2 Each Test Plan shall include as a minimum:
 - 4.2.1 the relevant Test definition and the purpose of the Test, the Milestone to which it relates, the requirements being Tested and, for each Test, the specific Test Success Criteria to be satisfied; and
 - 4.2.2 a detailed procedure for the Tests to be carried out.
- 4.3 The Buyer shall not unreasonably withhold or delay its approval of the Test Plan provided that the Supplier shall implement any reasonable requirements of the Buyer in the Test Plan.

5. Passing Testing

- 5.1 The Test Success Criteria for all Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 4.

6. How Deliverables will be tested

- 6.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days prior to the start of the relevant Testing (as specified in the Implementation Plan).
- 6.2 Each Test Specification shall include as a minimum:
 - 6.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Buyer and the extent to which it is equivalent to live operational data;
 - 6.2.2 a plan to make the resources available for Testing;
 - 6.2.3 Test scripts;
 - 6.2.4 Test pre-requisites and the mechanism for measuring them; and
 - 6.2.5 expected Test results, including:
 - a) a mechanism to be used to capture and record Test results; and
 - b) a method to process the Test results to establish their content.

7. Performing the tests

- 7.1 Before submitting any Deliverables for Testing the Supplier shall subject the relevant Deliverables to its own internal quality control measures.
- 7.2 The Supplier shall manage the progress of Testing in accordance with the relevant Test Plan and shall carry out the Tests in accordance with the relevant Test Specification. Tests may be witnessed by the Test Witnesses in accordance with Paragraph 9.3.
- 7.3 The Supplier shall notify the Buyer at least 10 Working Days in advance of the date, time and location of the relevant Tests and the Buyer shall ensure that the Test Witnesses attend the Tests.
- 7.4 The Buyer may raise and close Test Issues during the Test witnessing process.
- 7.5 The Supplier shall provide to the Buyer in relation to each Test:
 - 7.5.1 a draft Test Report not less than 2 Working Days prior to the date on which the Test is planned to end; and
 - 7.5.2 the final Test Report within 5 Working Days of completion of Testing.
- 7.6 Each Test Report shall provide a full report on the Testing conducted in respect of the relevant Deliverables, including:
 - 7.6.1 an overview of the Testing conducted;
 - 7.6.2 identification of the relevant Test Success Criteria that have/have not been satisfied together with the Supplier's explanation of why any criteria have not been met;
 - 7.6.3 the Tests that were not completed together with the Supplier's explanation of why those Tests were not completed;
 - 7.6.4 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 8.1; and
 - 7.6.5 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.
- 7.7 When the Supplier has completed a Milestone it shall submit any Deliverables relating to that Milestone for Testing.
- 7.8 Each party shall bear its own costs in respect of the Testing. However, if a Milestone is not Achieved the Buyer shall be entitled to recover from the Supplier, any reasonable additional costs it may incur as a direct result of further review or re-Testing of a Milestone.
- 7.9 If the Supplier successfully completes the requisite Tests, the Buyer shall issue a Satisfaction Certificate as soon as reasonably practical following such successful completion. Notwithstanding the issuing of any Satisfaction Certificate, the Supplier shall remain solely responsible for ensuring that the Deliverables are implemented in accordance with this Contract.

8. Discovering Problems

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

9. Test witnessing

- 9.1 The Buyer may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Buyer, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 9.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 9.3 The Test Witnesses:
 - 9.3.1 shall actively review the Test documentation;
 - 9.3.2 will attend and engage in the performance of the Tests on behalf of the Buyer so as to enable the Buyer to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 9.3.3 shall not be involved in the execution of any Test;
 - 9.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - 9.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Buyer to assess whether the Tests have been Achieved;
 - 9.3.6 may raise Test Issues on the Test Issue Management Log in respect of any Testing; and
- 9.4 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

10. Auditing the quality of the test

- 10.1 The Buyer or an agent or contractor appointed by the Buyer may perform on-going quality audits in respect of any part of the Testing (each a "Testing Quality Audit") subject to the provisions set out in the agreed Quality Plan.
- 10.2 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 10.3 The Buyer will give the Supplier at least 5 Working Days' written notice of the Buyer's intention to undertake a Testing Quality Audit.
- 10.4 The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Buyer to enable it to carry out the Testing Quality Audit.
- 10.5 If the Testing Quality Audit gives the Buyer concern in respect of the Testing Procedures or any Test, the Buyer shall prepare a written report for the Supplier detailing its concerns and the Supplier shall, within a reasonable timeframe, respond in writing to the Buyer's report.
- 10.6 In the event of an inadequate response to the written report from the Supplier, the Buyer (acting reasonably) may withhold a Satisfaction Certificate until the issues in the report have been addressed to the reasonable satisfaction of the Buyer.

11. Outcome of the testing

- 11.1 The Buyer will issue a Satisfaction Certificate when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.
- 11.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Buyer shall notify the Supplier and:
 - 11.2.1 the Buyer may issue a Satisfaction Certificate conditional upon the remediation of the Test Issues;
 - 11.2.2 the Buyer may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or
 - 11.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Buyer's other rights and remedies, such failure shall constitute a ~~material~~[Material](#) Default.
- 11.3 The Buyer shall be entitled, without prejudice to any other rights and remedies that it has under this Contract, to recover from the Supplier any reasonable additional costs it may incur as a direct result of further review or re-Testing which is required for the Test Success Criteria for that Deliverable to be satisfied.

- 11.4 The Buyer shall issue a Satisfaction Certificate in respect of a given Milestone as soon as is reasonably practicable following:
- 11.4.1 the issuing by the Buyer of Satisfaction Certificates and/or conditional Satisfaction Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and
 - 11.4.2 performance by the Supplier to the reasonable satisfaction of the Buyer of any other tasks identified in the Implementation Plan as associated with that Milestone.
- 11.5 The grant of a Satisfaction Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of any Implementation Plan and Clause 4 (Pricing and payments).
- 11.6 If a Milestone is not Achieved, the Buyer shall promptly issue a report to the Supplier setting out the applicable Test Issues and any other reasons for the relevant Milestone not being Achieved.
- 11.7 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Buyer shall issue a Satisfaction Certificate.
- 11.8 If there is one or more Material Test Issue(s), the Buyer shall refuse to issue a Satisfaction Certificate and, without prejudice to the Buyer's other rights and remedies, such failure shall constitute a ~~material~~[Material](#) Default.
- 11.9 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Buyer may at its discretion (without waiving any rights in relation to the other options) choose to issue a Satisfaction Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- 11.9.1 any Rectification Plan shall be agreed before the issue of a conditional Satisfaction Certificate unless the Buyer agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Buyer within 10 Working Days of receipt of the Buyer's report pursuant to Paragraph 10.5); and
 - 11.9.2 where the Buyer issues a conditional Satisfaction Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

12. Risk

- 12.1 The issue of a Satisfaction Certificate and/or a conditional Satisfaction Certificate shall not:
- 12.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Buyer's requirements for that Deliverable or Milestone; or
 - 12.1.2 affect the Buyer's right subsequently to reject all or any element of the Deliverables and/or any Milestone to which a Satisfaction Certificate relates.

Annex 1: Test Issues – Severity Levels

1. Severity 1 Error

- 1.1 This is an error that causes non-recoverable conditions, e.g. it is not possible to continue using a Component.

2. Severity 2 Error

- 2.1 This is an error for which, as reasonably determined by the Buyer, there is no practicable workaround available, and which:
 - 2.1.1 causes a Component to become unusable;
 - 2.1.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 2.1.3 has an adverse impact on any other Component(s) or any other area of the Deliverables.

3. Severity 3 Error

- 3.1 This is an error which:
 - 3.1.1 causes a Component to become unusable;
 - 3.1.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 3.1.3 has an impact on any other Component(s) or any other area of the Deliverables;but for which, as reasonably determined by the Buyer, there is a practicable workaround available;

4. Severity 4 Error

- 4.1 This is an error which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Deliverables.

5. Severity 5 Error

- 5.1 This is an error that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Deliverables.

Annex 2: Satisfaction Certificate

To: **[insert name of Supplier]**

From: **[insert name of Buyer]**

[insert Date dd/mm/yyyy]

Dear Sirs,

Satisfaction Certificate

Deliverable/Milestone(s): [Insert relevant description of the agreed Deliverables/Milestones].

We refer to the agreement ("**Contract**") **[insert Contract reference number]** relating to the provision of the [insert description of the Deliverables] between the **[insert Buyer name]** ("**Buyer**") and **[insert Supplier name]** ("**Supplier**") dated **[insert Start Effective Date dd/mm/yyyy]**.

The definitions for any capitalised terms in this certificate are as set out in ~~the~~[this](#) Contract.

[We confirm that all the Deliverables relating to [insert relevant description of Deliverables/agreed Milestones and/or reference number(s) from the Implementation Plan] have been tested successfully in accordance with the Test Plan [or that a conditional Satisfaction Certificate has been issued in respect of those Deliverables that have not satisfied the relevant Test Success Criteria].

[OR]

[This Satisfaction Certificate is granted on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with Clause 4 (Pricing and payments)].

Yours faithfully

[insert Name]

[insert Position]

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

Schedule 7 (Staff Transfer)

[Guidance note: Buyers will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective of whether TUPE does apply on entry if there are employees eligible for New Fair Deal pension protection then the appropriate pensions provisions will also need to be selected.]

If there is a staff transfer from the Buyer on entry (1st generation) then Part A shall apply.

If there is a staff transfer from former/incumbent supplier on entry (2nd generation), Part B shall apply. Part B contains an obligation on the Authority to procure indemnities from a Former Supplier in so far as it is reasonably able to do. Legal advice is recommended if using this Part B.

If there is both a 1st and 2nd generation staff transfer on entry, then both Part A and Part B shall apply.

~~If either Part A and/or Part B apply, then consider whether Part D (Pensions) shall apply and the Buyer shall indicate on the Award Form which Annex shall apply (either D1 (CSPS), D2 (NHSPS), or D3 (LGPS)). Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.~~

~~If there is no staff transfer (either 1st generation or 2nd generation) at the Start Date then Part C shall apply and Part D pensions may also apply where there is not a TUPE transfer for example where the incumbent provider is successful.~~

~~If the position on staff transfers is not known at the bid stage, include Parts A, B, C and D at the bid stage and then update the Buyer Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract. Buyers should note that which parts of this schedule are applicable is likely to be material to Suppliers for bid development and pricing and therefore clarity on this early on in the procurement process is likely to assist Suppliers in preparing bids.~~

If the Parties agree that TUPE is not expected to apply at the Start Date, on either a 1st generation or a 2nd generation transfer, then Part C shall apply. In Part C the Authority is stating that it believes TUPE will not apply and is both (i) giving indemnities and (ii) agreeing to procure indemnities from the Former Supplier, should this prove incorrect and TUPE does apply. Legal advice should be sought before the Authority gives such indemnities/uses Part C.

Part D (Pensions) may also apply should staff transfer or claim to have transferred.

Part D will apply where Part A applies, is likely to apply where Part B applies, and may apply where Part C applies. Please note that Part D may also apply where there is not a TUPE transfer, for example, where the incumbent provider is successful and becomes the new Supplier. Authorities will need to select which Annexes shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other schemes)).

Please note that the Authority is giving indemnities in Parts A and C, and is agreeing to procure indemnities in Parts B, C, and E. Legal advice is required, therefore, to ensure that the Authority understands the scope of its liability under these indemnities.

Please note that the MSC at Part E contains exit provisions and indemnities including, at Part E paragraph 2.13, the obligation on the Authority to procure indemnities from a Replacement Supplier in favour of the Supplier. If the Authority is co-commissioning these Services or commissioning on behalf of another part of the Crown, consideration should be given as to whether the Authority will be able to procure such indemnities or whether the obligation should be to use "reasonable endeavours" to procure.

Part E (dealing with staff transfer on exit) ~~shall apply to every Contract.~~ is required for every contract for services, irrespective of whether TUPE or New Fair Deal applies at the start of the contract. Part E is required to give employment protection on termination and/or expiry of the contract

1. Definitions

- 1.1 In this Schedule, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

"Admission Agreement"

either or both of the CSPS Admission Agreement (as defined in ~~Part D~~Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;

"Employee Liability"

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

- (a) ~~(a)~~ redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) ~~(b)~~ unfair, wrongful or constructive dismissal compensation;
- (c) ~~(c)~~ compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) ~~(d)~~ compensation for less favourable treatment of part-time workers or fixed term

employees;

- (e) ~~(e)~~ outstanding debts and unlawful deduction of wages including any PAYE and National Insurance Contributions in relation to payments made by the Buyer or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the Subcontractor if such payment should have been made prior to the Service Transfer Date and also including any payments arising in respect of pensions;
- (f) ~~(f)~~ claims whether in tort, contract or statute or otherwise;
- (g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Fair Deal Employees”

as defined in Part D;

“Former Supplier”

a supplier supplying the Services to the Buyer before ~~the~~any Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any subcontractor of such supplier (or any subcontractor of any such subcontractor);

“New Fair Deal”

the revised Fair Deal position set out in the HM Treasury guidance: “Fair Deal for staff pensions: staff transfer from central government” issued in October 2013 including:

- (a) any amendments to that document immediately prior to the Relevant Transfer Date;
- (b) any similar pension protection in accordance with the Annexes D1-D3 inclusive to Part D of this Schedule as notified to the Supplier by the Buyer;

“Notified Subcontractor”

a Subcontractor identified in the Annex to this Schedule to whom Transferring Buyer Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

“Old Fair Deal”

HM Treasury Guidance “Staff Transfers from Central Government: A Fair Deal for Staff

Pensions issued in June 1999 including the supplementary guidance *"Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues"* issued in June 2004;

"Partial Termination" the partial termination of the relevant Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 14.4 (When the Buyer can end this contract) or 14.6 (When the Supplier can end the contract);

"Replacement Subcontractor" a subcontractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any subcontractor of any such subcontractor);

"Relevant Transfer" a transfer of employment to which the Employment Regulations applies;

"Relevant Transfer Date" in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place, and for the purposes of Part D and its Annexes, where the Supplier or a Subcontractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor), references to the Relevant Transfer Date shall become references to the Start Date;

"Service Transfer" any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Subcontractor to a Replacement Supplier or a Replacement Subcontractor;

"Service Transfer Date" the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;

"Staffing Information" in relation to all persons identified on the Supplier's Provisional Supplier Staff List or Supplier's Final Supplier Staff List, as the case may be, all information required in Annex E2 (Table of Staffing Information) in the format specified and with the identities of Data Subjects anonymised where possible. The Buyer may acting reasonably make changes to the format or information requested in Annex E2 from time to time.

"Statutory Schemes" means the CSPA, NHSPA or LGPS as defined in the Annexes to Part D of this Schedule;

"Supplier's Final Supplier Staff List"	a list provided by the Supplier of all Supplier Staff whose will transfer under the Employment Regulations on the Service Transfer Date;
"Supplier's Provisional Supplier Staff List"	a list prepared and updated by the Supplier of all Supplier Staff who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
"Transferring Buyer Employees"	those employees of the Buyer to whom the Employment Regulations will apply on the Relevant Transfer Date; and
"Transferring Former Supplier Employees"	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date-; <u>and</u>
"Transferring Supplier Employees"	those employees of the Supplier and/or the Supplier's Subcontractors to whom the Employment Regulations will apply on the Relevant Transfer Date.

2. Interpretation

Where a provision in this Schedule imposes any obligation on the Supplier including to comply with a requirement or provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Subcontractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Buyer, Former Supplier, Replacement Supplier or Replacement Subcontractor, as the case may be and where the Subcontractor fails to satisfy any claims under such indemnities the Supplier will be liable for satisfying any such claim as if it had provided the indemnity itself.

3. Which parts of this Schedule apply

~~Only the~~The following parts of this Schedule shall apply to this Contract:

~~[Delete~~Mark N/A if not applicable to ~~the~~this Contract]

- 3.1 ~~[Part A (Staff Transfer At Start~~Operational Services Commencement Date – Transferring Employees from the Buyer to the Supplier)];
- 3.2 ~~[Part B (Staff Transfer At Start~~Operational Services Commencement Date – Transfer From Former Supplier)];
- 3.3 ~~[Part C (No Staff Transfer On Start~~Expected On Operational Services Commencement Date)];
- 3.4 ~~[Part D (Pensions)]~~;
 - 3.4.1 ~~[- Annex D1 (CSPS)]~~;
 - 3.4.2 ~~[- Annex D2 (NHSPS)-~~]D2NHSPS]];

~~[Subject to Contract]~~

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- 3.4.3 [\[- Annex D3 \(LGPS\)\]](#);
- 3.4.4 [\[- Annex D4 \(Other Schemes\)\]](#);
- 3.5 **Part E (Staff Transfer on Exit)** [of this Schedule will always apply to this Contract, including:](#)
 - 3.5.1 **Annex E1 (List of Notified Subcontractors)**;
 - 3.5.2 **Annex E2 (Staffing Information)**;

Part A: Staff Transfer at the Start Date

Transferring Employees from the Buyer to the Supplier

1. What is a relevant transfer

1.1 The Buyer and the Supplier agree that:

- 1.1.1 the commencement of the provision of the Services or of each relevant part of the Services will be a Relevant Transfer in relation to the Transferring Buyer Employees; and
- 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Buyer and the Transferring Buyer Employees (except in relation to any terms disapplied through operation of regulation 10~~(2)~~ of the Employment Regulations) will have effect on and from the Relevant Transfer Date as if originally made between the Supplier and/or any Subcontractor and each such Transferring Buyer Employee.
- 1.1.3 The Buyer shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees in respect of the period arising up to (but not including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period up to (but not including) the Relevant Transfer Date and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Buyer; and (ii) the Supplier and/or any Subcontractor (as appropriate). ~~—~~

2. Indemnities the Buyer must give

2.1 Subject to Paragraph 2.2, the Buyer shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:

- 2.1.1 ~~a)~~ any act or omission by the Buyer in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee occurring before the Relevant Transfer Date;
- 2.1.2 ~~b)~~ the breach or non-observance by the Buyer before the Relevant Transfer Date of:
 - (a) ~~(i)~~ any collective agreement applicable to the Transferring Buyer Employees; and/or

(b) ~~(ii)~~ any custom or practice in respect of any Transferring Buyer Employees which the Buyer is contractually bound to honour;

2.1.3 ~~e)~~ any claim by any trade union or other body or person representing the Transferring Buyer Employees arising from or connected with any failure by the Buyer to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

2.1.4 ~~d)~~ any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) ~~(i)~~ in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and

(b) ~~(ii)~~ in relation to any employee who is not a Transferring Buyer Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer ~~his/her~~[their](#) employment from the Buyer to the Supplier and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date.

2.1.5 ~~e)~~ a failure of the Buyer to discharge, or procure the discharge of, all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees arising before the Relevant Transfer Date;

2.1.6 ~~f)~~ any claim made by or in respect of any person employed or formerly employed by the Buyer other than a Transferring Buyer Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of the Employment Regulations; and

2.1.7 ~~g)~~ any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Buyer in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.

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

2.2.1 ~~a)~~ arising out of the resignation of any Transferring Buyer Employee before the Relevant Transfer Date on account of substantial detrimental changes to ~~his/her~~their working conditions proposed by the Supplier and/or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or

2.2.2 ~~b)~~ arising from the failure by the Supplier or any Subcontractor to comply with its obligations under the Employment Regulations.

2.3 Subject to Paragraphs 2.4 and 2.5,- if any employee of the Buyer who is not identified as a Transferring Buyer Employee claims, or it is determined in relation to any employees of the Buyer, that ~~his/her~~their contract of employment has been transferred from the Buyer to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then—:

2.3.1 the Supplier will, or shall procure that the Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer in writing;

2.3.2 the Buyer may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Supplier and/or any Subcontractor, or take such other reasonable steps as the Buyer considers appropriate to deal with the matter provided always that such steps are in compliance with the Law;

2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Buyer, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment or alleged employment;

2.3.4 if after the period referred to in Paragraph 2.3.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within five (5) Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 and in accordance with all applicable proper employment procedures set out in applicable Law, the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in this Paragraph 2.3 provided that the Supplier takes, or procures that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 2.4 The indemnity in Paragraph 2.3 shall not apply to any claim:
- 2.4.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or
 - 2.4.2 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure.
- 2.5 The indemnity in Paragraph 2.3 shall not apply to any termination of employment occurring later than six (6) Months from the ~~Relevant~~relevant Transfer Date.
- 2.6 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall ensure that the Notified Subcontractor shall, (a) comply with such obligations as may be imposed upon it under applicable Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

3. Indemnities the Supplier must give and its obligations

- 3.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Buyer against any Employee Liabilities arising from or as a result of:
- 3.1.1 ~~a)~~ any act or omission by the Supplier or any Subcontractor in respect of any Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee whether occurring before, on or after the Relevant Transfer Date;
 - 3.1.2 ~~b)~~ the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:
 - (a) ~~(i)~~ any collective agreement applicable to the Transferring Buyer Employees; and/or
 - (b) ~~(ii)~~ any custom or practice in respect of any Transferring Buyer Employees which the Supplier or any Subcontractor is contractually bound to honour;
 - 3.1.3 ~~c)~~ any claim by any trade union or other body or person representing any Transferring Buyer Employees arising from or connected with any failure by the Supplier or any Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
 - 3.1.4 ~~d)~~ any proposal by the Supplier or a Subcontractor made before the Relevant Transfer Date to make changes to the terms and

conditions of employment or working conditions of any Transferring Buyer Employees to their material detriment on or after their transfer to the Supplier or the relevant Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Buyer Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

3.1.5 ~~e)~~ any statement communicated to or action undertaken by the Supplier or any Subcontractor to, or in respect of, any Transferring Buyer Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer in writing;

3.1.6 ~~f)~~ any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

(a) ~~(i)~~ in relation to any Transferring Buyer Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and

(b) ~~(ii)~~ in relation to any employee who is not a Transferring Buyer Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer ~~his/her~~their employment from the Buyer to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;

3.1.7 ~~g)~~ a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Buyer Employees in respect of the period from (and including) the Relevant Transfer Date;

3.1.8 ~~h)~~ any claim made by or in respect of a Transferring Buyer Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Buyer Employee relating to any act or omission of the Supplier or any Subcontractor in relation to their obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Buyer's failure to comply with its obligations under regulation 13 of the Employment Regulations; and

- 3.1.9 ~~i)~~ a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.6 above.

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- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Buyer whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the Buyer's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge all its obligations in respect of the Transferring Buyer Employees, from (and including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and any other sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from and including the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Buyer and the Supplier

4. Information the Supplier must provide

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

5. Cabinet Office requirements

- 5.1 The Parties agree that the Principles of Good Employment Practice issued by the Cabinet Office in December 2010 apply to the treatment by the Supplier of employees whose employment begins after the Relevant Transfer Date, and the Supplier undertakes to treat such employees in accordance with the provisions of the Principles of Good Employment Practice.

- 5.2 The Supplier shall, and shall procure that each Subcontractor shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Buyer Employee as set down in:

- 5.2.1 ~~(i)~~ the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

- 5.2.2 ~~(ii)~~ Old Fair Deal; and/or

- 5.2.3 ~~(iii)~~ the New Fair Deal.

5.3 The Supplier acknowledges, in respect of those Transferring Authority Employees who were eligible for compensation under the terms of Civil Service Compensation Scheme ("CSCS") immediately prior to transfer, that the right to benefits calculated in accordance with the terms of the CSCS will transfer under the Employment Regulations. The Supplier acknowledges and accepts that for any employee who was eligible for compensation under or in accordance with the terms of the CSCS, the right to compensation, is a right to compensation in accordance with the terms of the CSCS applicable at the time at which the employee becomes entitled to such compensation (including voluntary or compulsory redundancy). Suppliers are advised to check the Civil Service Pensions website for the current CSCS terms.

5.4 ~~5.3~~ Any changes ~~embodied in~~ necessary to this Contract as a result of Changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraphs 5.1 or 5.2 shall be agreed in accordance with the Variation Procedure.

6. Pensions

~~6.1~~ The Supplier shall, and/or shall procure that each of its Subcontractors shall, comply with:

6.1 ~~6.1.1~~ the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and

6.2 ~~6.1.2~~ the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

Part B: Staff transfer at the Start Date

Transfer from a Former Supplier on Re-procurement

1. What is a relevant transfer

1.1 The Buyer and the Supplier agree that:

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

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

1.2 The Buyer shall procure that each Former Supplier shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Supplier Employees in respect of the period up to (but not including) the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Supplier shall make, and the Buyer shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

2. Indemnities given by the Former Supplier

2.1 Subject to Paragraph ~~2.22.1~~, the Buyer shall procure that each Former Supplier shall indemnify the Supplier and any Subcontractor against any Employee Liabilities arising from or as a result of:

2.1.1 any act or omission by the Former Supplier in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee arising before the Relevant Transfer Date;

2.1.2 the breach or non-observance by the Former Supplier arising before the Relevant Transfer Date of:

(a) ~~a)~~ any collective agreement applicable to the Transferring Former Supplier Employees; and/or

- (b) ~~b)~~ any custom or practice in respect of any Transferring Former Supplier Employees which the Former Supplier is contractually bound to honour;
- 2.1.3 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) ~~a)~~ in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising before the Relevant Transfer Date; and
- (b) ~~b)~~ in relation to any employee who is not a Transferring Former Supplier Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer ~~his/her~~their employment from the Former Supplier to the Supplier and/or any Notified Subcontractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.4 a failure of the Former Supplier to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- 2.1.5 any claim made by or in respect of any person employed or formerly employed by the Former Supplier other than a Transferring Former Supplier Employee for whom it is alleged the Supplier and/or any Notified Subcontractor as appropriate may be liable by virtue of this Contract and/or the Employment Regulations; and
- 2.1.6 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Former Supplier in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Supplier or any Subcontractor to comply with regulation 13(4) of the Employment Regulations.
- 2.2 The indemnities in Paragraph 2.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier or any Subcontractor whether occurring or having its origin before,

on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- 2.2.1 arising out of the resignation of any Transferring Former Supplier Employee before the Relevant Transfer Date on account of substantial detrimental changes to ~~his/her~~their working conditions proposed by the Supplier or any Subcontractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier and/or any Subcontractor to comply with its obligations under the Employment Regulations.
- 2.3 Subject to Paragraphs 2.4 and 2.5, if any employee of a Former Supplier who is not identified as a Transferring Former Supplier Employee and claims, and/or it is determined, in relation to such person that ~~his/her~~their contract of employment has been transferred from a Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
- 2.3.1 the Supplier shall, or shall procure that the Subcontractor shall, within five (5) Working Days of becoming aware of that fact notify the Buyer and the relevant Former Supplier in writing; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considers appropriate to resolve the matter provided always that such steps are in compliance with applicable Law, within fifteen (15) Working Days of receipt of notice from the Supplier;
 - 2.3.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Buyer, the Supplier shall, or shall procure that the Subcontractor shall immediately release the person from its employment;
 - 2.3.4 if after the period referred to in Paragraph 2.3.2:
 - (a) ~~a)~~ no such offer has been made;
 - (b) ~~b)~~ such offer has been made but not accepted; or
 - (c) ~~e)~~ ~~The~~the situation has not otherwise been resolved;
 - (d) -the Supplier and/or any Subcontractor may within five (5) Working Days give notice to terminate the employment or alleged employment of such person;

and subject to the Supplier's compliance with Paragraphs 2.3.1 to 2.3.4 the Buyer shall procure that the Former Supplier will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Former Supplier's employees referred to in Paragraph 2.3 provided that the Supplier takes, or shall procure that the Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.4 The indemnity in Paragraph 2.3:

2.4.1 -shall not apply to:

(a) ~~a)~~ any claim for:

- (i) for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or
- (ii) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

arising as a result of any alleged act or omission of the Supplier and/or any Subcontractor; or

(b) ~~b)~~ any claim that the termination of employment was unfair because the Supplier and/or Subcontractor neglected to follow a fair dismissal procedure; and

2.4.2 shall not apply to any termination of employment occurring later than 6 Months from the ~~Relevant~~relevant Transfer Date.

2.5 If the Supplier and/or any Subcontractor at any point accept the employment of any person as is described in Paragraph 2.3, such person shall be treated as having transferred to the Supplier and/or any Subcontractor and the Supplier shall, or shall procure that any Subcontractor shall, (a) comply with such obligations as may be imposed upon it under applicable Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

3. Indemnities the Supplier must give and its obligations

3.1 Subject to Paragraph 3 3.2, the Supplier shall indemnify the Buyer, and the Former Supplier against any Employee Liabilities arising from or as a result of:

3.1.1 any act or omission by the Supplier or any Subcontractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.2 the breach or non-observance by the Supplier or any Subcontractor on or after the Relevant Transfer Date of:

(a) ~~a)~~ any collective agreement applicable to the Transferring Former Supplier Employee; and/or

(b) ~~b)~~ any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;

- 3.1.3 any claim by any trade union or other body or person representing any Transferring Former Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- 3.1.4 any proposal by the Supplier or a Subcontractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Supplier Employees to their material detriment on or after their transfer to the Supplier or a Subcontractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- 3.1.5 –any statement communicated to or action undertaken by the Supplier or a Subcontractor to, or in respect of, any Transferring Former Supplier Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Buyer and/or the Former Supplier in writing;
- 3.1.6 –any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) ~~a)~~ in relation to any Transferring Former Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date; and
- (b) ~~b)~~ in relation to any employee who is not a Transferring Former Supplier Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer ~~his/her~~their employment from the Former Supplier to the Supplier or a Subcontractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authority relates to financial obligations arising on or after the Relevant Transfer Date;
- 3.1.7 —a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions

relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

- 3.1.8 any claim made by or in respect of a Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Supplier's failure to comply with its obligations under regulation 13(4) of the Employment Regulations; and
- 3.1.9 -a failure by the Supplier or any Subcontractor to comply with its obligations under Paragraph 2.8 above.
- 3.2 The indemnities in Paragraph 3.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Supplier whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.
- 3.3 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of all the Transferring Former Supplier Employees, on and from the Relevant Transfer Date including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due under the Admission Agreement which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Supplier and the Former Supplier.

4. Information the Supplier must give

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

5. Cabinet Office requirements

- 5.1 The Supplier shall comply with any requirement notified to it by the Buyer relating to pensions in respect of any Transferring Former Supplier Employee as set down in
- 5.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;
 - 5.1.2 Old Fair Deal; and/or
 - 5.1.3 the New Fair Deal.
- 5.2 Any changes ~~embodied in~~ necessary to this Contract as a result of changes to, or any replacement of, any statement of practice, paper or other guidance that replaces any of the documentation referred to in Paragraph 5.1 shall be agreed in accordance with the ~~Change Control~~ Variation Procedure.

6. Limits on the Former Supplier's obligations

Notwithstanding any other provisions of this Part B, where in this Part B the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer's must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

7. Pensions

- 7.1 The Supplier shall, and shall procure that each Subcontractor shall, comply with:
- 7.1.1 the requirements of Part 1 of the Pensions Act 2008, section 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 for all transferring staff; and
 - 7.1.2 the provisions in Part D: Pensions (and its Annexes) to this Staff Transfer Schedule.

Part C: No Staff Transfer on the Start Date

1. What happens if there is a staff transfer

- 1.1 The Buyer and the Supplier agree that the commencement of the provision of the Services or of any part of the Services ~~will~~is not expected to be a Relevant Transfer in relation to any employees of the Buyer and/or any Former Supplier.
- 1.2 Subject to Paragraphs 1.3, 1.4 and 1.5, if any employee of the Buyer and/or a Former Supplier claims, or it is determined in relation to any employee of the Buyer and/or a Former Supplier, that ~~his/her~~their contract of employment has been transferred from the Buyer and/or the Former Supplier to the Supplier and/or any Subcontractor pursuant to the Employment Regulations then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Subcontractor shall, within 5 Working Days of becoming aware of that fact, notify the Buyer in writing and, where required by the Buyer, give notice to the Former Supplier; ~~and~~;
 - 1.2.2 the Buyer and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person, or take such other steps as it considered appropriate to resolve the matter, within 15 Working Days of receipt of notice from the Supplier or the Subcontractor, provided always that such steps are in compliance with applicable Law;
 - 1.2.3 if such offer of employment is accepted, the Supplier shall, or shall procure that the Subcontractor shall, immediately release the person from its employment; and
 - 1.2.4 if after the period referred to in Paragraph 1.2.2 no such offer has been made, or such offer has been made but not accepted, the Supplier may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Supplier's compliance with Paragraphs 1.2.1 to 1.2.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 1.5:

- (a) ~~a)~~ the Buyer will indemnify the Supplier and/or the relevant Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Buyer's employees referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the Notified Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities; and
- (b) ~~b)~~ the Buyer will procure that the Former Supplier indemnifies the Supplier and/or any Subcontractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 provided that the Supplier takes, or shall procure that the

relevant Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

- 1.3 If any such person as is described in Paragraph 1.2 is neither re employed by the Buyer and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Subcontractor within the 15 Working Day period referred to in Paragraph 1.2 such person shall be treated as having transferred to the Supplier and/or the Subcontractor (as appropriate) and the Supplier shall, or shall procure that the Subcontractor shall, (a) comply with such obligations as may be imposed upon it under Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.
- 1.4 Where any person remains employed by the Supplier and/or any Subcontractor pursuant to Paragraph 1.3, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Subcontractor and the Supplier shall indemnify the Buyer and any Former Supplier, and shall procure that the Subcontractor shall indemnify the Buyer and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.
- 1.5 The indemnities in Paragraph 1.2 shall not apply to any claim:
 - 1.5.1 for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief;
 - 1.5.2 or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,in relation to any alleged act or omission of the Supplier and/or Subcontractor; or
 - 1.5.3 any claim that the termination of employment was unfair because the Supplier and/or any Subcontractor neglected to follow a fair dismissal procedure; and
- 1.6 The indemnities in Paragraph 1.2 shall not apply to any termination of employment occurring later than ~~36~~ 36 Months from the ~~Start~~ relevant Transfer Date.
- 1.7 If the Supplier and/or the Subcontractor does not comply with Paragraph 1.2, all Employee Liabilities in relation to such employees shall remain with the Supplier and/or the Subcontractor and the Supplier shall (i) comply with the provisions of Part D: Pensions of this Schedule, and (ii) indemnify the Buyer and any Former Supplier against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Subcontractor.

2. Limits on the Former Supplier's obligations

Where in this Part C the Buyer accepts an obligation to procure that a Former Supplier does or does not do something, such obligation shall be limited so that it extends only to the extent that the Buyer's contract with the Former Supplier

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contains a contractual right in that regard which the Buyer may enforce, or otherwise so that it requires only that the Buyer must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

Part D: Pensions

1. Definitions

In this Part D and Part E, the following words have the following meanings and they shall supplement Schedule 1 (Definitions), and shall be deemed to include the definitions set out in the Annexes:

"Actuary"	a Fellow of the Institute and Faculty of Actuaries;
"Admission Agreement"	means either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPS) or the LGPS Admission Agreement) as defined in Annex D3: LGPS), as the context requires;
"Best Value Direction"	the Best Value Authorities Staff Transfers (Pensions) Direction 2007 or the Welsh Authorities Staff Transfers (Pensions) Direction 2012 (as appropriate);
"Broadly Comparable"	<p>(a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary's Department of a broad comparability certificate; and</p> <p>(b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme's certificate of broad comparability issued by the Government Actuary's Department,</p> <p>and "Broad Comparability" shall be construed accordingly;</p>
"CSPS"	the schemes as defined in Annex D1 to this Part D;
"Direction Letter/Determination"	has the meaning in Annex D2 to this Part D;
"Fair Deal Eligible Employees"	means each of the CSPS Eligible Employees (as defined in Annex D1 to this Part D), the NHSPS Eligible Employees (as defined in Annex D2 to this Part D) and/or the LGPS Eligible Employees (as defined in Annex D3 to this Part D) (as applicable) (and shall include any such employee who has been admitted to and/or remains eligible to join a Broadly

	Comparable pension scheme at the relevant time in accordance with Paragraph 10 or 11 of this Part D);
"Fair Deal Employees"	<p>those:</p> <ul style="list-style-type: none"> (a) Transferring Buyer Employees; and/or (b) Transferring Former Supplier Employees; and/or (c) employees who are not Transferring Buyer Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Subcontractor, and whose employment is not terminated in accordance with the provisions of Paragraphs 2.3.42.3.4 of2.3.4 of Parts A or B or Paragraph 1.2.4 of Part C; (d) where the Former Supplier becomes the Supplier those employees; <p>who at the Start Date or Relevant Transfer Date (as appropriate) are or become entitled to New Fair Deal protection in respect of any of the Statutory Schemes as notified by the Buyer;</p>
"Fair Deal Schemes"	means the relevant Statutory Scheme or a Broadly Comparable pension scheme;
"Fund Actuary"	means Fund Actuary as defined in Annex D3 to this Part D;
"LGPS"	the schemes as defined in Annex D3 to this Part D;
"NHSPS"	the schemes as defined in Annex D2 to this Part D; and
"New Fair Deal"	<p>the revised Fair Deal position set out in the HM Treasury guidance: "<i>Fair Deal for Staff Pensions: Staff Transfer from Central Government</i>" issued in October 2013 including:</p> <ul style="list-style-type: none"> (a) any amendments to that document immediately prior to the Relevant Transfer Date; and (b) any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the Buyer; and.

2. Supplier obligations to participate in the pension schemes

2.1 In respect of all or any Fair Deal Employees each of Annex D1: CSPS, Annex D2: NHSPS and/or Annex D3: LGPS shall apply, as appropriate.

- 2.2 The Supplier undertakes to do all such things and execute any documents (including any relevant Admission Agreement and/or Direction Letter/Determination, if necessary) as may be required to enable the Supplier to participate in the appropriate Statutory Scheme in respect of the Fair Deal Employees and shall bear its own costs in such regard.
- 2.3 The Supplier undertakes:
- 2.3.1 to pay to the Statutory Schemes all such amounts as are due under the relevant Admission Agreement and/or Direction Letter/Determination or otherwise and shall deduct and pay to the Statutory Schemes such employee contributions as are required; and
- 2.3.2 subject to Paragraph 5 of Annex D3: LGPS to be fully responsible for all other costs, contributions, payments and other amounts relating to its participation in the Statutory Schemes, including for the avoidance of doubt any exit payments and the costs of providing any bond, indemnity or guarantee required in relation to such participation.
- 2.4 Where the Supplier is the Former Supplier (or a Subcontractor is a subcontractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Subcontractor) at the Start Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Subcontractor) shall comply with its requirements from the Start Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Subcontractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Buyer.

3. Supplier obligation to provide information

- 3.1 The Supplier undertakes to the Buyer:
- 3.1.1 to provide all information which the Buyer may reasonably request concerning matters referred to in this Part D as expeditiously as possible; and
- 3.1.2 not to issue any announcements to any Fair Deal Employee prior to the Relevant Transfer Date concerning the matters stated in this Part D without the consent in writing of the Buyer (such consent not to be unreasonably withheld or delayed); and
- 3.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former New Deal Eligible Employees arising on expiry or termination of this Contract.

4. Indemnities the Supplier must give

- 4.1 The Supplier undertakes to the Buyer to indemnify and keep indemnified **[NHS Pensions,]** the Buyer and/or any Replacement Supplier and/or any Replacement Subcontractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:
- 4.1.1 -arise out of or in connection with any liability towards all and any Fair Deal Employees in respect of service on or after the Relevant Transfer Date which arises from any ~~breach~~Default by the Supplier of this Part D, and/or the CSPA Admission Agreement and/or the Direction Letter/Determination and/or the LGPS Admission Agreement;
- 4.1.2 relate to the payment of benefits under and/or participation in a pension scheme (as defined in section 150(1) Finance Act 2004) provided by the Supplier or a Subcontractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;
- 4.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Subcontractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:
- (a) ~~a)~~ relate to any rights to benefits under a pension scheme (as defined in section 150(1) Finance Act 2004) in respect of periods of employment on and after the Relevant Transfer Date until the date of termination or expiry of this Contract;
- (b) ~~b)~~ arise out of the failure of the Supplier and/or any relevant Subcontractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or
- 4.1.4 arise out of or in connection with the Supplier (or its Subcontractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.
- 4.2 The indemnities in this Part D and its Annexes:
- 4.2.1 shall survive termination of this Contract; and
- 4.2.2 shall not be affected by the caps on liability contained in Clause 15 (How much you can be held responsible for).

5. What happens if there is a dispute

- 5.1 The Dispute Resolution Procedure will not apply to this Part D and any dispute (i) between the Buyer and the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial

matters referred to in this Part D and its Annexes shall in the absence of agreement between the Buyer and the Supplier be referred to an independent Actuary:

- 5.1.1 who will act as an expert and not as an arbitrator;
 - 5.1.2 whose decision will be final and binding on the Buyer and the Supplier; and
 - 5.1.3 whose expenses shall be borne equally by the Buyer and the Supplier unless the independent Actuary shall otherwise direct.
- 5.2 The independent Actuary shall be agreed by the Parties or, failing such agreement the independent Actuary shall be appointed by the President for the time being of the Institute and Faculty of Actuaries on the application by the Parties.

6. Other people's rights

- 6.1 The Parties agree Clause 23 (Other people's rights in this contract) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to ~~him or her~~them or it by the Supplier under this Part D, in ~~his or her~~their or its own right under section 1(1) of the CRTPA.
- 6.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-Contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Subcontractor in ~~his or her~~their or its own right under section 1(1) of the CRTPA.

7. What happens if there is a breach of this Part D

- 7.1 The Supplier agrees to notify the Buyer should it ~~breach~~Default any obligations it has under this Part D and agrees that the Buyer shall be entitled to terminate its Contract for ~~material~~Material Default and the consequences of termination set out in Clause 14.5.1 shall apply in the event that the Supplier:
- 7.1.1 commits an irremediable ~~breach~~Default of any provision or obligation it has under this Part D; or
 - 7.1.2 commits a ~~breach~~Default of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Buyer giving particulars of the ~~breach~~Default and requiring the Supplier to remedy it.

8. Transferring New Fair Deal Employees

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

- 8.1.1 notify the Buyer as far as reasonably practicable in advance of the transfer to allow the Buyer to make the necessary arrangement for participation with the relevant Statutory Scheme(s);
- 8.1.2 consult with about, and inform those Fair Deal Employees of, the pension provisions relating to that transfer; and
- 8.1.3 procure that the employer to which the Fair Deal Employees are transferred (the "**New Employer**") complies with the provisions of this Part D and its Annexes provided that references to the "Supplier" will become references to the New Employer, references to "Relevant Transfer Date" will become references to the date of the transfer to the New Employer and references to "Fair Deal Employees" will become references to the Fair Deal Employees so transferred to the New Employer.

9. What happens to pensions if this Contract ends

9.1 ~~9.1~~—The provisions of Part E: Staff Transfer ~~On~~on Exit (Mandatory) apply in relation to pension issues on expiry or termination of this Contract.

9.2 ~~9.2~~—The Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPS and/or the relevant Administering Authority and/or the Buyer may reasonably require, to enable the Replacement Supplier to participate in the appropriate Statutory Scheme in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection following a Service Transfer.

10. Broadly Comparable Pension Schemes On The Relevant Transfer Date

10.1 If the terms of any of Paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

10.2 Such Broadly Comparable pension scheme must be:

- 10.2.1 established by the Relevant Transfer Date;
- 10.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- 10.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme or from a Former Supplier's Broadly Comparable pension scheme (unless otherwise instructed by the Buyer);

- 10.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
 - 10.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).
- 10.3 Where the Supplier has provided a Broadly Comparable pension pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall):
- 10.3.1 -supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;
 - 10.3.2 -be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995;
 - 10.3.3 -instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing bulk transfer process with the Actuary to the Former Supplier's Broadly Comparable pension scheme or the Actuary to the relevant Statutory Scheme (as appropriate) and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). This will be with a view to the bulk transfer terms providing day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) credits in the Broadly Comparable pension scheme in respect of any Fair Deal Eligible Employee who consents to such a transfer; and
 - 10.3.4 -provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 10 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially

equivalent where there are benefit differences between the two schemes).

10.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract:

10.4.1 allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be on a past service reserve basis which should be calculated allowing for projected final salary at the assumed date of retirement, leaving service or death (in the case of final salary benefits). The actuarial basis for this past service reserve basis should be aligned to the funding requirements of the Broadly Comparable pension scheme in place at the time the bulk transfer terms are offered. The bulk transfer terms shall be subject to an underpin in relation to any service credits awarded in the Broadly Comparable pension scheme in accordance with Paragraph ~~10.3e~~[10.3.3](#) such that the element of the past service reserve amount which relates to such service credits shall be no lower than that required by the bulk transfer terms that were agreed in accordance with Paragraph ~~10.3e~~[10.3.3](#)) but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Subcontractor (as appropriate) as the date used to determine the actuarial assumptions; and

10.4.2 if the transfer payment paid by the trustees of the Broadly Comparable pension scheme is less (in the opinion of the Actuary to the Replacement Supplier's Broadly Comparable pension scheme (or to the relevant Statutory Scheme if applicable)) than the transfer payment which would have been paid had Paragraph ~~a)~~[10.4.1](#) been complied with, the Supplier shall (or shall procure that the Subcontractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Buyer shall otherwise direct. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the difference as required under this Paragraph.

11. Broadly Comparable Pension Schemes In Other Circumstances

11.1 If the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Subcontractors will) ensure that,

with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Buyer.

11.2 Such Broadly Comparable pension scheme must be:

- 11.2.1 established by the date of cessation of participation in the Statutory Scheme;
- 11.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;
- 11.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Buyer);
- 11.2.4 capable of paying a bulk transfer payment to the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (unless otherwise instructed by the Buyer); and
- 11.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Buyer).

11.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall):

- 11.3.1 supply to the Buyer details of its (or its Subcontractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;
- 11.3.2 be fully responsible for all costs, contributions, payments and other amounts relating to the setting up, certification of, ongoing participation in and/or withdrawal and exit from the Broadly Comparable pension scheme, including for the avoidance of doubt any debts arising under section 75 or 75A of the Pensions Act 1995; and
- 11.3.3 where required to do so by the Buyer, instruct any such Broadly Comparable pension scheme's Actuary to provide all such co-operation and assistance in agreeing a bulk transfer process with the Actuary to the relevant Statutory Scheme and to provide all such co-operation and assistance with any other Actuary appointed by the Buyer (where applicable). The Supplier must ensure that day for day and/or pound for pound (as applicable) (or actuarially equivalent where there are benefit differences

between the two schemes) credits in the Broadly Comparable pension scheme are provided in respect of any Fair Deal Employee who consents to such a transfer from the Statutory Scheme and the Supplier shall be fully responsible for any costs of providing those credits in excess of the bulk transfer payment received by the Broadly Comparable pension scheme; and

- 11.3.4 provide a replacement Broadly Comparable pension scheme in accordance with this Paragraph 11 with immediate effect for those Fair Deal Eligible Employees who are still employed by the Supplier and/or relevant Subcontractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Subcontractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).
- 11.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Subcontractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("the Shortfall"), the Supplier or the Subcontractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Subcontractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Buyer or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Buyer directs) for any failure to pay the Shortfall under this Paragraph.

12. Right Of Set-Off

- 12.1 The Buyer shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:

- 12.1.1 any unpaid employer's contributions or employee's contributions or any other financial obligations under the CSPA or any CSPA Admission Agreement in respect of the CSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;
- 12.1.2 any unpaid employer's contributions or employee's contributions or any other financial obligations under the NHSPA or any Direction Letter/Determination in respect of the NHSPA Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee; or
- 12.1.3 any unpaid employer's contributions or employee's contributions or any other financial obligations under the LGPS or any LGPS Admission Agreement in respect of the LGPS Eligible Employees whether due from the Supplier or from any relevant Subcontractor or due from any third party under any indemnity, bond or guarantee;

and shall pay such set off amount to the relevant Statutory Scheme.

- 12.2 The Buyer shall also have a right to set off against any payments due to the Supplier under this Contract all reasonable costs and expenses incurred by the Buyer as result of Paragraphs 12.1 above.

Annex D1:

Civil Service Pensions Schemes (CSPS)

1. Definitions

In this Annex D1: CSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

"CSPS Admission Agreement"	an admission agreement in the form available on the Civil Service Pensions website immediately prior to the Relevant Transfer Date to be entered into for the CSPS in respect of the Services;
"CSPS Eligible Employee"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the CSPS Admission Agreement;
"CSPS Fair Deal Employee"	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPS in accordance with the provisions of New Fair Deal; and
"CSPS"	the Principal Civil <u>The "Alpha" pension scheme introduced under The Public Service Pension Scheme (Civil Servants and Others) Pensions Regulations 2014</u> available to Civil Servants and employees of bodies under Schedule 1 of the Superannuation Act 1972 (and eligible employees of other bodies admitted to participate under a determination under section 25 of the Public Service Pensions Act 2013), as governed by rules adopted by Parliament; the Partnership Pension Account and its (i) Ill health Benefits Arrangements and (ii) Death Benefits Arrangements; the Civil Service Additional Voluntary Contribution Scheme; and "alpha" introduced under The Public Service (Civil Servants and Others) Pensions Regulations 2014.

2. Access to equivalent pension schemes after transfer

2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any CSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an employer which participates automatically in the CSPS, shall each secure a CSPS Admission Agreement to ensure that CSPS Fair Deal Employees or CSPS Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the

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relevant section of the CSPA that they currently contribute to, or were eligible to join immediately prior to the Relevant Transfer Date or became eligible to join on the Relevant Transfer Date. The Supplier and/or any of its Subcontractors shall procure that the CSPA Fair Deal Employees continue to accrue benefits in the CSPA in accordance with the provisions governing the relevant section of the CSPA for service from (and including) the Relevant Transfer Date.

- 2.2 If the Supplier and/or any of its Subcontractors enters into a CSPA Admission Agreement in accordance with Paragraph 2.1 but the CSPA Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining CSPA Eligible Employees membership of a pension scheme which is Broadly Comparable to the CSPA on the date those CSPA Eligible Employees ceased to participate in the CSPA in accordance with the provisions of Paragraph 11 of Part D.

Annex D2: NHS Pension Schemes

1. Definitions

In this Annex D2: NHSPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

<p>"Direction Letter/Determination"</p>	<p>an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) and issued to the Supplier or a Subcontractor of the Supplier (as appropriate) relating to the terms of participation of the Supplier or Subcontractor in the NHSPS in respect of the NHSPS Eligible Employees;</p>
<p>"NHS Broadly Comparable Employees"</p>	<p>means each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:</p> <p>(a) (c) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or</p> <p>(b) (d) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),</p> <p>but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Buyer has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS;</p>
<p>"NHSPS Eligible"</p>	<p>any NHSPS Fair Deal Employee who at the relevant</p>

Employees ^{""}	time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.;
"NHSPS Fair Deal Employees"	Means other than the NHS Broadly Comparable Employees , each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the NHSPS as a result of either:
	(a) their employment with the Buyer, an NHS Body or other employer which participates automatically in the NHSPS; or
	(b) their employment with a Former Supplier who provides access to the NHSPS pursuant to an NHS Pensions Direction or Determination (as appropriate) issued by the Secretary of State in exercise of the powers conferred by section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 or by section 25 of the Public Service Pensions Act 2013 (as appropriate) in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal and were permitted to re-join the NHSPS, having been formerly in employment with the Buyer, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),
	and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).
	For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an "open" Direction Letter or other NHSPS "access" facility but who has never been employed directly by an NHS Body (or other body which participates automatically in the NHSPS) is not an NHSPS Eligible Employee;
"NHS Body"	has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and

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

2. Membership of the NHS Pension Scheme

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Subcontractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Subcontractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
 - 2.2.1 all employer's and NHSPS Fair Deal Employees' contributions intended to go to the NHSPS are kept in a separate bank account; and
 - 2.2.2 the Pension Benefits and Premature Retirement Rights of NHSPS Fair Deal Employees are not adversely affected.
- 2.3 The Supplier must supply to the Buyer a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Subcontractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Subcontractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations (including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.
- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Subcontractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.

- 2.7 The Supplier will (and will procure that its Subcontractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

3. Continuation of early retirement rights after transfer

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

4. NHS Broadly Comparable Employees

The Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the NHSPS Broadly Comparable Employees membership of a pension scheme which is Broadly Comparable to NHSPS on the Relevant Transfer Date in accordance with Paragraph 10 of Part D. For the avoidance of doubt, this requirement is separate from any requirement to offer a Broadly Comparable pension scheme in accordance with Paragraph 5.2 below.

5. What the Buyer will do if the Supplier breaches and/or cancels its pension obligations

- 5.1 The Supplier agrees that the Buyer is entitled to make arrangements with NHS Pensions for the Buyer to be notified if the Supplier (or its Subcontractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Buyer in the event that it (or its Subcontractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Subcontractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Subcontractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 11 of Part D.
- 5.3 If the Buyer is entitled to terminate ~~the~~[this](#) Contract or the Supplier (or its Subcontractor, if relevant) ceases to participate in the NHSPS for whatever other reason, the Buyer may in its sole discretion, and instead of exercising its right to terminate this Contract where relevant, permit the Supplier (or any such Subcontractor, as appropriate) to offer Broadly Comparable Pension Benefits, on such terms as decided by the Buyer. The provisions of Paragraph 10 (Bulk Transfer Obligations in relation to any Broadly Comparable pension scheme) of Part D: Pensions shall apply in relation to any Broadly Comparable pension scheme established by the Supplier or its Subcontractors.
- 5.4 In addition to the Buyer's right to terminate ~~the~~[this](#) Contract, if the Buyer is notified by NHS Pensions of any NHS Pension Scheme Arrears, the Buyer

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will be entitled to deduct all or part of those arrears from any amount due to be paid under this Contract or otherwise.

6. Compensation when pension scheme access can't be provided

6.1 If the Supplier (or its Subcontractor, if relevant) is unable to provide the NHSPS Eligible Employees with either membership of:

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

6.1.2 a Broadly Comparable pension scheme,

the Buyer may in its sole discretion permit the Supplier (or any of its Subcontractors) to compensate the NHSPS Eligible Employees in a manner that is Broadly Comparable or equivalent in cash terms, the Supplier (or Subcontractor as relevant) having consulted with a view to reaching agreement with any recognised trade union or, in the absence of such body, the NHSPS Fair Deal Employees. The Supplier must meet (or must procure that the relevant Subcontractor meets) the costs of the Buyer determining whether the level of compensation offered is reasonable in the circumstances.

6.2 This flexibility for the Buyer to allow compensation in place of Pension Benefits is in addition to and not instead of the Buyer's right to terminate ~~the~~[this](#) Contract.

7. Indemnities that a Supplier must give

7.1 The Supplier must indemnify and keep indemnified the Buyer and any Replacement Supplier against all Losses arising out of any claim by any NHSPS Fair Deal Employee or any NHS Broadly Comparable Employees that the provision of (or failure to provide) Pension Benefits and NHS Premature Retirement Rights from the Relevant Transfer Date, or the level of such benefit provided, constitutes a breach of ~~his or her~~[their](#) employment rights.

Annex D3:

Local Government Pension Schemes (LGPS)

[Guidance: Note the LGPS unlike the CSPS & NHSPS is a funded scheme which has associated cost implications as follows:

There is not 1 LGPS but approx. 90 different Funds, each with their own separate Scheme Employer and Administering Authority, it is important to identify the correct one(s) and amend the definition of "Fund" accordingly.

It is important to check whether the Buyer can actually participate in the LGPS. Where a government department is taking on services which were formerly the responsibility of a Local Authority it may be necessary to obtain secretary of state approval for participation in the LGPS, this is because the services are being provided to Gov. Dept. and not to a Local Authority.

Unlike New Fair Deal the 2007 Best Value pension direction does not provide a right to bulk transfer past service. Whilst typically before the 2007 direction LA did provide such a right, it is a significant additional cost and therefore bulk transfer wording has been excluded. If required take legal advice due to the exceptionally high costs which can result from a requirement to provide bulk transfers.]

1. Definitions

- 1.1 In this Annex D3: LGPS to Part D: Pensions, the following words have the following meanings and they shall supplement Schedule 1 (Definitions):

“2013 Regulations”	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) (as amended from time to time);
"Administering Authority"	in relation to the Fund [insert name] , the relevant Administering Authority of that Fund for the purposes of the Local Government Pension Scheme Regulations 2013;
"Fund Actuary"	the actuary to a Fund appointed by the Administering Authority of that Fund;
"Fund"	[insert name] , a pension fund within the LGPS;
[“Initial Contribution Rate”]	[XX %] of pensionable pay (as defined in the 2013 Regulations);
"LGPS"	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government

	Pension Scheme;
"LGPS Admission Agreement"	an admission agreement within the meaning in Schedule 1 of the Local Government Pension Scheme Regulations 2013;
"LGPS Admission Body"	an admission body (within the meaning of Part 3 of Schedule 2 of the Local Government Pension Scheme Regulations 2013);
"LGPS Eligible Employees"	any Fair Deal Employee who at the relevant time is an eligible employee as defined in the LGPS Admission Agreement or otherwise any Fair Deal Employees who immediately before the Relevant Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to be or become a member of, the LGPS or of a scheme Broadly Comparable to the LGPS; and
"LGPS Fair Deal Employees"	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
"LGPS Regulations"	the Local Government Pension Scheme Regulations 2013 (SI 2013/2356) and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the LGPS.

2. Supplier must become a LGPS admission body

- 2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Subcontractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission Agreement ~~on or before~~ [with effect from](#) the Relevant Transfer Date to enable the LGPS Fair Deal Employees to retain either continuous active membership of or eligibility for the LGPS on and from the Relevant Transfer Date for so long as they remain employed in connection with the delivery of the Services under this Contract.

OPTION 1

- 2.2 **[Any LGPS Fair Deal Employees who:**

- 2.2.1 were active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall be admitted to the LGPS with effect on and from the Relevant Transfer Date; and
- 2.2.2 were eligible to join the LGPS (or a Broadly Comparable pension scheme) but were not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date shall retain the ability to join the LGPS on or after the Relevant Transfer Date if they wish to do so.]

OPTION 2

[Any LGPS Fair Deal Employees whether:

- 2.2.3 ~~2.2.1~~ active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or
- 2.2.4 ~~2.2.2~~ eligible to join the LGPS (or a Broadly Comparable pension scheme) but not active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date

shall be admitted to the LGPS with effect on and from the Relevant Transfer Date. The Supplier shall not automatically enrol or re-enrol for the purposes of the Pensions Act 2008 any LGPS Fair Deal Employees in any pension scheme other than the LGPS unless they cease to be eligible for membership of the LGPS.]

- 2.3 The Supplier will (and will procure that its Subcontractors (if any) will) provide at its own cost any indemnity, bond or guarantee required by an Administering Authority in relation to an LGPS Admission Agreement.

3. Broadly Comparable Scheme

- 3.1 If the Supplier and/or any of its Subcontractors is unable to obtain an LGPS Admission Agreement in accordance with Paragraph 2.1 because the Administering Authority will not allow it to participate in the Fund, the Supplier shall (and procure that its Subcontractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.
- 3.2 ~~3.2~~ If the Supplier and/or any of its Subcontractors becomes an LGPS Admission Body in accordance with Paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Subcontractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Subcontractors shall) at no extra cost to the Buyer, offer the remaining LGPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the LGPS on the date the LGPS Eligible Employees ceased to participate in the LGPS in accordance with the provisions of Paragraph 11 of Part D.

4. Discretionary Benefits

~~4.1~~ Where the Supplier and/or any of its Subcontractors is an LGPS Admission Body, the Supplier shall (and procure that its Subcontractors shall) comply with its obligations under regulation 60 of the 2013 Regulations in relation to the preparation of a discretionary policy statement.

5. LGPS Risk Sharing

5.1 Subject to Paragraphs 5.4 to 5.10, if at any time during the term of this Contract the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the "Excess Amount") shall be paid by the Supplier or the Subcontractor, as the case may be, and the Supplier shall be reimbursed by the Buyer.

5.2 Subject to Paragraphs 5.4 to 5.9 and 5.11, if at any time during the term of this Contract, the Administering Authority, pursuant to the LGPS Admission Agreement or the LGPS Regulations, requires the Supplier or any Subcontractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Buyer an amount equal to A-B (the "Refund Amount") where:

5.2.1 the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and

5.2.2 the amount of contributions or payments actually paid by the Supplier or Subcontractor for that Contract Year, as the case may be, to the Fund.

5.3 Subject to Paragraphs 5.4 to 5.10, where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the "Exit Payment"), such Exit Payment shall be paid by the Supplier or any Subcontractor (as the case may be) and the Supplier shall be reimbursed by the Buyer.

5.4 The Supplier and any Subcontractors shall at all times be responsible for the following costs:

5.4.1 any employer contributions relating to the costs of early retirement benefits arising on redundancy or as a result of business efficiency under Regulation 30(7) of the 2013 Regulations or otherwise;

- 5.4.2 any payment of Fund benefits to active members on the grounds of ill health or infirmity of mind or body under Regulation 35 of the 2013 Regulations or otherwise;
 - 5.4.3 any payment of Fund benefits to deferred or deferred pensioner members on the grounds of ill health or infirmity of mind or body under Regulation 38 of the 2013 Regulations or otherwise;
 - 5.4.4 any employer contributions relating to the costs of early or flexible retirement where the actuarial reduction is waived in whole or in part or a cost neutral reduction is not applied with the consent of the Supplier or any relevant Subcontractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
 - 5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Subcontractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
 - 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Subcontractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Subcontractor is contractually bound to provide such increases on the Relevant Transfer Date);
 - 5.4.7 to the extent not covered above, any other costs arising out of or in connection with the exercise of any discretion or the grant of any consent under the LGPS Regulations by the Supplier or any relevant Subcontractors where a member does not have an absolute entitlement to that benefit under the LGPS;
 - 5.4.8 any cost of the administration of the Fund that are not met through the Supplier's or Subcontractor's employer contribution rate, including without limitation an amount specified in a notice given by the Administering Authority under Regulation 70 of the 2013 Regulations;
 - 5.4.9 the costs of any reports and advice requested by or arising from an instruction given by the Supplier or a Subcontractor from the Fund Actuary; and/or
 - 5.4.10 any interest payable under the 2013 Regulations or LGPS Administration Agreement.
- 5.5 For the purposes of calculating any Exit Payment, Excess Amount or Refund Amount, any part of such an amount which is attributable to any costs which the Supplier or Subcontractors are responsible for in accordance with Paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that

- should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.
- 5.6 Where the Administering Authority obtains an actuarial valuation and a revised rates and adjustment certificate under the LGPS Regulations and/or the terms of the LGPS Admission Agreement when the LGPS Admission Agreement ceases to have effect and the Supplier or any Subcontractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the “Exit Credit”), the Supplier shall (or procure that any Subcontractor shall) reimburse the Buyer an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Supplier shall (or procure that the Subcontractor shall) notify the Buyer in writing within twenty (20) Working Days:
- 5.7.1 of the end of each Contract Year of any Excess Amount or Refund Amount due in respect of ~~the~~this Contract Year that has just ended and provide a reasonable summary of how the Excess Amount or Refund Amount was calculated; and
- 5.7.2 of being informed by the Administering Authority of any Exit Payment or Exit Credit that is determined by as being due from or to the Supplier or a Subcontractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8 Within twenty (20) Working Days of receiving the notification under Paragraph 5.7 above, the Buyer shall either:
- 5.8.1 notify the Supplier in writing of its acceptance of the Excess Amount, Refund Amount or Exit Payment;
- 5.8.2 request further information or evidence about the Excess Amount, Refund Amount or Exit Payment from the Supplier; and/or
- 5.8.3 request a meeting with the Supplier to discuss or clarify the information or evidence provided.
- 5.9 Where the Excess Amount, Refund Amount or Exit Payment is agreed following the receipt of further information or evidence or following a meeting in accordance with Paragraph 5.8 above, the Buyer shall notify the Supplier in writing. In the event that the Supplier and the Buyer are unable to agree the amount of the Excess Amount, Refund Amount or Exit Payment then they shall follow the Dispute Resolution Procedure.
- 5.10 Any Excess Amount or Exit Payment agreed by the Buyer or in accordance with the Dispute Resolution Procedure shall be paid by the Buyer within timescales as agreed between Buyer and Supplier. The amount to be paid by the Buyer shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Subcontractor.
- 5.11 Any Refund Amount agreed by the Buyer or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Subcontractor to the Buyer, shall be paid by the Supplier or any Subcontractor forthwith as

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the liability has been agreed. In the event the Supplier or any Subcontractor fails to pay any agreed Refund Amount, the Buyer shall demand in writing the immediate payment of the agreed Refund Amount by the Supplier and the Supplier shall make payment within seven (7) Working Days of such demand.

5.12 This Paragraph 5 shall survive termination of this Contract.

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Annex D4: Other Schemes

[Guidance: Placeholder for Pension Schemes other than LGPS, CSPA & NHSPS]

Part E: Staff Transfer on Exit

[Guidance: Please note, the reference at paragraphs 1.6.1, 1.6.2, and 1.6.4 is to Supplier Staff to capture all individuals working on the Services. Only employees can participate in public sector pension schemes or pension schemes which are broadly comparable and therefore the information in this paragraph 1.6.3 is limited to employees]

1. Obligations before a Staff Transfer

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

1.1.1 receipt of a notification from the Buyer of a Service Transfer or intended Service Transfer;

1.1.2 receipt of the giving of notice of early termination or any Partial Termination of the relevant Contract; and

1.1.3 the date which is twelve (12) Months before the end of the Term; and or

1.1.4 receipt of a written request of the Buyer at any time (provided that the Buyer shall only be entitled to make one such request in any six (6) Month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Supplier's Provisional Supplier Staff List, together with the Staffing Information in relation to the Supplier's Provisional Supplier Staff List and it shall provide an updated Supplier's Provisional Supplier Staff List at such intervals as are reasonably requested by the Buyer.

1.2 At least twenty (20) Working Days prior to the Service Transfer Date, the Supplier shall provide to the Buyer or at the direction of the Buyer to any Replacement Supplier and/or any Replacement Subcontractor

1.2.1 the Supplier's Final Supplier Staff List, which shall identify the basis upon which they are Transferring Supplier Employees and

1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Staff List (insofar as such information has not previously been provided).

- 1.3 The Buyer shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Subcontractor.
- 1.4 The Supplier warrants, for the benefit of The Buyer, any Replacement Supplier, and any Replacement Subcontractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraphs 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees that it shall not assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Staff List and shall, unless otherwise instructed by the Buyer (acting reasonably):
 - 1.5.1 not replace or re-deploy any Supplier Staff listed on the Supplier Provisional Supplier Staff List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person ~~he/she replaces~~[they replace](#)
 - 1.5.2 not make, promise, propose, permit or implement any material changes to the terms and conditions of (i) employment and/or (ii) pensions, retirement and death benefits (including not to make pensionable any category of earnings which were not previously pensionable or reduce the pension contributions payable) of the Supplier Staff (including any payments connected with the termination of employment);
 - 1.5.3 not increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Staff save for fulfilling assignments and projects previously scheduled and agreed;
 - 1.5.4 not introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Staff List;
 - 1.5.5 not increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services);
 - 1.5.6 not terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Staff List save by due disciplinary process;
 - 1.5.7 not dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor;
 - 1.5.8 give the Buyer and/or the Replacement Supplier and/or Replacement Subcontractor reasonable access to Supplier Staff and/or their consultation representatives to inform them of the

- intended transfer and consult any measures envisaged by the Buyer, Replacement Supplier and/or Replacement Subcontractor in respect of persons expected to be Transferring Supplier Employees;
- 1.5.9 co-operate with the Buyer and the Replacement Supplier to ensure an effective consultation process and smooth transfer in respect of Transferring Supplier Employees in line with good employee relations and the effective continuity of the Services, and to allow for participation in any pension arrangements to be put in place to comply with New Fair Deal;
- 1.5.10 promptly notify the Buyer or, at the direction of the Buyer, any Replacement Supplier and any Replacement Subcontractor of any notice to terminate employment given by the Supplier or received from any persons listed on the Supplier's Provisional Supplier Staff List regardless of when such notice takes effect;
- 1.5.11 not for a period of twelve (12) Months from the Service Transfer Date re-employ or re-engage or entice any employees, suppliers or Subcontractors whose employment or engagement is transferred to the Buyer and/or the Replacement Supplier (unless otherwise instructed by the Buyer (acting reasonably));
- 1.5.12 not to adversely affect pension rights accrued by all and any Fair Deal Employees in the period ending on the Service Transfer Date;
- 1.5.13 fully fund any Broadly Comparable pension schemes set up by the Supplier;
- 1.5.14 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract (including identification of the Fair Deal Employees);
- 1.5.15 promptly provide to the Buyer such documents and information mentioned in Paragraph 3.1.1 of Part D: Pensions which the Buyer may reasonably request in advance of the expiry or termination of this Contract; and
- 1.5.16 fully co-operate (and procure that the trustees of any Broadly Comparable pension scheme shall fully co-operate) with the reasonable requests of the Supplier relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Supplier or any Subcontractor in the provision of the Services on the expiry or termination of this Contract.

- 1.6 On or around each anniversary of the Start Date and up to four times during the last twelve (12) Months of the Term, the Buyer may make written requests to the Supplier for information relating to the manner in which the Services are organised. Within twenty (20) Working Days of receipt of a written request the Supplier shall provide such information as the Buyer may reasonably require which shall include:
- 1.6.1 the numbers of ~~employees~~ Supplier Staff engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each ~~employee~~ Supplier Staff engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Fair Deal Schemes (as defined in Part D: Pensions); and
 - 1.6.4 a description of the nature of the work undertaken by each ~~employee~~ Supplier Staff by location.
- 1.7 The Supplier shall provide all reasonable cooperation and assistance to the Buyer, any Replacement Supplier and/or any Replacement Subcontractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five (5) Working Days following the Service Transfer Date, the Supplier shall provide to the Buyer or, at the direction of the Buyer, to any Replacement Supplier and/or any Replacement Subcontractor (as appropriate), in respect of each person on the Supplier's Final Supplier Staff List who is a Transferring Supplier Employee:
- 1.7.1 the most recent month's copy pay slip data;
 - 1.7.2 details of cumulative pay for tax and pension purposes;
 - 1.7.3 details of cumulative tax paid;
 - 1.7.4 tax code;
 - 1.7.5 details of any voluntary deductions from pay; ~~and~~
 - 1.7.6 a copy of any personnel file and/or any other records regarding the service of the Transferring Supplier Employee;
 - 1.7.7 a complete copy of the information required to meet the minimum recording keeping requirements under the Working Time Regulations 1998 and the National Minimum Wage Regulations 1998; and
 - 1.7.8 ~~1.7.6~~ bank/building society account details for payroll purposes.
- 1.8 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3 the Supplier agrees that following within twenty (20) Working Days of a request from the Authority it shall and shall procure that each Sub-contractor shall use reasonable endeavours to comply with any

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[reasonable] request to align and assign Supplier Staff to any future delivery model proposed by the Authority for Replacement Services within thirty (30) Working Days or such longer timescale as may be agreed.

- 1.9 Any changes necessary to this Contract as a result of alignment referred to in Paragraph 1.8 shall be agreed in accordance with the Variation Procedure.

2. Staff Transfer when the contract ends

- 2.1 The Buyer and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Subcontractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Buyer and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Subcontractor (as the case may be) and each such Transferring Supplier Employee
- 2.2 The Supplier shall, and shall procure that each Subcontractor shall, comply with all its obligations [under the Employment Regulations and in particular obligations](#) in respect of the Transferring Supplier Employees arising under the Employment Regulations in respect of the period up to (~~and including but excluding~~) the Service Transfer Date and shall perform and discharge, and procure that each Subcontractor shall perform and discharge, all its obligations in respect of ~~all the Transferring~~ [any person identified in the Supplier's Final Supplier Employees Staff List](#) arising in respect of the period up to (~~and including but excluding~~) the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and all such sums due as a result of any Fair Deal Employees' participation in the [Statutory Schemes and any requirement to set up a broadly comparable pension scheme](#) which in any case are attributable in whole or in part to the period ending on (~~and including but excluding~~) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between: (i) the Supplier and/or the Subcontractor (as appropriate); and (ii) the Replacement Supplier and/or Replacement Subcontractor.
- 2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor against any Employee Liabilities arising from or as a result of:
- 2.3.1 any act or omission of the Supplier or any Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date.

- 2.3.2 the breach or non-observance by the Supplier or any Subcontractor occurring ~~on or~~ before but excluding the Service Transfer Date of:
- (a) ~~a)~~ any collective agreement applicable to the Transferring Supplier Employees; and/or
 - (b) ~~b)~~ any other custom or practice with a trade union or staff association in respect of any Transferring Supplier Employees which the Supplier or any Subcontractor is contractually bound to honour;
- 2.3.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees arising from or connected with any failure by the Supplier or a Subcontractor to comply with any legal obligation to such trade union, body or person arising ~~on or~~ before but excluding the Service Transfer Date;
- 2.3.4 any proceeding, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) ~~a)~~ in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising ~~on and~~ before but excluding the Service Transfer Date; and
 - (b) ~~b)~~ in relation to any employee who is not identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer ~~his/her~~ their employment from the Supplier to the Buyer and/or Replacement Supplier and/or any Replacement Subcontractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising ~~on or~~ before but excluding the Service Transfer Date;
- 2.3.5 a failure of the Supplier or any Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (~~and including~~ but excluding) the Service Transfer Date);
- 2.3.6 any claim made by or in respect of any person employed or formerly employed by the Supplier or any Subcontractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List for whom it is alleged the Buyer and/or the Replacement Supplier and/or any Replacement Subcontractor may be liable by virtue of this Contract and/or the Employment Regulations; and

- 2.3.7 any claim made by or in respect of a Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee relating to any act or omission of the Supplier or any Subcontractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Buyer and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.
- 2.4 The indemnity in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Subcontractor whether occurring or having its origin before, on or after the Service Transfer Date, Including any Employee Liabilities:
- 2.4.1 arising out of the resignation of any Transferring Supplier Employee before the Service Transfer Date on account of substantial detrimental changes to ~~his/her~~their working conditions proposed by the Replacement Supplier and/or any Replacement Subcontractor to occur in the period on or after the Service Transfer Date); or
- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Subcontractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 Subject to Paragraphs 2.6 and 2.7, if any employee of the Supplier who is not identified in the Supplier's Final Transferring Supplier Employee List claims, or it is determined in relation to any employees of the Supplier, that ~~his/her~~their contract of employment has been transferred from the Supplier to the Replacement Supplier and/or Replacement Subcontractor pursuant to the Employment Regulations then:
- 2.5.1 the Replacement Supplier and/or Replacement Subcontractor will, within five (5) Working Days of becoming aware of that fact, notify the Buyer and the Supplier in writing;
- 2.5.2 the Supplier may offer employment to such person, or take such other steps as it considered appropriate to resolve the matter, within fifteen (15) Working Days of receipt of notice from the Replacement Supplier and/or Replacement Subcontractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law;
- 2.5.3 if such offer of employment is accepted, or if the situation has otherwise been resolved by the Supplier or a Subcontractor, the Replacement Supplier and/or Replacement Subcontractor shall immediately release the person from its employment or alleged employment;
- 2.5.4 if after the period referred to in Paragraph 2.5.2 no such offer has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, the Replacement

Supplier and/or Replacement Subcontractor may within 5 Working Days give notice to terminate the employment of such person;

and subject to the Replacement Supplier's and/or Replacement Subcontractor's compliance with Paragraphs 2.5.1 to 2.5.4 the Supplier will indemnify the Replacement Supplier and/or Replacement Subcontractor against all Employee Liabilities arising out of the termination of the employment of any of the Supplier's employees referred to in Paragraph 2.5 provided that the Replacement Supplier takes, or shall procure that the Replacement Subcontractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.6 The indemnity in Paragraph 2.5 shall not apply to:

2.6.1 any claim for:

(a) ~~a)~~—discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or

(b) ~~b)~~—equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

arising as a result of any alleged act or omission of the Replacement Supplier and/or Replacement Subcontractor; or

2.6.2 any claim that the termination of employment was unfair because the Replacement Supplier and/or Replacement Subcontractor neglected to follow a fair dismissal procedure.

2.7 The indemnity in Paragraph 2.5 shall not apply to any termination of employment occurring later than six (6) Months from the Service Transfer Date.

2.8 If at any point the Replacement Supplier and/or Replacement Subcontractor accepts the employment of any such person as is described in Paragraph 2.5, such person shall be treated as a Transferring Supplier Employee and Paragraph 2.5 shall cease to apply to such person.

2.9 The Supplier shall comply, and shall procure that each Subcontractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Subcontractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Staff ~~list~~List before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:

2.9.1 the Supplier and/or any Subcontractor; and

- 2.9.2 the Replacement Supplier and/or the Replacement Subcontractor.
- 2.10 The Supplier shall promptly provide the Buyer and any Replacement Supplier and/or Replacement Subcontractor, in writing such information as is necessary to enable the Buyer, the Replacement Supplier and/or Replacement Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Buyer shall procure that the Replacement Supplier and/or Replacement Subcontractor, shall promptly provide to the Supplier and each Subcontractor in writing such information as is necessary to enable the Supplier and each Subcontractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 2.11 Subject to Paragraph ~~2.9~~[2.12](#), the Buyer shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Subcontractor and its Subcontractors against any Employee Liabilities arising from or as a result of:
- 2.11.1 any act or omission, whether occurring before, on or after the Service Transfer Date, of the Replacement Supplier and/or Replacement Subcontractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee.
- 2.11.2 the breach or non-observance by the Replacement Supplier and/or Replacement Subcontractor on or after the Service Transfer Date of:
- [\(a\)](#) ~~a)~~ any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List; and/or
- [\(b\)](#) ~~b)~~ any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List which the Replacement Supplier and/or Replacement Subcontractor is contractually bound to honour;
- 2.11.3 any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List arising from or connected with any failure by the Replacement Supplier and/or Replacement Subcontractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;
- 2.11.4 any proposal by the Replacement Supplier and/or Replacement Subcontractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List on or after their transfer to the Replacement Supplier or Replacement Subcontractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working

conditions of any person identified in the Supplier's Final Supplier Staff List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

- 2.11.5 any **statement** communicated to or action undertaken by the Replacement Supplier or Replacement Subcontractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;
- 2.11.6 any **proceeding**, claim or demand by HMRC or other statutory authority in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
- (a) ~~a)~~ in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and
 - (b) ~~b)~~ in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer ~~his/her~~their employment from the Supplier or Subcontractor, to the Replacement Supplier or Replacement Subcontractor to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date;
- 2.11.7 a **failure** of the Replacement Supplier or Replacement Subcontractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Staff List in respect of the period from (and including) the Service Transfer Date; and
- 2.11.8 any **claim** made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Staff List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Subcontractor in relation to obligations under regulation 13 of the Employment Regulations.

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- 2.12 The indemnity in Paragraph ~~2.10~~[2.11](#) shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Subcontractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Subcontractor (as applicable) to comply with its obligations under the Employment Regulations, or to the extent the Employee Liabilities arise out of the termination of employment of any person who is not identified in the Supplier's Final Supplier Staff List in accordance with Paragraph 2.5 (and subject to the limitations set out in Paragraphs 2.6 and 2.7 above).

~~ANNEX~~ Annex **E1: ~~LIST OF NOTIFIED SUBCONTRACTORS~~** List of Notified Subcontractors

~~ANNEX~~ Annex E2: ~~STAFFING~~ — ~~INFORMATION~~ Staffing Information

EMPLOYEE INFORMATION (ANONYMISED)

Name of Transferor: [Insert name of Transferor]

Number of Employees in-scope to transfer: []

~~Completion~~ Guidance notes

- 1 ***If you have any Key Subcontractors, please complete all the above information for any staff employed by such Key Subcontractor(s) in a separate spreadsheet.***
- 2 ***This spreadsheet is used to collect information from the current employer (transferor) about employees performing the relevant services to help plan for a potential TUPE transfer. Some or all of this information may be disclosed to bidders as part of a procurement process. The information should not reveal the employees' identities.***
- 3 ***If the information cannot be included on this form, attach the additional information, such as relevant policies, and cross reference to the item number and employee number where appropriate.***

1

EMPLOYEE DETAILS & KEY TERMS						
Details	Job Title	Grade / band	Work Location	Age	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

EMPLOYEE DETAILS & KEY TERMS							
	Contract end date (if fixed term contract or temporary contract) Details	<u>Contract end date (if fixed term contract or temporary contract)</u>	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previous to organization specify (name of whether
Emp No 1							
Emp No 2							
Emp No							
Emp							

	No								
	Emp No								
	Emp No								
	Emp No								
		ASSIGNMENT	CONTRACTUAL PAY AND BENEFITS						
	Details	% of working time dedicated to the provision of services under the contract	Salary (or hourly rate of pay)	Payment interval (weekly / fortnightly / monthly)	Bonus payment for previous 12 months (please specify whether contractual or discretionary entitlement)	Pay review method	Frequency of pay reviews	Agreed pay increases	Next pay review date
	Emp No 1								
	Emp No 2								
	Emp No								
	Emp								

No								
Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS

Details	Any existing or future commitment to training that has a time-off or financial implication	Car allowance (£ per year)	Lease or company car details	Any other allowances paid (e.g. shift allowance, standby allowance, travel allowance)	Private medical insurance (please specify whether single or family cover)	Life assurance (xSalary)	Long Term Disability / PHI (% of Salary)	Any other benefits in kind
Emp No 1								
Emp No 2								
Emp No								
Emp No								

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Emp No								
Emp No								
Emp No								

CONTRACTUAL PAY AND BENEFITS						
Details	Annual leave entitlement (excluding bank holidays)	Bank holiday entitlement	Method of calculating holiday pay (i.e. based on fixed salary only or incl. entitlements to variable remuneration such as bonuses, allowances, commission or overtime pay?)	Maternity or paternity or shared parental leave entitlement and pay	Sick leave entitlement and pay	Redundancy pay entitlement (statutory / enhanced / contractual / discretionary)
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	Employee pension contribution rate	Employer pension contribution rate	Please provide the name of the pension scheme and a link to the pension scheme website	Is the scheme an occupational pension scheme as defined in the Pension Schemes Act 1993?	If the scheme is not an occupational pension scheme, what type of scheme is it? E.g. personal pension scheme?	Type of pension provision e.g. defined benefit (CARE or final salary, and whether a public sector scheme e.g. CSPS, NHSPS, LGPS etc. or a broadly comparable scheme) or a defined contribution scheme or an auto enrolment master trust?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

PENSIONS						
Details	If the Employee is in the Local Government Pension Scheme, please supply details of Fund and Administering Authority.	If the Employee is in the Civil Service Pension Scheme, please provide details of the Admission Agreement.	If the Employee is in the NHSPS, please provide details of the Direction Letter.	If the Employee is in a broadly comparable pension scheme, please supply a copy of the GAD certificate of Broad Comparability.	Did Fair Deal or any other similar pension protection for ex-public sector employees apply to the employee when they TUPE transferred into your employment? If so, what was the nature of that protection (e.g. right to participate in a public sector pension scheme, or a broadly comparable scheme, or to bulk transfer past pension service into their current scheme)?	If Fair Deal, Best Value or other pension protection applied, which public sector employer did they originally transfer out of and when?
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						

Emp No						
OTHER						
Details	Security Check Level	Security Clearance Expiry date	Additional info or comments			
Emp No 1						
Emp No 2						
Emp No						
Emp No						
Emp No						
Emp No						
Emp No						

Schedule 10 (Service Levels)

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Critical Service Level Failure"	has the meaning given to it in the Award Form;
"Service Credits"	any service credits specified in the Annex to Part A of this Schedule being payable by the Supplier to the Buyer in respect of any failure by the Supplier to meet one or more Service Levels;
"Service Credit Cap"	has the meaning given to it in the Award Form;
"Service Level Failure"	means a failure to meet the Service Level Performance Measure in respect of a Service Level;
"Service Level Performance Measure"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule; and
"Service Level Threshold"	shall be as set out against the relevant Service Level in the Annex to Part A of this Schedule.

2. What happens if you don't meet the Service Levels

- 2.1 The Supplier shall at all times provide the Deliverables to meet or exceed the Service Level Performance Measure for each Service Level.
- 2.2 The Supplier acknowledges that any Service Level Failure shall entitle the Buyer to the rights set out in Part A of this Schedule including the right to any Service Credits and that any Service Credit is a price adjustment and not an estimate of the Loss that may be suffered by the Buyer as a result of the Supplier's failure to meet any Service Level Performance Measure.
- 2.3 The Supplier shall send Performance Monitoring Reports to the Buyer detailing the level of service which was achieved in accordance with the provisions of Part B (Performance Monitoring) of this Schedule.
- 2.4 A Service Credit shall be the Buyer's exclusive financial remedy for a Service Level Failure except where:
- 2.4.1 the Supplier has over the previous ~~(twelve)~~ (12) Month period exceeded the Service Credit Cap; and/or
- 2.4.2 the Service Level Failure:
- (a) ~~a)~~ exceeds the relevant Service Level Threshold;

- (b) ~~b)~~ has arisen due to a Prohibited Act or wilful Default by the Supplier;
- (c) ~~c)~~ results in the corruption or loss of any Government Data; and/or
- (d) ~~d)~~ results in the Buyer being required to make a compensation payment to one or more third parties; and/or

2.4.3 the Buyer is also entitled to or does terminate this Contract pursuant to Clause 14.4 of the Core Terms (When the Buyer can end the contract).

2.5 Not more than once in each Contract Year, the Buyer may, on giving the Supplier at least three (3) Months' notice, change the weighting of Service Level Performance Measure in respect of one or more Service Levels and the Supplier shall not be entitled to object to, or increase the Charges as a result of such changes, provided that:

2.5.1 the total number of Service Levels for which the weighting is to be changed does not exceed the number applicable as at the Start Date;

2.5.2 the principal purpose of the change is to reflect changes in the Buyer's business requirements and/or priorities or to reflect changing industry standards; and

2.5.3 there is no change to the Service Credit Cap.

3. Critical Service Level Failure

On the occurrence of a Critical Service Level Failure:

3.1 any Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue; and

3.2 the Buyer shall (subject to the Service Credit Cap) be entitled to withhold and retain as compensation a sum equal to any Charges which would otherwise have been due to the Supplier in respect of that Service Period ("**Compensation for Critical Service Level Failure**"),

provided that the operation of this Paragraph 3 shall be without prejudice to the right of the Buyer to terminate this Contract and/or to claim damages from the Supplier for ~~material~~Material Default.

Part A: Service Levels and Service Credits

1. Service Levels

If the level of performance of the Supplier:

- 1.1 is likely to or fails to meet any Service Level Performance Measure; or
- 1.2 is likely to cause or causes a Critical Service Level Failure to occur,

the Supplier shall immediately notify the Buyer in writing and the Buyer, in its absolute discretion and without limiting any other of its rights, may:

- 1.2.1 require the Supplier to immediately take all remedial action that is reasonable to mitigate the impact on the Buyer and to rectify or prevent a Service Level Failure or Critical Service Level Failure from taking place or recurring;
- 1.2.2 instruct the Supplier to comply with the Rectification Plan Process;
- 1.2.3 if a Service Level Failure has occurred, deduct the applicable Service ~~Level~~-Credits payable by the Supplier to the Buyer; and/or
- 1.2.4 if a Critical Service Level Failure has occurred, exercise its right to Compensation for Critical Service Level Failure (including the right to terminate for ~~material~~Material Default and the consequences of termination in Clause 14.5.1 shall apply).

2. Service Credits

- 2.1 The Buyer shall use the Performance Monitoring Reports supplied by the Supplier to verify the calculation and accuracy of the Service Credits, if any, applicable to each Service Period.
- 2.2 Service Credits are a reduction of the amounts payable in respect of the Deliverables and do not include VAT. The Supplier shall set-off the value of any Service Credits against the appropriate invoice in accordance with calculation formula in the Annex to Part A of this Schedule.

Annex A to Part A: Service Levels and Service Credits Table

[Guidance Note: The following table and calculation are included by way of example only. Procurement-specific Service Levels and formulae, including Service Levels relating to Social Value (Social Value KPIs) (which should be established using the Model Award Criteria and Reporting Metrics set out in the procurement documentation and in the tenderer's proposals) in line with PPN 06/20, should be introduced that reflect the particular requirements of the Procurement. For Social Value KPIs, where the successful bidder proposes specific commitments in its tender proposal which are in addition to the above, then such commitments will also be used to establish Social Value KPIs. Bespoke adjustments to the approach below can also be made as necessary. In line with the Sourcing Playbook, it is HMG's intention to publish the top KPIs for the Government's most important contracts. Where this publication requirement applies to this Contract, the Buyer must select at least three Service Levels (KPIs) which shall be publishable and must also select the single most important Social Value KPI, which shall also be publishable (four KPIs in total). Buyers can indicate which are publishable in the table below.]

The Buyer should discuss Social Value with participants during pre-market engagement to inform the selection of relevant, proportionate and non-discriminatory questions and criteria from the Social Value Model, and to consider whether the market in question has a mature Social Value offering. Such Social Value KPIs will always comprise a combination of a deliverable and a numeric element, being specific, measurable and time-bound commitments, by which performance of that deliverable is to be measured

In the table below, Social Value KPIs should have an appropriate Service Credit level above 0% (zero percent) for markets which have a mature Social Value offering. When determining what are such appropriate levels, the Buyer should consider what is proportionate in the context of the subject matter of the contract and its value, what is feasible in the circumstances, whether they provide sufficient incentive without driving up cost. The Buyer should also consider whether Social Value goals are better served in each instance by tying Service Credits to the input cost of meeting the Social Value KPI or to the output benefit which meeting the Social Value KPI is expected to bring.

For less mature markets, the Buyer should consider setting the Service Credit level for Social Value KPIs at 0% (zero percent), as the Rectification Plan Process will be a more appropriate remedy in these circumstances than Service Credits.

The Buyer should ensure that the social value priorities to be delivered and how the Supplier will deliver these priorities are included in ~~the~~[this](#) Contract

[Subject to Contract]

Schedule 10 (Service Levels), [Crown Copyright 2023](#), [Subject to Contract]

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(for example in Schedule 2 (Specification) and Schedule 8 (Implementation Plan))

Service Levels					
Service Level Performance Criterion	Key Indicator	Service Level Performance Measure	Service Level Threshold	Service Credit for each Service Period	Publishable KPI
[Accurate and timely billing of Buyer]	Accuracy /Timelines	at least 98% at all times	[]	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure	[Yes/No]
Access to Buyer support	Availability	at least 98% at all times	[]	0.5% Service Credit gained for each percentage under the specified Service Level Performance Measure	[Yes/No]
[Social Value KPI 1]	[]	[]	[]	[]	[Yes/No]
[Social Value KPI 2]	[]	[]	[]	[]	[Yes/No]
[Social Value KPI 3]	[]	[]	[]	[]	[Yes/No]

The Service Credits shall be calculated on the basis of the following formula:

[Example:

Formula: $x\%$ (Service Level Performance Measure) - $x\%$ (actual Service Level performance) = $x\%$ of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer

Worked example: 98% (e.g. Service Level Performance Measure requirement for accurate and timely billing Service Level) - 75% (e.g. actual performance achieved against this Service Level in a Service Period) = 23% of the Charges payable to the Buyer as Service Credits to be deducted from the next Invoice payable by the Buyer]

Part B: Performance Monitoring

1. Performance Monitoring and Performance Review

- 1.1 Within twenty (20) Working Days of the ~~Start~~[Effective](#) Date the Supplier shall provide the Buyer with details of how the process in respect of the monitoring and reporting of Service Levels will operate between the Parties and the Parties will endeavour to agree such process as soon as reasonably possible.
- 1.2 The Supplier shall provide the Buyer with performance monitoring reports ("**Performance Monitoring Reports**") in accordance with the process and timescales agreed pursuant to Paragraph 1.1 of Part B of this Schedule which shall contain, as a minimum, the following information in respect of the relevant Service Period just ended:
 - 1.2.1 for each Service Level, the actual performance achieved over the Service Level for the relevant Service Period;
 - 1.2.2 a summary of all failures to achieve Service Levels that occurred during that Service Period;
 - 1.2.3 details of any Critical Service Level Failures;
 - 1.2.4 for any repeat failures, actions taken to resolve the underlying cause and prevent recurrence;
 - 1.2.5 the Service Credits to be applied in respect of the relevant period indicating the failures and Service Levels to which the Service Credits relate; and
 - 1.2.6 such other details as the Buyer may reasonably require from time to time.
- 1.3 The Parties shall attend meetings to discuss Performance Monitoring Reports ("**Performance Review Meetings**") on a Monthly basis. The Performance Review Meetings will be the forum for the review by the Supplier and the Buyer of the Performance Monitoring Reports. The Performance Review Meetings shall:
 - 1.3.1 take place within one (1) week of the Performance Monitoring Reports being issued by the Supplier at such location and time (within normal business hours) as the Buyer shall reasonably require;
 - 1.3.2 be attended by the Supplier's Representative and the Buyer's Representative; and
 - 1.3.3 be fully minuted by the Supplier and the minutes will be circulated by the Supplier to all attendees at the relevant meeting and also to the Buyer's Representative and any other recipients agreed at the relevant meeting.
- 1.4 The minutes of the preceding Month's Performance Review Meeting will be agreed and signed by both the Supplier's Representative and the Buyer's Representative at each meeting.

~~[Subject to Contract]~~

Schedule 10 (Service Levels), [Crown Copyright 2023, \[Subject to Contract\]](#)

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- 1.5 The Supplier shall provide to the Buyer such documentation as the Buyer may reasonably require in order to verify the level of the performance by the Supplier and the calculations of the amount of Service Credits for any specified Service Period.

2. Satisfaction Surveys

~~2.1~~ The Buyer may undertake satisfaction surveys in respect of the Supplier's provision of the Deliverables. The Buyer shall be entitled to notify the Supplier of any aspects of their performance of the provision of the Deliverables which the responses to the Satisfaction Surveys reasonably suggest are not in accordance with this Contract.

Schedule 11 (Continuous Improvement)

1. Supplier's Obligations

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

- 1.6 The Supplier must provide sufficient information with each suggested improvement to enable a decision on whether to implement it. The Supplier shall provide any further information as requested.
- 1.7 If the Buyer wishes to incorporate any improvement into this Contract, it must request a Variation in accordance with the Variation Procedure and the Supplier must implement such Variation at no additional cost to the Buyer.
- 1.8 Once the first Continuous Improvement Plan has been Approved in accordance with Paragraph 1.5:
 - 1.8.1 the Supplier shall use all reasonable endeavours to implement any agreed deliverables in accordance with the Continuous Improvement Plan; and
 - 1.8.2 the Parties agree to meet as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the Parties) to review the Supplier's progress against the Continuous Improvement Plan.
- 1.9 The Supplier shall update the Continuous Improvement Plan as and when required but at least once every Contract Year (after the first (1st) Contract Year) in accordance with the procedure and timescales set out in Paragraph 1.3.
- 1.10 All costs relating to the compilation or updating of the Continuous Improvement Plan and the costs arising from any improvement made pursuant to it and the costs of implementing any improvement, shall have no effect on and are included in the Charges.
- 1.11 Should the Supplier's costs in providing the Deliverables to the Buyer be reduced as a result of any changes implemented, all of the cost savings shall be passed on to the Buyer by way of a consequential and immediate reduction in the Charges for the Deliverables.
- 1.12 At any time during the Contract Period of ~~the~~this Contract, the Supplier may make a proposal for gainshare. If the Buyer deems gainshare to be applicable then the Supplier shall update the Continuous Improvement Plan so as to include details of the way in which the proposal shall be implemented in accordance with an agreed gainshare ratio.

Schedule 12 (Benchmarking)

1. Definitions

1.1 In this Schedule, the following expressions shall have the following meanings:

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

2. When you should use this Schedule

- 2.1 The Supplier acknowledges that the Buyer wishes to ensure that the Deliverables, represent value for money to the taxpayer throughout the Contract Period.
- 2.2 This Schedule sets out to ensure the Contract represents value for money throughout and that the Buyer may terminate the Contract by issuing a Termination Notice to the Supplier if the Supplier refuses or fails to comply with its obligations as set out in Paragraph 3 of this Schedule, [in which case the consequences of termination set out in Clause 14.5.1 shall apply](#).
- 2.3 Amounts payable under this Schedule shall not fall with the definition of a Cost.

3. Benchmarking

3.1 How benchmarking works

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

3.2 Benchmarking Process

- 3.2.1 The benchmarker shall produce and send to the Buyer, for Approval, a draft plan for the Benchmark Review which must include:
- (a) ~~a~~ a proposed cost and timetable for the Benchmark Review;
 - (b) ~~b~~ a description of the benchmarking methodology to be used which must demonstrate that the methodology to be used is capable of fulfilling the benchmarking purpose; and
 - (c) ~~c~~ a description of how the benchmarker will scope and identify the Comparison Group.
- 3.2.2 The benchmarker, acting reasonably, shall be entitled to use any model to determine the achievement of value for money and to carry out the benchmarking.
- 3.2.3 The Buyer must give notice in writing to the Supplier within ten (10) Working Days after receiving the draft plan, advising the benchmarker and the Supplier whether it Approves the draft plan, or, if it does not approve the draft plan, suggesting amendments to that plan (which must be reasonable). If amendments are suggested then the benchmarker must produce an amended draft plan and this Paragraph 3.2.3 shall apply to any amended draft plan.
- 3.2.4 Once both Parties have approved the draft plan then they will notify the benchmarker. No Party may unreasonably withhold or delay its Approval of the draft plan.
- 3.2.5 Once it has received the Approval of the draft plan, the benchmarker shall:
- (a) ~~a~~ finalise the Comparison Group and collect data relating to Comparable Rates. The selection of the Comparable Rates (both in terms of number and identity) shall be a matter for the benchmarker's professional judgment using:
 - (A) information from other service providers to the Buyer;
 - (B) survey information;
 - (C) information from "in-house" providers to the Buyer to the extent that the benchmarker considers that they are valid comparators;
 - (D) market intelligence;
 - (E) the benchmarker's own data and experience;
 - (F) relevant published information; and
 - (G) pursuant to Paragraph 3.2.6 below, information from other suppliers or purchasers on Comparable Rates;

- (b) ~~b)~~ by applying the adjustment factors listed in Paragraph 3.2.7 and from an analysis of the Comparable Rates, derive the Equivalent Data;
- (c) ~~c)~~ using the Equivalent Data, calculate the Upper Quartile;
and
- (d) ~~d)~~ determine whether or not each Benchmarked Rate is, and/or the Benchmarked Rates as a whole are, Good Value.

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

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

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

3.3 Benchmarking Report

3.3.1 For the purposes of this Schedule "**Benchmarking Report**" shall mean the report produced by the benchmarker following the Benchmark Review and as further described in this Schedule;

3.3.2 The benchmarker shall prepare a Benchmarking Report and deliver it to the Buyer, at the time specified in the plan Approved pursuant to Paragraph 3.2.3, setting out its findings. Those findings shall be required to:

- (a) ~~a)~~ include a finding as to whether or not a Benchmarked Service and/or whether the Benchmarked Deliverables as a whole are, Good Value;
- (b) ~~b)~~ if any of the Benchmarked Deliverables are, individually or as a whole, not Good Value, specify the changes that would be required to make that Benchmarked Service or the Benchmarked Deliverables as a whole Good Value; and
- (c) ~~c)~~ include sufficient detail and transparency so that the Party requesting the Benchmarking can interpret and understand how the Supplier has calculated whether or not

the Benchmarked Deliverables are, individually or as a whole, Good Value.

- 3.3.3 The Parties agree that any changes required to this Contract identified in the Benchmarking Report shall be implemented at the direction of the Buyer in accordance with Clause 28 (Changing the contract).

Schedule 14 (Business Continuity and Disaster Recovery)

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"BCDR Plan"	has the meaning given to it in Paragraph 2.1 of this Schedule;
"Business Continuity Plan"	has the meaning given to it in Paragraph 2.2.2 of this Schedule;
"Disaster Recovery Plan"	has the meaning given to it in Paragraph 2.2.3 of this Schedule;
"Related Supplier"	any person who provides Deliverables to the Buyer which are related to the Deliverables from time to time;
"Review Report"	has the meaning given to it in Paragraph 6.3 of this Schedule; and
"Supplier's Proposals"	has the meaning given to it in Paragraph 6.3 of this Schedule;

2. BCDR Plan

- 2.1 At least ~~ninety~~forty (~~90~~40) Working Days ~~prior to~~after the ~~Start~~Effective Date the Supplier shall prepare and deliver to the Buyer for the Buyer's written approval a plan (a "**BCDR Plan**"), which shall detail the processes and arrangements that the Supplier shall follow to:
- 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Deliverables; and
 - 2.1.2 the recovery of the Deliverables in the event of a Disaster;
- 2.2 The BCDR Plan shall be divided into three sections:
- 2.2.1 Section 1 which shall set out general principles applicable to the BCDR Plan;
 - 2.2.2 Section 2 which shall relate to business continuity (the "**Business Continuity Plan**"); and
 - 2.2.3 Section 3 which shall relate to disaster recovery (the "**Disaster Recovery Plan**").
- 2.3 Following receipt of the draft BCDR Plan from the Supplier, the Parties shall use reasonable endeavours to agree the contents of the BCDR Plan. If the Parties are unable to agree the contents of the BCDR Plan within twenty

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(20) Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

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

3.1 Section 1 of the BCDR Plan shall:

- 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the provision of the Deliverables and any goods and/or services provided to the Buyer by a Related Supplier;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Buyer and any Related Suppliers with respect to business continuity and disaster recovery;
- 3.1.4 detail how the BCDR Plan interoperates with any overarching disaster recovery or business continuity plan of the Buyer and any of its other Related Supplier in each case as notified to the Supplier by the Buyer from time to time;
- 3.1.5 contain a communication strategy including details of an incident and problem management service and advice and help desk facility which can be accessed via multiple channels;
- 3.1.6 contain a risk analysis, including:
 - (a) ~~a)~~ failure or disruption scenarios and assessments of likely frequency of occurrence;
 - (b) ~~b)~~ identification of any single points of failure within the provision of Deliverables and processes for managing those risks;
 - (c) ~~c)~~ identification of risks arising from an Insolvency Event of the Supplier, any Key Subcontractors and/or Supplier Group member;
 - (d) ~~d)~~ identification of risks arising from the interaction of the provision of Deliverables with the goods and/or services provided by a Related Supplier; and
 - (e) ~~e)~~ a business impact analysis of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details for the Supplier (and any Subcontractors) and for the Buyer;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to minimise data loss;

- 3.1.11 identify the responsibilities (if any) that the Buyer has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 provide for the provision of technical assistance to key contacts at the Buyer as required by the Buyer to inform decisions in support of the Buyer's business continuity plans.
- 3.2 The BCDR Plan shall be designed so as to ensure that:
 - 3.2.1 the Deliverables are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
 - 3.2.2 the adverse impact of any Disaster is minimised as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 27002; ISO22301/ISO22313 and all other industry standards from time to time in force; and
 - 3.2.4 it details a process for the management of disaster recovery testing.
- 3.3 The BCDR Plan shall be upgradeable and sufficiently flexible to support any changes to the Deliverables and the business operations supported by the provision of Deliverables.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Service Levels, or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any ~~breach~~ [Default](#) by the Supplier of this Contract.

4. Business Continuity (Section 2)

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

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Deliverables during any period of invocation of the Business Continuity Plan; and

- 4.2.4 set out the circumstances in which the Business Continuity Plan is invoked.

5. Disaster Recovery (Section 3)

- 5.1 The Disaster Recovery Plan (which shall be invoked only upon the occurrence of a Disaster) shall be designed to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Buyer supported by the Services following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Supplier's BCDR Plan shall include an approach to business continuity and disaster recovery that addresses the following:
 - 5.2.1 loss of access to the Buyer Premises;
 - 5.2.2 loss of utilities to the Buyer Premises;
 - 5.2.3 loss of the Supplier's helpdesk or CAFM system;
 - 5.2.4 loss of a Subcontractor;
 - 5.2.5 emergency notification and escalation process;
 - 5.2.6 contact lists;
 - 5.2.7 staff training and awareness;
 - 5.2.8 BCDR Plan testing;
 - 5.2.9 post implementation review process;
 - 5.2.10 any applicable Service Levels with respect to the provision of the disaster recovery services and details of any agreed relaxation to the Service Levels in respect of the provision of other Deliverables during any period of invocation of the Disaster Recovery Plan;
 - 5.2.11 details of how the Supplier shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
 - 5.2.12 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
 - 5.2.13 testing and management arrangements.

6. Review and changing the BCDR Plan

- 6.1 The Supplier shall review the BCDR Plan:
 - 6.1.1 on a regular basis and as a minimum once every six (6) Months;
 - 6.1.2 within three (3) calendar Months of the BCDR Plan (or any part) having been invoked pursuant to Paragraph 7; and

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

7. Testing the BCDR Plan

- 7.1 The Supplier shall test the BCDR Plan:
 - 7.1.1 regularly and in any event not less than once in every Contract Year;
 - 7.1.2 in the event of any major reconfiguration of the Deliverables;
 - 7.1.3 at any time where the Buyer considers it necessary (acting in its sole discretion).

- 7.2 If the Buyer requires an additional test of the BCDR Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Buyer's requirements and the relevant provisions of the BCDR Plan. The Supplier's costs of the additional test shall be borne by the Buyer unless the BCDR Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 7.3 The Supplier shall undertake and manage testing of the BCDR Plan in full consultation with and under the supervision of the Buyer and shall liaise with the Buyer in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Buyer.
- 7.4 The Supplier shall ensure that any use by it or any Subcontractor of "live" data in such testing is first approved with the Buyer. Copies of live test data used in any such testing shall be (if so required by the Buyer) destroyed or returned to the Buyer on completion of the test.
- 7.5 The Supplier shall, within twenty (20) Working Days of the conclusion of each test, provide to the Buyer a report setting out:
 - 7.5.1 the outcome of the test;
 - 7.5.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
 - 7.5.3 the Supplier's proposals for remedying any such failures.
- 7.6 Following each test, the Supplier shall take all measures requested by the Buyer to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the Supplier, at its own cost, by the date reasonably required by the Buyer.

8. Invoking the BCDR Plan

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

9. Circumstances beyond your control

~~9.1~~ The Supplier shall not be entitled to relief under Clause 24 (Circumstances beyond your control) if it would not have been impacted by the Force Majeure Event had it not failed to comply with its obligations under this Schedule.

Schedule 15 (Minimum Standards of Reliability)

1. Standards

- 1.1 If this Contract has an anticipated contract value in excess of £20 million (excluding VAT) it shall not be awarded unless the Supplier can demonstrate that it meets the minimum standards of reliability as set out in the Find a Tender Service Notice (“**Minimum Standards of Reliability**”) at the time of the proposed award of ~~the~~[this](#) Contract.
- 1.2 The Buyer shall assess the Supplier’s compliance with the Minimum Standards of Reliability whenever it considers (in its absolute discretion) that it is appropriate to do so.
- 1.3 In the event that the Supplier does not demonstrate that it meets the Minimum Standards of Reliability in an assessment carried out pursuant to Paragraph 1.2, the Buyer shall so notify the Supplier and the Buyer reserves the right to terminate its Contract for ~~material~~[Material](#) Default under Clause 14.4 (When the Buyer can end the contract) and the consequences of termination set out in Clause 14.5.1 shall apply.

Schedule 16 (Security)

[Guidance Note: Buyer to select whether or when Part A (Short Form Security Requirements) or Part B (Long Form Security Requirements) should apply. Part B should be considered where there is a high level of risk to personal or sensitive data.]

The Cabinet Office Information Assurance Team has produced some stand-alone security schedules (available on <https://www.security.gov.uk/guidance/procurement-security-contracts/>) and Buyers may therefore wish to consider whether they would like to include these instead.

Part A: Short Form Security Requirements

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Breach of Security"

the occurrence of:

- (a) ~~a)~~ any unauthorised access to or use of the Deliverables, the Sites and/or any Information and Communication Technology ("ICT"), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or
- (b) ~~b)~~ the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract,

in either case as more particularly set out in the Security Policy where the Buyer has required compliance there with in accordance with Paragraph 2.1; and

"Security Management Plan"

the Supplier's security management plan prepared pursuant to this Schedule, a draft of which has been provided by the Supplier to the Buyer and as updated from time to time.

2. Complying with security requirements and updates to them

- 2.1 The Supplier shall comply with the requirements in this Schedule in respect of the Security Management Plan. Where specified by a Buyer it shall also comply with the Security Policy and ICT Policy and shall ensure that the Security Management Plan produced by the Supplier fully complies with the Security Policy and ICT Policy.
- 2.2 Where the Security Policy applies the Buyer shall notify the Supplier of any changes or proposed changes to the Security Policy.
- 2.3 If the Supplier believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the provision of the Deliverables it may propose a Variation to the Buyer. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall be subject to the Variation Procedure.
- 2.4 Until and/or unless a change to the Charges is agreed by the Buyer pursuant to the Variation Procedure the Supplier shall continue to provide the Deliverables in accordance with its existing obligations.

3. Security Standards

- 3.1 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on security.
- 3.2 The Supplier shall be responsible for the effective performance of its security obligations and shall at all times provide a level of security for its own system and any cloud services used which:
 - 3.2.1 is in accordance with the Law and this Contract;
 - 3.2.2 as a minimum demonstrates Good Industry Practice;
 - 3.2.3 meets any specific security threats of immediate relevance to the Deliverables and/or the Government Data; ~~and~~
 - 3.2.4 where specified by the Buyer in accordance with Paragraph 2.1 complies with the Security Policy and the ICT Policy; and
 - 3.2.5 complies with the 14 Cloud Security Principles available at: <https://www.ncsc.gov.uk/collection/cloud/the-cloud-security-principles>. The Supplier must document how it and any cloud service providers they use comply with these principles, and provide this documentation upon request by the Buyer.
- 3.3 The references to standards, guidance and policies contained or set out in Paragraph 3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.

- 3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Supplier should notify the Buyer's Representative of such inconsistency immediately upon becoming aware of the same, and the Buyer's Representative shall, as soon as practicable, advise the Supplier which provision the Supplier shall be required to comply with.

4. Security Management Plan

4.1 Introduction

~~4.1.1~~ The Supplier shall develop and maintain a Security Management Plan in accordance with this Schedule. The Supplier shall thereafter comply with its obligations set out in the Security Management Plan.

4.2 Content of the Security Management Plan

~~4.2.1~~ The Security Management Plan shall:

4.2.1 ~~a)~~ comply with the principles of security set out in Paragraph 3 and any other provisions of this Contract relevant to security;

4.2.2 ~~b)~~ identify the necessary delegated organisational roles for those responsible for ensuring it is complied with by the Supplier;

4.2.3 ~~c)~~ detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Deliverables, processes associated with the provision of the Deliverables, the Buyer Premises, the Sites and any ICT, ~~Information~~information and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that ~~Information~~information, data and/or the Deliverables;

4.2.4 ~~d)~~ be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, and any ICT, ~~Information~~information and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that ~~Information~~information, data and/or the Deliverables;

4.2.5 ~~e)~~ set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the provision of the Goods and/or Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Contract;

4.2.6 ~~f)~~ set out the plans for transitioning all security arrangements and responsibilities for the Supplier to meet the full obligations of the security requirements set out in this Contract and, where necessary in accordance with the Security Policy as set out in Paragraph 2.1–; and

4.2.7 ~~g)~~ be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the provision of the Deliverables and shall only reference documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.

4.3 **Development of the Security Management Plan**

4.3.1 Within twenty (20) Working Days after the ~~Start~~Effective Date and in accordance with Paragraph 4.4, the Supplier shall prepare and deliver to the Buyer for Approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan.

4.3.2 If the Security Management Plan submitted to the Buyer in accordance with Paragraph 4.3.1, or any subsequent revision to it in accordance with Paragraph 4.4, is Approved it will be adopted immediately and will replace the previous version of the Security Management Plan and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not Approved, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit to the Buyer for Approval. The Parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of its first submission to the Buyer. If the Buyer does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure.

4.3.3 The Buyer shall not unreasonably withhold or delay its decision to Approve or not the Security Management Plan pursuant to Paragraph 4.3.2. However, a refusal by the Buyer to Approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.

4.3.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph ~~4.3.2~~4.3.3 or of any change to the Security Management Plan in accordance with Paragraph 4.4 shall not relieve the Supplier of its obligations under this Schedule.

4.4 **Amendment of the Security Management Plan**

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

- (a) ~~a)~~ emerging changes in Good Industry Practice;
- (b) ~~b)~~ any change or proposed change to the Deliverables and/or associated processes;
- (c) ~~c)~~ where necessary in accordance with Paragraph 2.2, any change to the Security Policy;

- (d) ~~d)~~ any new perceived or changed security threats; and
 - (e) ~~e)~~ any reasonable change in requirements requested by the Buyer.
- 4.4.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amendment of the Security Management Plan at no additional cost to the Buyer. The results of the review shall include:
 - (a) ~~a)~~ suggested improvements to the effectiveness of the Security Management Plan;
 - (b) ~~b)~~ updates to the risk assessments; and
 - (c) ~~c)~~ suggested improvements in measuring the effectiveness of controls.
- 4.4.3 Subject to Paragraph 4.4.4, any change or amendment which the Supplier proposes to make to the Security Management Plan (as a result of a review carried out in accordance with Paragraph 4.4.1, a request by the Buyer or otherwise) shall be subject to the Variation Procedure.
- 4.4.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

5. Security breach

- 5.1 Either Party shall notify the other in accordance with the agreed security incident management process (as detailed in the Security Management Plan) upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.
- 5.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 5.1, the Supplier shall:
 - 5.2.1 immediately use all reasonable endeavours (which shall include any action or changes reasonably required by the Buyer) necessary to:
 - (a) ~~a)~~ minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) ~~b)~~ remedy such Breach of Security to the extent possible and protect the integrity of the Buyer and the provision of the Goods and/or Services to the extent within its control against any such Breach of Security or attempted Breach of Security;

- (c) ~~e)~~ prevent an equivalent breach in the future exploiting the same cause failure; and
- (d) ~~d)~~ as soon as reasonably practicable provide to the Buyer, where the Buyer so requests, full details (using the reporting mechanism defined by the Security Management Plan) of the Breach of Security or attempted Breach of Security, including a cause analysis where required by the Buyer.

5.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the Security Management Plan with the Security Policy (where relevant in accordance with Paragraph 2.1-) or the requirements of this Schedule, then any required change to the Security Management Plan shall be at no cost to the Buyer.

Part B: Long Form Security Requirements

1. Definitions

- 1.1 In this Schedule the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Breach of Security"	means the occurrence of: <u>(a)</u> a) any unauthorised access to or use of the Goods and/or Deliverables, the Sites and/or any Information and Communication Technology (" ICT "), information or data (including the Confidential Information and the Government Data) used by the Buyer and/or the Supplier in connection with this Contract; and/or <u>(b)</u> b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Government Data), including any copies of such information or data, used by the Buyer and/or the Supplier in connection with this Contract, in either case as more particularly set out in the security requirements in the Security Policy where the Buyer has required compliance therewith in accordance with Paragraph 3.4.3(d);
"ISMS"	the information security management system and process developed by the Supplier in accordance with Paragraph 3 (ISMS) as updated from time to time in accordance with this Schedule; and
"Security Tests"	tests to validate the ISMS and security of all relevant processes, systems, incident response plans, patches to vulnerabilities and mitigations to Breaches of Security.

2. Security Requirements

- 2.1 The Parties acknowledge that the purpose of the ISMS and Security Management Plan are to ensure a good organisational approach to security under which the specific requirements of this Contract will be met.
- 2.2 The Parties shall each appoint a security representative to be responsible for Security. The initial security representatives of the Parties are:
- 2.2.1 **[insert security representative of the Buyer]**
- 2.2.2 **[insert security representative of the Supplier]**

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

3. Information Security Management System (ISMS)

- 3.1 The Supplier shall develop and submit to the Buyer, within twenty (20) Working Days after the ~~Start~~Effective Date, an information security management system for the purposes of this Contract and shall comply with the requirements of Paragraphs 3.4 to 3.6.
- 3.2 The Supplier acknowledges that the Buyer places great emphasis on the reliability of the performance of the Deliverables, confidentiality, integrity and availability of information and consequently on the security provided by the ISMS and that the Supplier shall be responsible for the effective performance of the ISMS.
- 3.3 The Buyer acknowledges that:
 - 3.3.1 If the Buyer has not stipulated that it requires a bespoke ISMS, the ISMS provided by the Supplier may be an extant ISMS covering the Services and their implementation across the Supplier's estate; and
 - 3.3.2 Where the Buyer has stipulated that it requires a bespoke ISMS then the Supplier shall be required to present the ISMS for the Buyer's Approval.
- 3.4 The ISMS shall:
 - 3.4.1 if the Buyer has stipulated that it requires a bespoke ISMS, be developed to protect all aspects of the Deliverables and all processes associated with the provision of the Deliverables, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, information and data (including the Buyer's

- Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract;
- 3.4.2 meet the relevant standards in ISO/IEC 27001 (at least ISO/IEC 27001:2013) and ISO/IEC27002, in accordance with Paragraph 7;
- 3.4.3 at all times provide a level of security which:
- (a) ~~a)~~ is in accordance with the Law and this Contract;
 - (b) ~~b)~~ complies with the Baseline Security Requirements;
 - (c) ~~c)~~ as a minimum demonstrates Good Industry Practice;
 - (d) ~~d)~~ where specified by a Buyer, complies with the Security Policy and the ICT Policy;
 - (e) ~~e)~~ complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4)
(<https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework>)
 - (f) ~~f)~~ takes account of guidance issued by the Centre for Protection of National Infrastructure
(<https://www.cpni.gov.uk>)
 - (g) ~~g)~~ complies with HMG Information Assurance Maturity Model and Assurance Framework
(<https://www.ncsc.gov.uk/articles/hmg-ia-maturity-model-ia-mm>)
 - (h) ~~h)~~ complies with the 14 Cloud Security Principles
(<https://www.ncsc.gov.uk/collection/cloud/the-cloud-security-principles>). The Supplier must document how the ISMS complies with these principles, and provide this documentation upon request by the Buyer;
 - (i) ~~i)~~ meets any specific security threats of immediate relevance to the ISMS, the Deliverables and/or Government Data;
 - (j) ~~j)~~ addresses issues of incompatibility with the Supplier's own organisational security policies; and
 - (k) ~~k)~~ complies with ISO/IEC 27001 (at least ISO/IEC 27001:2013) and ISO/IEC27002 in accordance with Paragraph 7;
- 3.4.4 document the security incident management processes and incident response plans;
- 3.4.5 document the vulnerability management policy including processes for identification of system vulnerabilities and assessment of the potential impact on the Deliverables of any new threat, vulnerability or exploitation technique of which the Supplier becomes aware, prioritisation of security patches, testing of security patches, application of security patches, a process for Buyer approvals of

- exceptions, and the reporting and audit mechanism detailing the efficacy of the patching policy; and
- 3.4.6 be certified by (or by a person with the direct delegated authority of) a Supplier's main board representative, being the "Chief Security Officer", "Chief Information Officer", "Chief Technical Officer" or "Chief Financial Officer" (or equivalent as agreed in writing by the Buyer in advance of issue of the relevant Security Management Plan).
- 3.5 Subject to Paragraph 2 the references to Standards, guidance and policies contained or set out in Paragraph 3.4 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, as notified to the Supplier from time to time.
- 3.6 In the event that the Supplier becomes aware of any inconsistency in the provisions of the standards, guidance and policies set out in Paragraph 3.4, the Supplier shall immediately notify the Buyer Representative of such inconsistency and the Buyer Representative shall, as soon as practicable, notify the Supplier as to which provision the Supplier shall comply with.
- 3.7 If the bespoke ISMS submitted to the Buyer pursuant to Paragraph 3.3.1 is Approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the ISMS is not Approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission of the ISMS to the Buyer. If the Buyer does not Approve the ISMS following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Buyer pursuant to this Paragraph 3 may be unreasonably withheld or delayed. However any failure to approve the ISMS on the grounds that it does not comply with any of the requirements set out in Paragraphs 3.4 to 3.6 shall be deemed to be reasonable.
- 3.8 Approval by the Buyer of the ISMS pursuant to Paragraph 3.7 or of any change to the ISMS shall not relieve the Supplier of its obligations under this Schedule.

4. Security Management Plan

- 4.1 Within twenty (20) Working Days after the ~~Start~~[Effective](#) Date, the Supplier shall prepare and submit to the Buyer for Approval in accordance with Paragraph 4 fully developed, complete and up-to-date Security Management Plan which shall comply with the requirements of Paragraph 4.2.
- 4.2 The Security Management Plan shall:
- 4.2.1 be based on the initial Security Management Plan set out in Annex 2 (Security Management Plan);

- 4.2.2 comply with the Baseline Security Requirements and, where specified by the Buyer in accordance with Paragraph 3.4.3(d), the Security Policy;
- 4.2.3 identify the necessary delegated organisational roles defined for those responsible for ensuring this Schedule is complied with by the Supplier;
- 4.2.4 detail the process for managing any security risks from Subcontractors and third parties authorised by the Buyer with access to the Goods and/or Services, processes associated with the delivery of the Goods and/or Services, the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, ~~Information~~[information](#) and data (including the Buyer's Confidential Information and the Government Data) and any system that could directly or indirectly have an impact on that information, data and/or the Deliverables;
- 4.2.5 unless otherwise specified by the Buyer in writing, be developed to protect all aspects of the Deliverables and all processes associated with the delivery of the Deliverables, including the Buyer Premises, the Sites, the Supplier System, the Buyer System (to the extent that it is under the control of the Supplier) and any ICT, ~~Information~~[information](#) and data (including the Buyer's Confidential Information and the Government Data) to the extent used by the Buyer or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that ~~Information~~[information](#), data and/or the Deliverables;
- 4.2.6 set out the security measures to be implemented and maintained by the Supplier in relation to all aspects of the Deliverables and all processes associated with the delivery of the Deliverables and at all times comply with and specify security measures and procedures which are sufficient to ensure that the Deliverables comply with the provisions of this Schedule (including the requirements set out in Paragraph 3.4);
- 4.2.7 demonstrate that the Supplier's approach to delivery of the Deliverables has minimised the Buyer and Supplier effort required to comply with this Schedule through consideration of available, appropriate and practicable pan-government accredited services (for example, "platform as a service" offering from the G-Cloud catalogue);
- 4.2.8 set out the plans for transitioning all security arrangements and responsibilities from those in place at the ~~Start~~[Effective](#) Date to those incorporated in the ISMS within the timeframe agreed between the Parties;
- 4.2.9 set out the scope of the Buyer System that is under the control of the Supplier;

- 4.2.10 be structured in accordance with ISO/IEC 27001 (at least ISO/IEC 27001:2013) and ISO/IEC 27002, cross-referencing if necessary to other Schedules which cover specific areas included within those standards; and
 - 4.2.11 be written in plain English in language which is readily comprehensible to the staff of the Supplier and the Buyer engaged in the Deliverables and shall reference only documents which are in the possession of the Parties or whose location is otherwise specified in this Schedule.
- 4.3 If the Security Management Plan submitted to the Buyer pursuant to Paragraph 4.1 is Approved by the Buyer, it shall be adopted by the Supplier immediately and thereafter operated and maintained in accordance with this Schedule. If the Security Management Plan is not approved by the Buyer, the Supplier shall amend it within ten (10) Working Days of a notice of non-approval from the Buyer and re-submit it to the Buyer for Approval. The Parties shall use all reasonable endeavours to ensure that the Approval process takes as little time as possible and in any event no longer than fifteen (15) Working Days from the date of the first submission to the Buyer of the Security Management Plan. If the Buyer does not Approve the Security Management Plan following its resubmission, the matter shall be resolved in accordance with the Dispute Resolution Procedure. No Approval to be given by the Buyer pursuant to this Paragraph may be unreasonably withheld or delayed. However, any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in Paragraph 4.2 shall be deemed to be reasonable.
- 4.4 Approval by the Buyer of the Security Management Plan pursuant to Paragraph 4.3 or of any change or amendment to the Security Management Plan shall not relieve the Supplier of its obligations under this Schedule.

5. Amendment of the ISMS and Security Management Plan

- 5.1 The ISMS and Security Management Plan shall be fully reviewed and updated by the Supplier and at least annually to reflect:
- 5.1.1 emerging changes in Good Industry Practice;
 - 5.1.2 any change or proposed change to the Supplier System, the Deliverables and/or associated processes;
 - 5.1.3 any new perceived or changed security threats;
 - 5.1.4 where required in accordance with Paragraph 3.4.3(d), any changes to the Security Policy [and/or the ICT Policy](#);
 - 5.1.5 any new perceived or changed security threats; and
 - 5.1.6 any reasonable change in requirement requested by the Buyer.

- 5.2 The Supplier shall provide the Buyer with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Buyer. The results of the review shall include:
 - 5.2.1 suggested improvements to the effectiveness of the ISMS;
 - 5.2.2 updates to the risk assessments;
 - 5.2.3 proposed modifications to the procedures and controls that affect information security to respond to events that may impact on the ISMS; and
 - 5.2.4 suggested improvements in measuring the effectiveness of controls.
- 5.3 Subject to Paragraph 5.4, any change which the Supplier proposes to make to the ISMS or Security Management Plan (as a result of a review carried out pursuant to Paragraph 5.1, a Buyer request, a change to Annex 1 (Security) or otherwise) shall be subject to the Variation Procedure and shall not be implemented until Approved in writing by the Buyer.
- 5.4 The Buyer may, acting reasonably, Approve and require changes or amendments to the ISMS or Security Management Plan to be implemented on timescales faster than set out in the Variation Procedure but, without prejudice to their effectiveness, all such changes and amendments shall thereafter be subject to the Variation Procedure for the purposes of formalising and documenting the relevant change or amendment.

6. Security Testing

- 6.1 The Supplier shall conduct Security Tests from time to time (and at least annually across the scope of the ISMS) and additionally after any change or amendment to the ISMS (including security incident management processes and incident response plans) or the Security Management Plan. Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Deliverables and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Buyer. Subject to compliance by the Supplier with the foregoing requirements, if any Security Tests adversely affect the Supplier's ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Security Tests.
- 6.2 The Buyer shall be entitled to send a representative to witness the conduct of the Security Tests. The Supplier shall provide the Buyer with the results of such Security Tests (in a form approved by the Buyer in advance) as soon as practicable after completion of each Security Test.
- 6.3 Without prejudice to any other right of audit or access granted to the Buyer pursuant to this Contract, the Buyer and/or its authorised representatives shall be entitled, at any time upon giving reasonable notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Supplier's compliance with the

ISMS and the Security Management Plan. The Buyer may notify the Supplier of the results of such tests after completion of each such test. If any such Buyer's test adversely affects the Supplier's ability to deliver the Deliverables so as to meet the KPIs, the Supplier shall be granted relief against any resultant under-performance for the period of the Buyer's test.

- 6.4 Where any Security Test carried out pursuant to Paragraphs 6.2 or 6.3 reveals any actual or potential Breach of Security or weaknesses (including un-patched vulnerabilities, poor configuration and/or incorrect system management), the Supplier shall promptly notify the Buyer of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Supplier proposes to make in order to correct such failure or weakness. Subject to the Buyer's prior written Approval, the Supplier shall implement such changes to the ISMS and the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Buyer or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan is to address a non-compliance with the Security Policy or security requirements (as set out in Annex 1 (Baseline Security Requirements) to this Schedule) or the requirements of this Schedule, the change to the ISMS or Security Management Plan shall be at no cost to the Buyer.
- 6.5 If any repeat Security Test carried out pursuant to Paragraph 6.4 reveals an actual or potential Breach of Security exploiting the same root cause failure, such circumstance shall constitute a ~~material~~Material Default of this Contract.

7. Complying with the ISMS

- 7.1 The Buyer shall be entitled to carry out such security audits as it may reasonably deem necessary in order to ensure that the ISMS maintains compliance with the principles and practices of ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or the Security Policy where such compliance is required in accordance with Paragraph 3.4.3(d).
- 7.2 If, on the basis of evidence provided by such security audits, it is the Buyer's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or, where relevant, the Security Policy are not being achieved by the Supplier, then the Buyer shall notify the Supplier of the same and give the Supplier a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to implement and remedy. If the Supplier does not become compliant within the required time then the Buyer shall have the right to obtain an independent audit against these standards in whole or in part.
- 7.3 If, as a result of any such independent audit as described in Paragraph the Supplier is found to be non-compliant with the principles and practices of ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or, where relevant, the Security Policy then the Supplier shall, at its own expense, undertake those

actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Buyer in obtaining such audit.

8. Security Breach

- 8.1 Either Party shall notify the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any breach of security or any potential or attempted Breach of Security.
- 8.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in Paragraph 8.1, the Supplier shall:
- 8.2.1 immediately use all reasonable endeavours (which shall include any action or changes reasonably required by the Buyer) necessary to:
- (a) ~~a)~~ minimise the extent of actual or potential harm caused by any Breach of Security;
 - (b) ~~b)~~ remedy such Breach of Security or any potential or attempted Breach of Security in order to protect the integrity of the Buyer Property and/or Buyer Assets and/or ISMS to the extent that this is within the Supplier's control;
 - (c) ~~c)~~ apply a tested mitigation against any such Breach of Security or attempted Breach of Security and provided that reasonable testing has been undertaken by the Supplier, if the mitigation adversely affects the Supplier's ability to provide the Deliverables so as to meet the relevant Service Levels the Supplier shall be granted relief against any resultant under-performance for such period as the Buyer, acting reasonably, may specify by written notice to the Supplier;
 - (d) ~~d)~~ prevent a further Breach of Security or any potential or attempted Breach of Security in the future exploiting the same root cause failure; and
 - (e) ~~e)~~ supply any requested data to the Buyer (or the Computer Emergency Response Team for UK Government ("GovCertUK")) on the Buyer's request within two (2) Working Days and without charge (where such requests are reasonably related to a possible incident or compromise); and
 - (f) ~~f)~~ as soon as reasonably practicable provide to the Buyer full details (using the reporting mechanism defined by the ISMS) of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Buyer.
- 8.3 In the event that any action is taken in response to a Breach of Security or potential or attempted Breach of Security that demonstrates non-compliance of the ISMS with the Security Policy (where relevant) or the

requirements of this Schedule, then any required change to the ISMS shall be at no cost to the Buyer.

9. Vulnerabilities and fixing them

- 9.1 The Buyer and the Supplier acknowledge that from time to time vulnerabilities in the ICT Environment will be discovered which unless mitigated will present an unacceptable risk to the Buyer's information.
- 9.2 The severity of threat vulnerabilities for COTS Software shall be categorised by the Supplier as "Critical", "Important" and "Other" by aligning these categories to the vulnerability scoring according to the agreed method in the ISMS and using the appropriate vulnerability scoring systems including:
 - 9.2.1 the "National Vulnerability Database" "Vulnerability Severity Ratings": "High", "Medium" and "Low" respectively (these in turn are aligned to CVSS scores as set out by NIST <http://nvd.nist.gov/cvss.cfm>); and
 - 9.2.2 Microsoft's "Security Bulletin Severity Rating System" ratings "Critical", "Important", and the two remaining levels ("Moderate" and "Low") respectively.
- 9.3 The Supplier shall procure the application of security patches to vulnerabilities within a maximum period from the public release of such patches with those vulnerabilities categorised as "Critical" within fourteen (14) days of release, "Important" within thirty (30) days of release and all "Other" within sixty (60) Working Days of release, except where:
 - 9.3.1 the Supplier can demonstrate that a vulnerability is not exploitable within the context of any Service (e.g. because it resides in a software component which is not running in the service) provided vulnerabilities which the Supplier asserts cannot be exploited within the context of a Service must be remedied by the Supplier within the above timescales if the vulnerability becomes exploitable within the context of the Service;
 - 9.3.2 the application of a "Critical" or "Important" security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Buyer; or
 - 9.3.3 the Buyer agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the ISMS.

- 9.4 The Specification and Implementation Plan (if applicable) shall include provisions for major version upgrades of all COTS Software to be upgraded within six (6) Months of the release of the latest version, such that it is no more than one major version level below the latest release (normally codified as running software no older than the "n-1 version") throughout the Term unless:
- 9.4.1 where upgrading such COTS Software reduces the level of mitigations for known threats, vulnerabilities or exploitation techniques, provided always that such upgrade is made within twelve (12) Months of release of the latest version; or
- 9.4.2 is agreed with the Buyer in writing.
- 9.5 The Supplier shall:
- 9.5.1 implement a mechanism for receiving, analysing and acting upon threat information supplied by GovCertUK, or any other competent ~~Central Government Body~~CrownBody;
- 9.5.2 ensure that the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;
- 9.5.3 ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the ICT Environment by actively monitoring the threat landscape during the Contract Period;
- 9.5.4 pro-actively scan the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) for vulnerable components and address discovered vulnerabilities through the processes described in the ISMS as developed under Paragraph 3.4.5;
- 9.5.5 from the date specified in the Security Management Plan provide a report to the Buyer within five (5) Working Days of the end of each Month detailing both patched and outstanding vulnerabilities in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and any elapsed time between the public release date of patches and either time of application or for outstanding vulnerabilities the time of issue of such report;
- 9.5.6 propose interim mitigation measures to vulnerabilities in the ICT Environment known to be exploitable where a security patch is not immediately available;
- 9.5.7 remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in order to reduce the attack surface of the ICT Environment); and
- 9.5.8 inform the Buyer when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect

the security of the ICT Environment and provide initial indications of possible mitigations.

- 9.6 If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under this Paragraph ~~9.5~~, the Supplier shall immediately notify the Buyer.
- 9.7 A failure to comply with Paragraph 9.3 shall constitute a Default, and the Supplier shall comply with the Rectification Plan Process.

Part B – Annex 1:

Baseline security requirements

1. Handling Classified information

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

2. End user devices

2.1 When Government Data resides on a mobile, removable or physically uncontrolled device it must be stored encrypted using a product or system component which has been formally assured through a recognised certification process of the National Cyber Security Centre ("NCSC") to at least Foundation Grade, for example, under the NCSC Commercial Product Assurance scheme ("CPA").

2.2 Devices ~~Other than in relation to Government Data which is licenced by the Supplier, devices~~ used to access or manage Government Data and services must be under the management authority of Buyer or Supplier and have a minimum set of security policy configuration enforced. These devices must be placed into a 'known good' state prior to being provisioned into the management authority of the Buyer. Unless otherwise agreed with the Buyer in writing, all Supplier devices are expected to meet the set of security requirements set out in the End User Devices Security Guidance (<https://www.ncsc.gov.uk/guidance/end-user-device-security>). Where the guidance highlights shortcomings in a particular platform the Supplier may wish to use, then these should be discussed with the Buyer and a joint decision shall be taken on whether the residual risks are acceptable. Where the Supplier wishes to deviate from the NCSC guidance, then this should be agreed in writing on a case by case basis with the Buyer.

3. Data Processing, Storage, Management and Destruction

3.1 The Supplier and Buyer recognise the need for the Buyer's information to be safeguarded under the UK Data Protection regime or a similar regime. To that end, the Supplier must be able to state to the Buyer the physical locations in which data may be stored, processed and managed from, and what legal and regulatory frameworks Government Data will be subject to at all times.

3.2 The Supplier shall agree any change in location of data storage, processing and administration with the Buyer in accordance with Clause 18 (Data protection).

3.3 The Supplier shall:

3.3.1 provide the Buyer with all Government Data on demand in an agreed open format;

- 3.3.2 have documented processes to guarantee availability of Government Data in the event of the Supplier ceasing to trade;
- 3.3.3 securely destroy all media that has held Government Data at the end of life of that media in line with Good Industry Practice; and
- 3.3.4 securely erase any or all Government Data held by the Supplier when requested to do so by the Buyer, other than in relation to Government Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers.

4. Ensuring secure communications

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

5. Security by design

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

6. Security of Supplier Staff

- 6.1 Supplier Staff shall be subject to pre-employment checks that include, as a minimum: identity, unspent criminal convictions and right to work.
- 6.2 The Supplier shall agree on a case by case basis Supplier Staff roles which require specific government clearances (such as "SC") including system administrators with privileged access to IT systems which store or process Government Data.
- 6.3 The Supplier shall prevent Supplier Staff who are unable to obtain the required security clearances from accessing systems which store, process,

or are used to manage Government Data except where agreed with the Buyer in writing.

- 6.4 All Supplier Staff that have the ability to access Government Data or systems holding Government Data shall undergo regular training on secure information management principles. Unless otherwise agreed with the Buyer in writing, this training must be undertaken annually.
- 6.5 Where the Supplier or Subcontractors grants increased ICT privileges or access rights to Supplier Staff, those Supplier Staff shall be granted only those permissions necessary for them to carry out their duties. When staff no longer need elevated privileges or leave the organisation, their access rights shall be revoked within one (1) Working Day.

7. Restricting and monitoring access

~~7.1~~ The Supplier shall operate an access control regime to ensure all users and administrators of the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) are uniquely identified and authenticated when accessing or administering the Services. Applying the "principle of least privilege", users and administrators shall be allowed access only to those parts of the ICT Environment that they require. The Supplier shall retain an audit record of accesses.

8. Audit

- 8.1 The Supplier shall collect audit records which relate to security events in the systems or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include:
 - 8.1.1 Logs to facilitate the identification of the specific asset which makes every outbound request external to the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier). To the extent the design of the Deliverables allows such logs shall include those from DHCP servers, HTTP/HTTPS proxy servers, firewalls and routers.
 - 8.1.2 Security events generated in the ICT Environment (to the extent that the ICT Environment is within the control of the Supplier) and shall include: privileged account log-on and log-off events, the start and termination of remote access sessions, security alerts from desktops and server operating systems and security alerts from third party security software.
- 8.2 The Supplier and the Buyer shall work together to establish any additional audit and monitoring requirements for the ICT Environment.
- 8.3 The Supplier shall retain audit records collected in compliance with this Paragraph 8 for a period of at least six (6) Months.

Part B – Annex 2 – Security Management Plan

[REDACTED]

Schedule 18 (Supply Chain Visibility)

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Contracts Finder"	the Government's publishing portal for public sector procurement opportunities;
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises;
"Supply Chain Information Report Template"	the document at Annex 1 of this Schedule 18; and
"Unconnected Sub-contract"	any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017
"Unconnected Sub-contractor"	any third party with whom the Supplier enters into an Unconnected Sub-contract

2. Visibility of Sub-Contract Opportunities in the Supply Chain

2.1 The Supplier shall:

- 2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;
- 2.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;
- 2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
- 2.1.4 provide reports on the information at Paragraph 2.1.3 to the Buyer in the format and frequency as reasonably specified by the Buyer; and

- 2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 2.2 Each advert referred to at Paragraph 2.1.1 of this Schedule 18 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 2.3 The obligations on the Supplier set out at Paragraph 2.1 shall only apply in respect of Sub-Contract opportunities arising after the ~~Start~~Effective Date.
- 2.4 Notwithstanding Paragraph 2.1, the Buyer may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the Supplier on Contracts Finder.

3. Visibility of Supply Chain Spend

- 3.1 In addition to any other management information requirements set out in ~~the~~this Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “SME Management Information Reports”) to the Buyer which incorporates the data described in the Supply Chain Information Report Template which is:
 - 3.1.1 the total contract revenue received directly on ~~the~~this Contract;
 - 3.1.2 the total value of sub-contracted revenues under ~~the~~this Contract (including revenues for non-SMEs/non-VCSEs); and
 - 3.1.3 the total value of sub-contracted revenues to SMEs and VCSEs.
- 3.2 The SME Management Information Reports shall be provided by the Supplier in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Buyer from time to time. The Supplier agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1.1 – 3.1.3 and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Buyer issuing a replacement version. The Buyer agrees to give at least thirty (30) days’ notice in writing of any such change and shall specify the date from which it must be used.
- 3.3 The Supplier further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Buyer.

4 Visibility of Payment Practice

- 4.1 If this Contract has at the ~~Start~~[Effective](#) Date an anticipated contract value in excess of £5 million per annum (excluding VAT) averaged over ~~the~~[this](#) Contract Period and without prejudice to Clause 4.6, Clause 8.2.1(b) and 8.2.2(b), the Supplier shall:
- (a) pay any sums which are due from it to any Sub-contractor or Unconnected Sub-contractor pursuant to any invoice (or other notice of an amount for payment) on the earlier of:
 - (i) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (ii) the date that falls sixty (60) days after the day on which the Supplier receives an invoice (or otherwise has notice of an amount for payment); and
 - (b) include within the Supply Chain Information Report a summary of its compliance with this Paragraph [4.4.4](#), such data to be certified every six months by a director of the Supplier as being accurate and not misleading.
- 4.2 If any Supply Chain Information Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall provide to the Buyer within **[15]** Working Days of submission of the latest Supply Chain Information Report an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:
- (a) identification of the primary causes of failure to pay 95% or above of all Sub-contractor or Unconnected Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt;
 - (b) actions to address each of the causes set out in Sub-Paragraph [\(a\)](#); and
 - (c) mechanism for and commitment to regular reporting on progress to the Supplier’s Board.
- 4.3 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.
- 4.4 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of

~~[Subject to Contract]~~

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the procurement process and such action plan shall be included as part of the Supplier's Solution (to the extent it is not already included).

- 4.5 If the Supplier notifies the Buyer (whether in a Supply Chain Report or otherwise) that the Supplier has failed to pay 95% or above of its Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Buyer otherwise discovers the same, the Buyer shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

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Annex 1 - Supply Chain Information Report template

	Contract Year 20[]			
	Under this Contract		Supplier as a whole	
	£	%	£	%
Estimated total contract revenue (£) to be received in this Contract Year	£[]	100%	£[]	100%
Total value of Sub-contracted revenues (£) in this Contract Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to SMEs (£) in this Contract Year	£[]	[]	£[]	[]
Total value of Sub-contracted revenues to VCSEs (£) in this Contract Year	£[]	[]	£[]	[]

Schedule 19 (Cyber Essentials Scheme)

[Guidance: Buyer must indicate in the Award Form whether a Cyber Essentials or Cyber Essentials Plus Certificate is required. See the [Cyber Essentials PPN] for further details.]

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Cyber Essentials Scheme"	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found at: https://www.gov.uk/government/publications/cyber-essentials-scheme-overview ;
"Cyber Essentials Basic Certificate"	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
"Cyber Essentials Certificate"	Cyber Essentials Basic Certificate or the Cyber Essentials Plus Certificate to be provided by the Supplier as set out in the Award Form;
"Cyber Essential Scheme Data"	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; <u>and</u>
"Cyber Essentials Plus Certificate"	the certification awarded on the basis of external testing by an independent certification body of the Supplier's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance. <u>[Guidance: see the Award Form for situations when this should be required]</u> .

2. What Certification do you need

- 2.1 Where the Award Form requires that the Supplier provide a Cyber Essentials Certificate prior to **[Guidance: add appropriate wording with respect to status of contract. All Paragraphs must be reviewed to ensure that the wording added is consistent with all other Paragraphs in the Schedule]** the Supplier shall provide a valid Cyber Essentials Certificate to the Buyer. Where the Supplier fails to comply with this Paragraph 2.1 it shall be prohibited from commencing the provision of Deliverables under ~~the~~[this](#) Contract until such time as the Supplier has evidenced to the Buyer its compliance with this Paragraph 2.1.
- 2.2 Where the Supplier continues to Process Cyber Essentials Scheme Data during ~~the~~[this](#) Contract Period of ~~the~~[this](#) Contract the Supplier shall deliver to the Buyer evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the Supplier under Paragraph 2.1.
- 2.3 Where the Supplier is due to Process Cyber Essentials Scheme Data ~~after the Start date of the Contract but before the end of the Contract Period~~, the Supplier shall deliver to the Buyer evidence of:
- 2.3.1 a valid and current Cyber Essentials Certificate before the Supplier Processes any such Cyber Essentials Scheme Data; and
- 2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Supplier under Paragraph 2.1.
- 2.4 In the event that the Supplier fails to comply with Paragraphs 2.2 or 2.3 (as applicable), the Buyer reserves the right to terminate this Contract for ~~material~~[Material](#) Default [and the consequences of termination in Clause 14.5.1 shall apply](#).
- 2.5 The Supplier shall ensure that all Sub-Contracts with Subcontractors who Process Cyber Essentials [Scheme](#) Data ~~contain provisions no less onerous on the Subcontractors than those imposed on the Supplier under this Contract in respect of the~~[require the Subcontractor to provide a valid Cyber Essentials ~~Scheme under Paragraph 2.1 of this Schedule~~ Certificate, at the equivalent level to that held by the Supplier. The Supplier cannot require the Subcontractor to commence the provision of Deliverables under the Sub-Contract until the Subcontractor has evidenced to the Supplier that it holds a valid Cyber Essentials Certificate.](#)
- 2.6 [The Supplier must manage, and must ensure that all Subcontractors manage, all end-user devices used by the Supplier and the Subcontractor on which Cyber Essentials Scheme Data is processed by ensuring those devices are within the scope of the current Cyber Essentials Certificates held by the Supplier and the Subcontractor, or any ISO/IEC 27001 \(at least ISO/IEC 27001:2013\) certification issued by a UKAS-approved certification body, where the scope of that certification includes the Deliverables.](#)

~~[Subject to Contract]~~

Schedule 19 (Cyber Essential Scheme), [Crown Copyright 2023](#), [\[Subject to Contract\]](#)

~~Crown Copyright 2022~~

2.7 ~~2.6~~ This Schedule shall survive termination or expiry of this Contract.

Schedule 20 (Processing Data)

[Guidance: the Buyer will be the Controller, and the Supplier the Processor in the vast majority of cases. If you believe another data processing scenario applies, such as the Parties being Joint or Independent Controllers, you must speak to your data protection team or DPO. Making the Supplier a Controller over Buyer information can create risks for you as a Buyer, and you must make sure you understand the consequences of this.]

1. Status of the Controller

1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under a Contract dictates the status of each party under the DPA 2018. A Party may act as:

1.1.1 “Controller” in respect of the other Party who is “Processor”;

1.1.2 “Processor” in respect of the other Party who is “Controller”;

1.1.3 “Joint Controller” with the other Party;

1.1.4 “Independent Controller” of the Personal Data where the other Party is also “Controller”,

in respect of certain Personal Data under a Contract and shall specify in Annex 1 (Processing Personal Data) which scenario they think shall apply in each situation.

2. Where one Party is Controller and the other Party its Processor

2.1 Where a Party is a Processor, the only Processing that it is authorised to do is listed in Annex 1 (Processing Personal Data) by the Controller and may not be determined by the Processor.

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

2.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of the Controller, include:

2.3.1 a systematic description of the envisaged Processing and the purpose of the Processing;

2.3.2 an assessment of the necessity and proportionality of the Processing in relation to the Services;

2.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and

2.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 2.4 The Processor shall, in relation to any Personal Data Processed in connection with its obligations under ~~the~~[this](#) Contract:
- 2.4.1 ~~Process~~[process](#) that Personal Data only in accordance with Annex 1 (~~Processing Personal Data~~), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall [promptly](#) notify the Controller before Processing the Personal Data unless prohibited by Law;
- 2.4.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause 18.4 of the Core Terms, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
- [\(a\)](#) ~~a)~~ nature of the data to be protected;
 - [\(b\)](#) ~~b)~~ harm that might result from a ~~Personal Data Breach~~[Loss Event](#);
 - [\(c\)](#) ~~c)~~ state of technological development; and
 - [\(d\)](#) ~~d)~~ cost of implementing any measures~~;~~ .
- 2.4.3 ensure that:
- [\(a\)](#) ~~a)~~ the Processor Personnel do not Process Personal Data except in accordance with ~~the~~[this](#) Contract (and in particular Annex 1 (~~Processing Personal Data~~));
 - [\(b\)](#) ~~b)~~ it uses ~~all reasonable~~[best](#) endeavours to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this Schedule 20, Clauses 18 (Data protection), 19 (What you must keep confidential) and 20 (When you can share information);
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Subprocessor;
 - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by ~~the~~[this](#) Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- 2.4.4 not transfer Personal Data outside of the UK [and/or the EEA](#) unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- ~~a) the transfer is in accordance with Article 45 of the UK GDPR (or section 73 of DPA 2018); or~~

- (a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR (or section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the EU GDPR (where applicable); or
- (b) ~~b)~~ the Controller and/or the Processor has~~have~~ provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 of the DPA 2018) and/or Article 46 of the EU GDPR (where applicable) as determined by the Controller which could include relevant parties entering into the International Data Transfer Agreement (the "IDTA"), or:
- (i) where the transfer is subject to UK GDPR:
- (A) the International Data Transfer Agreement issued by the Information Commissioner under S119A(1) of the DPA 2018 (the "IDTA"); or
- (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time ("EU SCCs") together with the UK International Data Transfer Agreement Addendum to the European Commission's EU SCCs (the "Addendum"), as published by the Information Commissioner's Office from time to time, under section 119A(1) of the DPA 2018; and/or
- (ii) where the transfer is subject to EU GDPR, the EU SCCs,
- ~~-as well as any additional measures determined by the Controller being implemented by the importing party;~~
- (c) ~~c)~~ the Data Subject has enforceable rights and effective legal remedies;
- (d) ~~d)~~ the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
- (e) ~~e)~~ the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data;

~~2.4.5 where the Personal Data is subject to EU GDPR, not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:~~

- ~~a) the transfer is in accordance with Article 45 of the EU GDPR; or~~
- ~~b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time as well as any additional measures determined by the non-transferring Party;~~
- ~~c) the Data Subject has enforceable rights and effective legal remedies;~~
- ~~d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and~~
- ~~e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and~~

2.4.5 ~~2.4.6~~ at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of ~~the~~[this](#) Contract unless the Processor is required by Law to retain the Personal Data.

2.5 Subject to Paragraph 2.6 of this Schedule 20, the Processor shall notify the Controller immediately if in relation to it Processing Personal Data under or in connection with ~~the~~[this](#) Contract it:

- 2.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 2.5.2 receives a request to rectify, block or erase any Personal Data;
- 2.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- 2.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under ~~the~~[this](#) Contract;
- 2.5.5 receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- 2.5.6 becomes aware of a ~~Personal Data Breach~~[Loss Event](#).

- 2.6 The Processor's obligation to notify under Paragraph 2.5 of this Schedule 20 shall include the provision of further information to the Controller, as details become available.
- 2.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Paragraph 2.5 of this Schedule 20 (and insofar as possible within the timescales reasonably required by the Controller) including by immediately providing:
 - 2.7.1 the Controller with full details and copies of the complaint, communication or request;
 - 2.7.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - 2.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 2.7.4 assistance as requested by the Controller following any **Personal Data Breach**[Loss Event](#); and/or
 - 2.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office or any other regulatory authority, or any consultation by the Controller with the Information Commissioner's Office or any other regulatory authority.
- 2.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Schedule 20. This requirement does not apply where the Processor employs fewer than [two hundred and fifty \(250\)](#) staff, unless:
 - 2.8.1 the Controller determines that the Processing is not occasional;
 - 2.8.2 the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the UK GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the UK GDPR; or
 - 2.8.3 the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 2.10 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 2.11 Before allowing any Subprocessor to Process any Personal Data related to ~~the~~[this](#) Contract, the Processor must:
 - 2.11.1 notify the Controller in writing of the intended Subprocessor and Processing;
 - 2.11.2 obtain the written consent of the Controller;

- 2.11.3 enter into a written agreement with the Subprocessor which ~~give~~gives effect to the terms set out in this Schedule 20 such that they apply to the Subprocessor; and
- 2.11.4 provide the Controller with such information regarding the Subprocessor as the Controller may reasonably require.
- 2.12 The Processor shall remain fully liable for all acts or omissions of any of its Subprocessors.
- ~~2.13 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Schedule 20 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to the Contract).~~
- 2.13 ~~2.14~~ The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Buyer may on not less than thirty (30) Working Days' notice to the Supplier amend ~~the~~this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

3. Where the Parties are Joint Controllers of Personal Data

~~3.1~~ In the event that the Parties are Joint Controllers in respect of Personal Data under ~~the~~this Contract, the Parties shall implement Paragraphs that are necessary to comply with UK GDPR Article 26 based on the terms set out in Annex 2 ([Joint Controller Agreement](#)) to this Schedule 20 (Processing Data).

4. Independent Controllers of Personal Data

- 4.1 ~~3.2~~ With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Controller.
- 4.2 ~~3.3~~ Each Party shall Process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.
- 4.3 ~~3.4~~ Where a Party has provided Personal Data to the other Party in accordance with Paragraph ~~3.2~~4.2 of this Schedule 20 above, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.
- 4.4 ~~3.5~~ The Parties shall be responsible for their own compliance with Articles 13 and 14 UK GDPR in respect of the Processing of Personal Data for the purposes of ~~the~~this Contract.
- 4.5 ~~3.6~~ The Parties shall only provide Personal Data to each other:
- 4.5.1 ~~3.6.1~~ to the extent necessary to perform their respective obligations under ~~the~~this Contract;

4.5.2 ~~3.6.2~~ in compliance with the Data Protection Legislation (including by ensuring all required ~~data privacy~~ fair processing information has been given to affected Data Subjects ~~to meet the requirements of Articles 13 and 14 of the UK GDPR~~); ~~and~~

4.5.3 where the provision of Personal Data from one Party to another involves transfer of such data to outside the UK and/or the EEA, if the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:

(a) the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or Article 45 of the EU GDPR (where applicable); or

(b) the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include:

(i) where the transfer is subject to UK GDPR:

(A) the International Data Transfer Agreement (the "IDTA") ""as published by the Information Commissioner's Office or such updated version of such IDTA as is published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time;
or

(B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the "Addendum") as published by the Information Commissioner's Office from time to time; and/or

(ii) where the transfer is subject to EU GDPR, the EU SCCs,

as well as any additional measures determined by the Controller being implemented by the importing party;

(c) the Data Subject has enforceable rights and effective legal remedies;

- (d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
- (e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and

4.5.4 ~~3.6.3~~ where it has recorded it in Annex 1 (Processing Personal Data).

4.6 ~~3.7~~ Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its Processing of Personal Data as Independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the UK GDPR, and the measures shall, at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of the UK GDPR.

4.7 ~~3.8~~ A Party Processing Personal Data for the purposes of ~~the~~this Contract shall maintain a record of its Processing activities in accordance with Article 30 UK GDPR and shall make the record available to the other Party upon reasonable request.

4.8 ~~3.9~~ Where a Party receives a request by any Data Subject to exercise any of their rights under the Data Protection Legislation in relation to the Personal Data provided to it by the other Party pursuant to ~~the~~this Contract ("Request Recipient"):

4.8.1 ~~3.9.1~~ the other Party shall provide any information and/or assistance as reasonably requested by the Request Recipient to help it respond to the request or correspondence, at the cost of the Request Recipient; or

4.8.2 ~~3.9.2~~ where the request or correspondence is directed to the other Party and/or relates to that other Party's Processing of the Personal Data, the Request Recipient will:

- (a) ~~a)~~ promptly, and in any event within five (5) Working Days of receipt of the request or correspondence, inform the other Party that it has received the same and shall forward such request or correspondence to the other Party; and
- (b) ~~b)~~ provide any information and/or assistance as reasonably requested by the other Party to help it respond to the request or correspondence in the timeframes specified by Data Protection Legislation.

- 4.9 ~~3.10~~ Each Party shall promptly notify the other Party upon it becoming aware of any ~~Personal Data~~ Breach Loss Event relating to Personal Data provided by the other Party pursuant to ~~the~~this Contract and shall:
- 4.9.1 ~~3.10.1~~ do all such things as reasonably necessary to assist the other Party in mitigating the effects of the ~~Personal Data~~ Breach Loss Event;
- 4.9.2 ~~3.10.2~~ implement any measures necessary to restore the security of any compromised Personal Data;
- 4.9.3 ~~3.10.3~~ work with the other Party to make any required notifications to the Information Commissioner's Office or any other regulatory authority and affected Data Subjects in accordance with the Data Protection Legislation (including the timeframes set out therein); and
- 4.9.4 ~~3.10.4~~ not do anything which may damage the reputation of the other Party or that Party's relationship with the relevant Data Subjects, save as required by Law.
- 4.10 ~~3.11~~ Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under ~~the~~this Contract as specified in Annex 1 (Processing Personal Data).
- 4.11 ~~3.12~~ Personal Data shall not be retained or processed for longer than is necessary to perform each Party's respective obligations under ~~the~~this Contract which is specified in Annex 1 (Processing Personal Data).
- 4.12 ~~3.13~~ Notwithstanding the general application of Paragraphs 2.1 to 2.14 of this Schedule 20 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Paragraphs ~~3.24.2~~ to ~~3.12~~4.12 of this Schedule 20.

Annex 1 - Processing Personal Data

1. This Annex shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Annex shall be with the Buyer at its absolute discretion.
 - 1.1 The contact details of the Buyer's Data Protection Officer are: **[Insert Contact details]**
 - 1.2 The contact details of the Supplier's Data Protection Officer are: **[Insert Contact details]**
 - 1.3 The Processor shall comply with any further written instructions with respect to Processing by the Controller.
 - 1.4 Any such further instructions shall be incorporated into this Annex.

[Guidance: the Buyer will be the Controller, and the Supplier the Processor in the vast majority of cases. If you believe another data processing scenario applies, such as the Parties being Joint or Independent Controllers, you must speak to your data protection team or DPO.]

Description	Details
Identity of Controller for each Category of Personal Data	<p>The Buyer is Controller and the Supplier is Processor</p> <p>The Parties acknowledge that in accordance with Paragraph 2 and for the purposes of the Data Protection Legislation, the Buyer is the Controller and the Supplier is the Processor of the following Personal Data:</p> <ul style="list-style-type: none">• [Insert the scope of Personal Data which the purposes and means of the Processing by the Supplier is determined by the Buyer] <p>The Supplier is Controller and the Buyer is Processor</p> <p>The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Buyer is the Processor in accordance with Paragraph 2Paragraph 2 of the following Personal Data:</p> <ul style="list-style-type: none">• [Insert the scope of Personal Data which the purposes and means of the Processing by the Buyer is determined by the Supplier] <p>The Parties are Joint Controllers</p> <p>The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none">• [Insert the scope of Personal Data which the purposes and means of the Processing is determined by the both Parties together] <p>The Parties are Independent Controllers of Personal Data</p>

Description	Details
	<p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <ul style="list-style-type: none"> • Business contact details <u>Personally identifiable information</u> of Supplier Personnel for which the Supplier is the Controller, • Business contact details <u>Personally identifiable information</u> of any directors, officers, employees, agents, consultants and contractors of Buyer (excluding the Supplier Personnel) engaged in the performance of the Buyer’s duties under the <u>this</u> Contract) for which the Buyer is the Controller, • [Insert the scope of other Personal Data provided by one Party who is Controller to the other Party who will separately determine the nature and purposes of its Processing the Personal Data on receipt e.g. where (1) the Supplier has professional or regulatory obligations in respect of Personal Data received, (2) a standardised service is such that the Buyer cannot dictate the way in which Personal Data is processed by the Supplier, or (3) where the Supplier comes to the transaction with Personal Data for which it is already Controller for use by the Buyer] <p>[Guidance where multiple relationships have been identified above, please address the below rows in the table for in respect of each relationship identified]</p>
<u>Subject matter of the Processing</u>	<p>[Insert This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p><u>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide [insert description of relevant service].]</u></p>
Duration of the Processing	<p>[INSERT Insert] Clearly set out the duration of the Processing including dates]</p>
Nature and purposes of the Processing	<p>[INSERT Insert] Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the Processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>

Description	Details
Type of Personal Data <u>being Processed</u>	[INSERT/Insert] Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[INSERT/Insert] Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
Plan for return and destruction of the data once the Processing is complete UNLESS requirement under law to preserve that type of data	[INSERT/Insert] Describe how long the data will be retained for, how it be returned or destroyed]
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract <u>and international transfers and legal gateway</u>	[Clearly identify each location, explain where geographically personal data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g. adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this contract]
Protective Measures that the Supplier and, where applicable, its Sub-contractors have implemented to protect Personal Data processed under this Contract Agreement against a breach of security (insofar as that breach of security relates to	[Please be as specific as possible]

Description	Details
data) or a Personal Data Breach Loss Event	

Annex 2 - Joint Controller Agreement

1. Joint Controller Status and Allocation of Responsibilities

- 1.1 With respect to Personal Data under Joint Control of the Parties, the Parties envisage that they shall each be a Data Controller in respect of that Personal Data in accordance with the terms of this Annex 2 (Joint Controller Agreement) in replacement of Paragraph 2 of this Schedule 20 (Where one Party is Controller and the other Party is Processor) and Paragraphs ~~3-2~~ ~~-3.12~~ [4.2-4.12](#) of this Schedule 20 (Independent Controllers of Personal Data). Accordingly, the Parties each undertake to comply with the applicable Data Protection Legislation in respect of their Processing of such Personal Data as Data Controllers.
- 1.2 The Parties agree that the **[Supplier/Buyer]**:
 - 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for using ~~all reasonable~~ [best](#) endeavours to comply with the UK GDPR regarding the exercise by Data Subjects of their rights under the UK GDPR;
 - 1.2.2 shall direct Data Subjects to its Data Protection Officer or suitable alternative in connection with the exercise of their rights as Data Subjects and for any enquiries concerning their Personal Data or privacy;
 - 1.2.3 is solely responsible for the Parties' compliance with all duties to provide information to Data Subjects under Articles 13 and 14 of the UK GDPR;
 - 1.2.4 is responsible for obtaining the informed consent of Data Subjects, in accordance with the UK GDPR, for Processing in connection with the Services where consent is the relevant legal basis for that Processing; and
 - 1.2.5 shall make available to Data Subjects the essence of this Annex (and notify them of any changes to it) concerning the allocation of responsibilities as Joint Controller and its role as exclusive point of contact, the Parties having used their best endeavours to agree the terms of that essence. This must be outlined in the **[Supplier's/Buyer's]** privacy policy (which must be readily available by hyperlink or otherwise on all of its public facing services and marketing).
- 1.3 Notwithstanding the terms of Paragraph 1.2, the Parties acknowledge that a Data Subject has the right to exercise their legal rights under the Data Protection Legislation as against the relevant Party as Controller.

2. Undertakings of both Parties

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

- 2.1.1 report to the other Party every x months on:
- (a) ~~a)~~ the volume of Data Subject Access Request (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (b) ~~b)~~ the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;
 - (c) ~~c)~~ any other requests, complaints or communications from Data Subjects (or third parties on their behalf) relating to the other Party's obligations under applicable Data Protection Legislation;
 - (d) ~~d)~~ any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and
 - (e) ~~e)~~ any requests from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law,
- that it has received in relation to the subject matter of ~~the~~[this](#) Contract during that period;
- 2.1.2 notify each other immediately if it receives any request, complaint or communication made as referred to in Paragraphs- 2.1.1(a) to [2.1.1\(e\)](#);
- 2.1.3 provide the other Party with full cooperation and assistance in relation to any request, complaint or communication made as referred to in Paragraphs ~~2.1.1~~[2.1.2](#) and (c) to [2.1.1\(e\)](#) to enable the other Party to comply with the relevant timescales set out in the Data Protection Legislation;
- 2.1.4 not disclose or transfer the Personal Data to any third party unless necessary for the provision of the Services and, for any disclosure or transfer of Personal Data to any third party, (save where such disclosure or transfer is specifically authorised under ~~the~~[this](#) Contract or is required by Law) that disclosure or transfer of Personal Data is otherwise considered to be lawful processing of that Personal Data in accordance with Article 6 of the UK GDPR or EU GDPR (as the context requires). For the avoidance of doubt, the third party to which Personal Data is transferred must be subject to equivalent obligations which are no less onerous than those set out in this Annex;
- 2.1.5 request from the Data Subject only the minimum information necessary to provide the Services and treat such extracted information as Confidential Information;
- 2.1.6 ensure that at all times it has in place appropriate Protective Measures to guard against unauthorised or unlawful Processing of the Personal Data and/or accidental loss, destruction or damage to

- the Personal Data and unauthorised or unlawful disclosure of or access to the Personal Data;
- 2.1.7 use ~~all reasonable~~best endeavours to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
- (a) ~~a)~~ are aware of and comply with their duties under this Annex 2 (Joint Controller Agreement) and those in respect of Confidential Information
 - (b) ~~b)~~ are informed of the confidential nature of the Personal Data, are subject to appropriate obligations of confidentiality and do not publish, disclose or divulge any of the Personal Data to any third party where the that Party would not be permitted to do so;
 - (c) ~~c)~~ have undergone adequate training in the use, care, protection and handling of personal data as required by the applicable Data Protection Legislation;
- 2.1.8 ensure that it has in place Protective Measures as appropriate to protect against a ~~Personal Data Breach~~Loss Event having taken account of the:
- (a) ~~a)~~ nature of the data to be protected;
 - (b) ~~b)~~ harm that might result from a ~~Personal Data Breach~~Loss Event;
 - (c) ~~c)~~ state of technological development; and
 - (d) ~~d)~~ cost of implementing any measures;
- 2.1.9 ensure that it has the capability (whether technological or otherwise), to the extent required by Data Protection Legislation, to provide or correct or delete at the request of a Data Subject all the Personal Data relating to that Data Subject that the Supplier holds; and
- 2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a ~~Personal Data Breach~~Loss Event;
- 2.1.11 ~~where the Personal Data is subject to UK GDPR,~~ not transfer such Personal Data outside of the UK and/or the EEA unless the prior written consent of the non-transferring Party has been obtained and the following conditions are fulfilled:
- ~~a) the transfer is in accordance with Article 45 of the UK GDPR or DPA 2018 Section 73; or~~
 - (a) [the destination country has been recognised as adequate by the UK government in accordance with Article 45 of the UK GDPR or DPA 2018 Section 74A and/or the transfer is in accordance with Article 45 of the EU GDPR \(where applicable\); or](#)

- (b) ~~b)~~ the transferring Party has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the UK GDPR or DPA 2018 Section 75 and/or Article 46 of the EU GDPR (where applicable)) as agreed with the non-transferring Party which could include ~~the International Data Transfer Agreement (the "IDTA"), or~~ :
- (i) where the transfer is subject to UK GDPR:
- (A) the UK International Data Transfer Agreement (the "IDTA"), as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 from time to time; or
- (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time (the "EU SCCs"), together with the UK International Data Transfer Agreement Addendum to the ~~European Commission's EU SCCs (the "Addendum")~~, as published by the Information Commissioner's Office from time to time, ~~as well as any additional measures;~~ and/or
- ~~c) the Data Subject has enforceable rights and effective legal remedies;~~
- ~~d) the transferring Party complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and~~
- ~~e) the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data; and~~
- (ii) ~~2.1.12 where the Personal Data transfer is subject to EU GDPR, not transfer such Personal Data outside of the EU unless the prior written consent of non-transferring Party has been obtained and the following conditions are fulfilled:~~ the EU SCCs, as well as any additional measures determined by the Controller being implemented by the importing party;
- ~~a) the transfer is in accordance with Article 45 of the EU GDPR; or~~
- ~~b) the transferring Party has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the non-transferring Party~~

~~which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU as well as any additional measures;~~

- ~~(c)~~ ~~e)~~ the Data Subject has enforceable rights and effective legal remedies;
- ~~(d)~~ ~~d)~~ the transferring Party complies with its obligations under the [EU GDPR Data Protection Legislation](#) by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the non-transferring Party in meeting its obligations); and
- ~~(e)~~ ~~e)~~ the transferring Party complies with any reasonable instructions notified to it in advance by the non-transferring Party with respect to the processing of the Personal Data.

2.2 Each Joint Controller shall use ~~its reasonable~~[best](#) endeavours to assist the other Controller to comply with any obligations under applicable Data Protection Legislation and shall not perform its obligations under this Annex in such a way as to cause the other Joint Controller to breach any of its obligations under applicable Data Protection Legislation to the extent it is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations.

3. Data Protection Breach

3.1 Without prejudice to Paragraph- 3.2, each Party shall notify the other Party promptly and without undue delay, and in any event within [forty eight \(48\)](#) hours, upon becoming aware of any ~~Personal Data Breach~~[Loss Event](#) or circumstances that are likely to give rise to a ~~Personal Data Breach~~[Loss Event](#), providing the Buyer and its advisors with:

3.1.1 sufficient information and in a timescale which allows the other Party to meet any obligations to report a ~~Personal Data Breach~~[Loss Event](#) under the Data Protection Legislation;

3.1.2 all reasonable assistance, including:

- ~~(a)~~ ~~a)~~ co-operation with the other Party and the Information Commissioner investigating the ~~Personal Data Breach~~[Loss Event](#) and its cause, containing and ~~recovering~~ the compromised Personal Data and compliance with the applicable guidance;
- ~~(b)~~ ~~b)~~ co-operation with the other Party including using such ~~reasonable~~[best](#) endeavours as are ~~directed~~ by the Buyer to assist in the investigation, mitigation and remediation of a ~~Personal Data Breach~~[Loss Event](#);
- ~~(c)~~ ~~c)~~ co-ordination with the other Party regarding the management of public ~~relations~~ and public statements relating to the ~~Personal Data Breach~~[Loss Event](#); and/or

- (d) ~~d)~~ providing the other Party and to the extent instructed by the other Party to do so, and/or the Information Commissioner investigating the ~~Personal Data Breach Loss Event~~, with complete information relating to the ~~Personal Data Breach Loss Event~~, including, without limitation, the information set out in Paragraph 3.2.

3.2 Each Party shall use ~~all reasonable best~~ endeavours to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a ~~Personal Data Breach Loss Event which is the fault of that Party~~ as ~~if~~ it was- that Party's own data at its own cost with all possible speed and shall provide the other Party with all reasonable assistance in respect of any such ~~Personal Data Breach Loss Event~~, including providing the other Party, as soon as possible and within ~~forty eight (48)~~ hours of the ~~Personal Data Breach Loss Event~~ relating to the ~~Personal Data Breach Loss Event~~, in particular:

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

4. Audit

4.1 The Supplier shall permit:

- 4.1.1 the Buyer, or a third-party auditor acting under the Buyer's direction, to conduct, at the Buyer's cost, data privacy and security audits, assessments and **inspections** concerning the Supplier's data security and privacy procedures relating to Personal Data, its compliance with this Annex 2 and the Data Protection Legislation; and/or
- 4.1.2 the Buyer, or a third-party auditor acting under the Buyer's direction, access to premises at which the Personal Data is accessible or at which it is able to inspect any **relevant** records, including the record maintained under Article 30 UK GDPR by the Supplier so far as relevant to ~~the~~this Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.

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

5. Impact Assessments

The Parties shall:

- 5.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to Processing operations, risks and measures); and
- 5.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with ~~the~~this Contract, in accordance with the terms of Article 30 UK GDPR.

6. ICO Guidance

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

7. Liabilities for Data Protection Breach

[Guidance: This Paragraph represents a risk share, you may wish to reconsider the apportionment of liability and whether recoverability of losses are likely to be hindered by the contractual limitation of liability provisions]

- 7.1 If financial penalties are imposed by the Information Commissioner on either the Buyer or the Supplier for a ~~Personal Data Breach~~Loss Event ("**Financial Penalties**") then the following shall occur:
 - 7.1.1 if in the view of the Information Commissioner, the Buyer is responsible for the ~~Personal Data Breach~~Loss Event, in that it is caused as a result of the actions or inaction of the Buyer, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Buyer, then the Buyer shall be responsible for the payment of such Financial Penalties. In this case, the Buyer will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such ~~Personal Data Breach~~Loss Event. The Supplier shall provide to the Buyer and its third party investigators and auditors, on request and at the Supplier's reasonable cost, full cooperation and access to conduct a thorough audit of such ~~Personal Data Breach~~Loss Event;
 - 7.1.2 if in the view of the Information Commissioner, the Supplier is responsible for the ~~Personal Data Breach~~Loss Event, in that it is not a ~~Personal Data Breach~~Loss Event that the Buyer is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Buyer and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such ~~Personal Data Breach~~Loss Event; or

- 7.1.3 if no view as to responsibility is expressed by the Information Commissioner, then the Buyer and the Supplier shall work together to investigate the relevant ~~Personal-Data Breach~~Loss Event and allocate responsibility for any Financial Penalties as outlined above, or by agreement to split any financial penalties equally if no responsibility for the ~~Personal-Data Breach~~Loss Event can be apportioned. In the event that the Parties do not agree such apportionment then such Dispute shall be referred to the Dispute Resolution Procedure set out in Clause 39 of the Core Terms (Resolving disputes).
- 7.2 If either the Buyer or the Supplier is the defendant in a legal claim brought before a court of competent jurisdiction ("Court") by a third party in respect of a ~~Personal-Data Breach~~Loss Event, then unless the Parties otherwise agree, the Party that is determined by the final decision of the court to be responsible for the ~~Personal-Data Breach~~Loss Event shall be liable for the losses arising from such ~~Personal-Data Breach~~Loss Event. Where both Parties are liable, the liability will be apportioned between the Parties in accordance with the decision of the Court.
- 7.3 In respect of any losses, cost claims or expenses incurred by either Party as a result of a ~~Personal-Data Breach~~Loss Event (the "Claim Losses"):
- 7.3.1 if the Buyer is responsible for the relevant ~~Personal-Data Breach~~Loss Event, then the Buyer shall be responsible for the Claim Losses;
- 7.3.2 if the Supplier is responsible for the relevant ~~Personal-Data Breach~~Loss Event, then the Supplier shall be responsible for the Claim Losses: and
- 7.3.3 if responsibility for the relevant ~~Personal-Data Breach~~Loss Event is unclear, then the Buyer and the Supplier shall be responsible for the Claim Losses equally.
- 7.4 Nothing in either ~~Paragraph 7.2 or Paragraph 7.3~~Paragraph 7.2 or Paragraph 7.3 shall preclude the Buyer and the Supplier reaching any other agreement, including by way of compromise with a third party complainant or claimant, as to the apportionment of financial responsibility for any Claim Losses as a result of a ~~Personal-Data Breach~~Loss Event, having regard to all the circumstances of the ~~Personal-Data Breach~~Loss Event and the legal and financial obligations of the Buyer.

8. Termination

If the Supplier is in ~~material~~Material Default under any of its obligations under this Annex 2_ (Joint Controller Agreement), the Buyer shall be entitled to terminate ~~the~~this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 14 of the Core Terms (Ending the contract) and the consequences of termination in Clause 14.5.1 of the Core Terms shall apply.

9. Sub-Processing

In respect of any Processing of Personal Data performed by a third party on behalf of a Party, that Party shall:

- 9.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by ~~the~~[this](#) Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and
- 9.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

10. Data Retention

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

Schedule 22 (Insurance Requirements)

[Guidance: For guidance on risk, liability and insurance generally, see paragraph 1.5 and Annex 1 of the Model Services Contract Guidance on Gov.uk]

1. The insurance you need to have

- 1.1 The Supplier shall take out and maintain or procure the taking out and maintenance of the insurances as set out in the Annex to this Schedule and any other insurances as may be required by applicable Law (together the “**Insurances**”). The Supplier shall ensure that each of the Insurances is effective no later than the ~~Start~~[Effective](#) Date in respect of those Insurances set out in the Annex to this Schedule and those required by applicable Law; and
- 1.2 The Insurances shall be:
 - 1.2.1 maintained in accordance with Good Industry Practice;
 - 1.2.2 (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time;
 - 1.2.3 taken out and maintained with insurers of good financial standing and good repute in the international insurance market; and
 - 1.2.4 maintained until the End Date except in relation to Professional Indemnity where required under the Annex Part C which shall be maintained for at least six (6) years after the End Date.
- 1.3 The Supplier shall ensure that the public and products liability policy contain an indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with the Deliverables and for which the Supplier is legally liable.

2. How to manage the insurance

- 2.1 Without limiting the other provisions of this Contract, the Supplier shall:
 - 2.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to Deliverables as it would be reasonable to expect of a prudent contractor acting in accordance with Good Industry Practice, including the investigation and reports of relevant claims to insurers;
 - 2.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and
 - 2.1.3 hold all policies in respect of the Insurances and cause any insurance broker effecting the Insurances to hold any insurance slips and other evidence of placing cover representing any of the Insurances to which it is a party.

3. What happens if you aren't insured

- 3.1 The Supplier shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances.
- 3.2 Where the Supplier has failed to purchase or maintain any of the Insurances in full force and effect, the Buyer may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances and recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

4. Evidence of insurance you must provide

~~4.1~~ The Supplier shall upon the ~~Start~~[Effective](#) Date and within 15 Working Days after the renewal of each of the Insurances, provide evidence, in a form satisfactory to the Buyer, that the Insurances are in force and effect and meet in full the requirements of this Schedule.

5. Making sure you are insured to the required amount

- 5.1 The Supplier shall ensure that any Insurances which are stated to have a minimum limit "in the aggregate" are maintained ~~at all times~~ for the minimum limit of indemnity [for the periods](#) specified in this ~~Contract and if~~ [Schedule](#).
- 5.2 ~~any claims are made which do not relate to~~ [Where the Supplier intends to claim under any of the Insurances for any matters that are not related to the Deliverables and/or this Contract then, the Supplier shall, where such claim is likely to result in the level of cover available under any of the Insurances being reduced below the minimum limit of indemnity specified in this Schedule, promptly notify the Buyer and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Schedule.](#)

6. Cancelled Insurance

- 6.1 The Supplier shall notify the Buyer in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.
- 6.2 The Supplier shall ensure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as voided in whole or part. The Supplier shall use all reasonable endeavours to notify the Buyer (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or void any insurance, or any cover or claim under any insurance in whole or in part.

7. Insurance claims

- 7.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Deliverables, or ~~the~~this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Buyer receives a claim relating to or arising out of ~~the~~this Contract or the Deliverables, the Supplier shall co-operate with the Buyer and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.
- 7.2 Except where the Buyer is the claimant party, the Supplier shall give the Buyer notice within twenty (20) Working Days after any insurance claim in excess of **[£to be determined by the Buyer]** relating to or arising out of the provision of the Deliverables or this Contract on any of the Insurances or which, but for the application of the applicable policy excess, would be made on any of the Insurances and (if required by the Buyer) full details of the incident giving rise to the claim.

[Guidance: The insurance claims notification threshold should normally represent a significant or material value claim in connection with the requirement or represent an amount that would provide comfort to the Buyer that it has knowledge of claims that might impact on the Buyer.]

- 7.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.
- 7.4 Where any Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Supplier shall be liable for such excess or deductible. The Supplier shall not be entitled to recover from the Buyer any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

ANNEX: REQUIRED INSURANCES

PART A: THIRD PARTY PUBLIC AND PRODUCTS LIABILITY INSURANCE

1. 4 Insured

~~4.1~~The Supplier

2. 2 Interest

2.1 To indemnify the Insured in respect of all sums which the Insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

2.1.1 ~~(a)~~ death or bodily injury to or sickness, illness or disease contracted by any person; and

2.1.2 ~~(b)~~ loss of or damage to physical property;

happening during the period of insurance (as specified in Paragraph 5) and arising out of or in connection with the provision of the Deliverables and in connection with this Contract.

3. 3 Limit of indemnity

3.1 Not less than £[to be determined by the Buyer] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £[to be determined by the Buyer] in the aggregate per annum in respect of products and pollution liability (to the extent insured by the relevant policy).

[Guidance: The Buyer should set the Limit of Indemnity by way of an insurable risk review (supported by the Buyers professional insurance adviser). The level specified in the limit of indemnity above should be predicated upon:

- ~~The risk profile represented by the Buyer requirement in question~~
- ~~Potential frequency and severity of claims and losses (not the value of the contract) relative to the risk exposure~~
- ~~Insurance market availability in prevailing insurance market conditions.~~

The wording on the limit of indemnity for third party public and products liability reflects what is available in UK insurance market conditions for this type of insurance only. While insurance is available in the UK on this basis, it may not be available in other parts of the world, in which case Suppliers may need to seek an alternative UK insurance policy on this basis.]

4. ~~4~~-Territorial limits

[United Kingdom]

[Guidance: The Buyer should populate any additional territories relative to the service delivery. The Annex drafting reflects United Kingdom insurance market conditions and availability only. Where there is an overseas requirement consider obtaining professional insurance advice to set the appropriate requirement in the Annex]

5. ~~5~~-Period of insurance

~~5.1~~ From the date of this Contract for the period of ~~the~~[this](#) Contract and renewable on an annual basis unless agreed otherwise by the Buyer in writing.

[Guidance: The Buyer should populate the period of insurance relative to the requirement in question. The period of insurance should reflect the period that the relevant insurable risk can materialise and take into account any contract specific issues such as phasing.]

6. ~~6~~-Cover features and extensions

~~6.1~~ Indemnity to principals clause under which the Buyer shall be indemnified in respect of claims made against the Buyer in respect of death or bodily injury or third party property damage arising out of or in connection with ~~the~~[this](#) Contract and for which the Supplier is legally liable.

[Guidance: As part of the insurance review the Buyer should consider what additional cover features and extensions may be required to protect its interests (e.g. contractual liability extension and legal defence costs in addition to the limit of indemnity). The Buyer may need to seek professional subject matter insurance advice in this regard.]

7. ~~7~~-Principal exclusions

- 7.1 War and related perils.
- 7.2 ~~Nuclear~~ and radioactive risks.
- 7.3 Liability for death, illness, disease or bodily injury sustained by employees of ~~the~~ Insured arising out of the course of their employment.
- 7.4 ~~Liability~~ arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- 7.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- 7.6 Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- 7.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

7.8 Liability arising from seepage and pollution unless caused by a sudden, unintended, unexpected and accidental occurrence.

[Guidance: This list of exclusions represents insurance market wide exclusions for the third party public and products liability insurance. If something listed here is excluded and you wish it can be covered by an alternative insurance and include in PART C]

8. ~~8~~-Maximum deductible threshold

~~8.1~~ Not to exceed £ **[Insert: figure on contract award based on the Supplier's acceptable response to the Invitation To Tender]** for each and every third party property damage claim (personal injury claims to be paid in full).

PART B: UNITED KINGDOM COMPULSORY INSURANCES

The Supplier shall meet its insurance obligations under applicable Law in full, including, United Kingdom employers' liability insurance and motor third party liability insurance.

~~PART~~PART C: ADDITIONAL INSURANCES

[Guidance: You may wish to consider including the following additional required insurances. The Buyer may need to seek professional subject matter insurance advice in this regard. Examples of additional insurance are:

Professional Indemnity Insurance	Where the Buyer requirement includes a potential breach of professional duty by the Supplier in connection with professional advice and /or professional services to be maintained for <u>six (6)</u> years after the End Date
Property Damage Insurance / Goods in Transit Insurance	Where the Buyer requirement necessitates primary perils insurance for relevant physical property (e.g. Buyer physical property in the care, custody and control of the Supplier in delivering the <u>this</u> Contract).
Cyber Liability Insurance	Where the Buyer requirement includes specific cyber risk exposures.
Environmental Liability Insurance or Contractors Pollution Liability Insurance	Where the Buyer requirement includes exposure to significant pollution / contamination risks.

Schedule 23 (Guarantee)

1. Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Guarantee"	a deed of guarantee in favour of a Buyer in the form set out in the Annex to this Schedule; and
"Guarantor"	the person acceptable to a Buyer to give a Guarantee;

2. -Guarantee

2.1 Where a Buyer has notified the Supplier that the award of ~~the~~[this](#) Contract by the Buyer shall be conditional upon receipt of a valid Guarantee, then, on or prior to the execution of ~~the~~[this](#) Contract, as a condition for the award of ~~the~~[this](#) Contract, the Supplier shall deliver to the Buyer:

2.1.1 an executed Guarantee from a Guarantor; and

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

2.2 Where a Buyer has procured a Guarantee from the Supplier under Paragraph 2.1- above, the Buyer may terminate ~~the~~[this](#) Contract for ~~material~~[Material](#) Default where:

2.2.1 the Guarantor withdraws the Guarantee for any reason whatsoever;

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

2.2.3 an Insolvency Event occurs in respect of the Guarantor;

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

2.2.5 the Supplier fails to provide the documentation required by Paragraph 2.1 by the date so specified by the Buyer;

2.2.6 and in each case the Guarantee (as applicable) is not replaced by an alternative guarantee agreement acceptable to the Buyer;

[and the consequences of termination set out in Clause 14.5.1 shall apply.](#)

Annex 1 – Form of Guarantee

[Guidance Note: this is a draft form of guarantee which can be used to procure a Guarantee, but it will need to be amended to reflect the Beneficiary's requirements.]

[INSERT NAME OF THE GUARANTOR]

- AND -

[INSERT NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

DEED OF GUARANTEE

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

PROVIDED BY:

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

WHEREAS:

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

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

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;
- 1.2 the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list]

"Beneficiary(s)"	means all the Buyer(s) under a Contract [Insert name of the Buyer with whom the Supplier enters into the this Contract] and "Beneficiaries" shall be construed accordingly;
"Goods"	has the meaning given to it in the this Contract;
"Guaranteed Agreement"	means the contract with Contract Reference [Insert contract reference number] for the Goods and/or Services dated on or about the date hereof made between the Beneficiary and the Supplier;
"Guaranteed Obligations"	means all obligations and liabilities of the Supplier to the Beneficiary under the Guaranteed Agreement

	together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;
"Services"	has the meaning given to it in the this Contract;
"Supplier"	means [Insert the name, address and registration number of the Supplier as each appears in the Award Form] .

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

2. ~~4.~~ **GUARANTEE AND INDEMNITY**

2.1 ~~4.1~~ The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.

2.2 ~~4.2~~ The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or

at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.

2.3 ~~1.3~~ If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:

2.3.1 ~~1.3.1~~ fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and

2.3.2 ~~1.3.2~~ as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.

2.4 ~~1.4~~ As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. ~~4.~~ **OBLIGATION TO ENTER INTO A NEW CONTRACT**

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

into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. ~~2.~~ DEMANDS AND NOTICES

4.1 ~~2.1~~ Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:

[Insert Address of the Guarantor in England and Wales]

[Insert Facsimile Number]

For the Attention of [Insert details]

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

4.2 ~~2.2~~ Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:

4.2.1 ~~2.2.1~~ if delivered by hand, at the time of delivery; or

4.2.2 ~~2.2.2~~ if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or

4.2.3 ~~2.2.3~~ if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.

4.3 ~~2.3~~ In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.

4.4 ~~2.4~~ Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. ~~4.~~ BENEFICIARY'S PROTECTIONS

5.1 ~~4.1~~ The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.

- 5.2 ~~1.2~~-This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 ~~1.2.1~~ it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 ~~1.2.2~~ it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 ~~1.2.3~~ if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 ~~1.2.4~~ the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 ~~1.3~~ The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the ~~breach or non-performance~~ Default by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other ~~default~~ Default in respect of the same Guaranteed Obligation.
- 5.4 ~~1.4~~ The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 ~~1.5~~ The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.

5.6 ~~4.6~~ Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.

5.7 ~~4.7~~ Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

5.8 ~~4.8~~ The Guarantor shall afford any auditor of the Beneficiary appointed under the Guaranteed Agreement access to such records and accounts at the Guarantor's premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the Beneficiary's auditors from time to time, in order that the Auditor may identify or investigate any circumstances which may impact upon the financial stability of the Guarantor.

6. ~~4.~~ **GUARANTOR INTENT**

Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. ~~2.~~ **RIGHTS OF SUBROGATION**

7.1 ~~2.1~~ The Guarantor shall, at any time when there is any ~~default~~ Default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:

7.1.1 ~~2.1.1~~ of subrogation and indemnity;

7.1.2 ~~2.1.2~~ to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and

7.1.3 ~~2.1.3~~ to prove in the liquidation or insolvency of the Supplier,

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

payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. ~~4.~~ DEFERRAL OF RIGHTS

8.1 ~~4.1~~ Until all amounts which may be or become payable by the Supplier under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

8.1.1 ~~4.1.1~~ exercise any rights it may have to be indemnified by the Supplier;

8.1.2 ~~4.1.2~~ claim any contribution from any other guarantor of the Supplier's obligations under the Guaranteed Agreement;

8.1.3 ~~4.1.3~~ take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;

8.1.4 ~~4.1.4~~ demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 ~~4.1.5~~ claim any set-off or counterclaim against the Supplier;

8.2 ~~4.2~~ If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. ~~4.~~ REPRESENTATIONS AND WARRANTIES

9.1 ~~4.1~~ The Guarantor hereby represents and warrants to the Beneficiary that:

9.1.1 ~~4.1.1~~ the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

9.1.2 ~~4.1.2~~ the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

9.1.3 ~~4.1.3~~ the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including entry into and performance of a contract pursuant to Clause 3, have been duly authorised by all necessary corporate action and do not contravene or conflict with:

(a) ~~a)~~ the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

(b) ~~b)~~ any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

(c) ~~e)~~ the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

9.1.4 ~~4.1.4~~ all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

9.1.5 ~~4.1.5~~ this Deed of Guarantee is the legal, valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10.4. PAYMENTS AND SET-OFF

10.1 ~~4.1~~ All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.

10.2 ~~4.2~~ The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

10.3 ~~4.3~~ The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11.4. GUARANTOR'S ACKNOWLEDGEMENT

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

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

~~12.2~~-ASSIGNMENT

12.1 ~~2.1~~The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.

12.2 ~~2.2~~The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

~~13.4~~-SEVERANCE

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

~~14.2~~-THIRD PARTY RIGHTS

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

~~15.3~~-SURVIVAL

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

~~16.4~~-GOVERNING LAW

16.1 ~~4.1~~This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.

16.2 ~~4.2~~The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

16.3 ~~4.3~~Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

16.4 ~~4.4~~The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of

this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

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

16.5 ~~4.5~~ [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

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

EXECUTED as a DEED by

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

Director

Director/Secretary

Schedule 24 (Financial Difficulties)

[Guidance: This template Schedule provides the user with the option of using Credit Ratings and/or Credit Scores and/or Financial Indicators for the purposes of the Financial Distress Provisions. Please consult the Playbook guidance about Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers. Users may use any combination of these indicators to suit their own requirements and may delete or amend as required. Users should ensure that the drafting of any Financial Indicators aligns with the financial standing criteria used during the selection stage of the procurement]

1. Definitions

- 1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

““Applicable Financial Indicators””	means the financial indicators from Part C of Annex 2 which are to apply to the Monitored Suppliers as set out in Part B of Annex 3;
"Credit Rating Threshold"	the minimum credit rating level for each entity in the FDE Group as set out in Part A of Annex 2;
““Credit Reference Agencies””	the credit reference agencies listed in Part B of Annex 1;
““Credit Score Notification Trigger””	the minimum size of any downgrade in a credit score, set out in Part B of Annex 2, which triggers a Credit Score Notification Trigger Event;
““Credit Score Notification Trigger Event””	any downgrade of a credit score which is equal to or greater than the Credit Score Notification Trigger;
"Credit Score Threshold"	the minimum credit score level for each entity in the FDE Group as set out in Part B of Annex 2;
"Financial Distress Service Continuity Plan"	a plan setting out how the Supplier will ensure the continued performance and delivery of the Deliverables in accordance with the this Contract in the event that a Financial Distress Event occurs. This plan should include what the Buyer would need to put in place to ensure performance and delivery of the Deliverables in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity;
““Financial	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial

Indicators	indicators set out at Part C of Annex 2; and in respect of each Monitored Supplier, means those Applicable Financial Indicators;
Financial Target Thresholds	means the target thresholds for each of the Financial Indicators set out at Part C of Annex 2;
Primary Metric	[credit rating pursuant to Paragraph 3.3]/[credit score pursuant to Paragraph 4.3]/[financial indicators pursuant to Paragraph 5.4] [Guidance: The Primary Metric is used in Paragraph 8 as the means of measuring whether the Supplier has resolved the Financial Distress Event. If the Financial Distress Event is resolved by reference to the selected Primary Metric then the Supplier is entitled to relief under Paragraph 8 whether or not the other metrics still show continuing Financial Distress Events.]
Monitored Supplier	those entities specified in Part B of Annex 3; and
Rating Agencies	the rating agencies listed in Part A of Annex 1.

2. When this Schedule applies

- 2.1 The Parties shall comply with the provisions of this Schedule in relation to the assessment of the financial standing of the FDE Group and the consequences of a change to that financial standing.
- 2.2 The terms of this Schedule shall survive under ~~the~~this Contract until the termination or expiry of ~~the~~this Contract.

3. Credit Ratings

- 3.1 The Supplier warrants and represents to the Buyer that as at the StartEffective Date the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Part A of Annex 2.
- 3.2 The Supplier shall:
 - 3.2.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies; and
 - 3.2.2 promptly (and in any event within five (5) Working Days) notify the Buyer in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group.
- 3.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit rating is the Primary Metric, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating

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Threshold if any of the Rating Agencies have given a credit rating level for that FDE Group entity which is below the applicable Credit Rating Threshold.

4. Credit Scores

- 4.1 The Supplier warrants and represents to the Buyer that as at the **Start Effective** Date the credit scores issued for each entity in the FDE Group by each of the Credit Reference Agencies are as set out in Part B of Annex 2.
- 4.2 The Supplier shall:
 - 4.2.1 regularly monitor the credit scores of each entity in the FDE Group with the Credit Reference Agencies; and
 - 4.2.2 promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing if there is any Credit Score Notification Trigger Event for any entity in the FDE Group (and in any event within five (5) Working Days).
- 4.3 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if credit score is the Primary Metric, the credit score of an FDE Group entity shall be deemed to have dropped below the applicable Credit Score Threshold if any of the Credit Reference Agencies have given a credit score for that FDE Group entity which is below the applicable Credit Score Threshold.

5. Financial Indicators

[Guidance: The Financial Indicators set out in the table at Part C of Annex 2 are examples of the types of Financial Indicators that you may wish to use in respect of the Supplier's financial standing. These should be aligned with any financial standing criteria used at the selection stage of the procurement and you may wish to delete or insert different indicators as appropriate. Financial Indicators may be restricted to specific key indicators rather than including all of the criteria used at the selection stage]

- 5.1 The Supplier shall monitor and report on the Financial Indicators for each entity in the FDE Group against the Financial Target Thresholds at least at the frequency set out for each at Part C of Annex 2 (where specified) and in any event, on a regular basis and no less than once a year within one hundred and twenty (120) days after the accounting reference date
- 5.2 Subject to the calculation methodology set out at Annex 4 of this Schedule, the Financial Indicators and the corresponding calculations and thresholds used to determine whether a Financial Distress Event has occurred in respect of those Financial Indicators, shall be as set out in Appendix I: Standard Financial Ratios of *Assessing and Monitoring the Economic and Financial Standing of Bidders and Suppliers – May 2021* (as amended, supplemented or replaced from time to time) which as at the **Start Effective** Date can be found at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/987132/Assessing_and_monitoring_the_economic_and_financial_standing_of_suppliers_guidance_note_May_2021.pdf

- 5.3 Each report submitted by the Supplier pursuant to Paragraph 5.1 shall:
- 5.3.1 be a single report with separate sections for each of the FDE Group entities;
 - 5.3.2 contain a sufficient level of information to enable the Buyer to verify the calculations that have been made in respect of the Financial Indicators;
 - 5.3.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes; **[and]**
 - 5.3.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable[.]/[; **and]**
 - 5.3.5 **include a history of the Financial Indicators reported by the Supplier in graph form to enable the Buyer to easily analyse and assess the trends in financial performance.]**
- 5.4 For the purposes of determining whether a Financial Distress Event has occurred, and for the purposes of determining relief under Paragraph 8 if financial indicators are the Primary Metric, the Financial Indicator of an FDE Group entity shall be deemed to have dropped below the applicable Financial Target Threshold if:
- 5.4.1 a report submitted by the Supplier pursuant to Paragraph ~~5.1~~5.1 shows that any FDE Group entity has failed to meet or exceed the Financial Target Threshold for any **[one]** of the Financial Indicators set out in Part C of Annex 2 of this Schedule;
 - 5.4.2 a report submitted by the Supplier pursuant to Paragraph ~~5.1~~5.1 does not comply with the requirements set out in Paragraph 5.3; or
 - 5.4.3 the Supplier does not deliver a report pursuant to Paragraph ~~5.1~~5.3 in accordance with the applicable monitoring and reporting frequency.

6. What happens if there is a financial distress event

- 6.1 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Buyer in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event and in any event, ensure that such notification is made within 10 Working Days of the date on which the Supplier first becomes

aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event.

- 6.2 In the event of a Financial Distress Event then, immediately upon notification of the Financial Distress Event (or if the Buyer becomes aware of the Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Buyer shall have the rights and remedies as set out in Paragraphs 6.4 to 6.6.

[Guidance: replace Paragraph 6.3 with "NOT USED" if there are no Key Subcontractors or the Key Subcontractors are not Monitored Suppliers]

- 6.3 [In the event that a Financial Distress Event arises due to a Key Subcontractor notifying the Buyer that the Supplier has not satisfied any sums properly due under a specified invoice and not subject to a genuine dispute then, the Buyer shall not exercise any of its rights or remedies under Paragraph 6.4 without first giving the Supplier ten (10) Working Days to:

6.3.1 rectify such late or non-payment; or

6.3.2 demonstrate to the Buyer's reasonable satisfaction that there is a valid reason for late or non-payment.]

- 6.4 The Supplier shall (and shall procure that each Additional FDE Group Member shall):

6.4.1 at the request of the Buyer meet the Buyer as soon as reasonably practicable (and in any event within three (3) Working Days of the initial notification (or awareness) of the Financial Distress Event) to review the effect of the Financial Distress Event on the continued performance of ~~the~~this Contract and delivery of the Deliverables in accordance ~~the~~this Contract; and

6.4.2 where the Buyer reasonably believes (taking into account the discussions and any representations made under Paragraph 6.4.1) that the Financial Distress Event could impact on the continued performance of ~~the~~this Contract and delivery of the Deliverables in accordance with ~~the~~this Contract:

(a) ~~a)~~ submit to the Buyer for its Approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) Working Days of the initial notification (or awareness) of the Financial Distress Event);

(b) ~~b)~~ use reasonable endeavours to put in place the necessary measures with each Additional FDE Group Member to ensure that it is able to provide financial information relating to that Additional FDE Group Member to the Buyer; and

- (c) ~~e)~~ provide such financial information relating to FDE Group entity as the Buyer may reasonably require.
- 6.5 If the Buyer does not (acting reasonably) approve the draft Financial Distress Service Continuity Plan, it shall inform the Supplier of its reasons and the Supplier shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the Buyer within five (5) Working Days of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is either:
- 6.5.1 Approved;
 - 6.5.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Service Continuity Plan has not been Approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Service Continuity Plan (to be held within 28 days of the date of the notice); or
 - 6.5.3 finally rejected by the Buyer.
- 6.6 Following Approval of the Financial Distress Service Continuity Plan by the Buyer, the Supplier shall:
- 6.6.1 on a regular basis (which shall not be less than Monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance ~~the~~this Contract and delivery of the Deliverables in accordance with ~~the~~this Contract;
 - 6.6.2 provide a written report of the results of each review and assessment carried out under Paragraph 6.6.1 to the Buyer;
 - 6.6.3 where the Financial Distress Service Continuity Plan is not adequate or up to date in accordance with Paragraph 6.6.1, submit an updated Financial Distress Service Continuity Plan to the Buyer for its Approval, and the provisions of Paragraphs 6.5 shall apply to the review and Approval process for the updated Financial Distress Service Continuity Plan; and
 - 6.6.4 comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

- 6.7 Where the Supplier reasonably believes that the relevant Financial Distress Event (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Buyer and subject to the agreement of the Parties, the Supplier may be relieved of its obligations under Paragraph 6.6.

7. When the Buyer can terminate for financial distress

- 7.1 The Buyer shall be entitled to terminate this Contract for ~~material~~Material Default if:
- 7.1.1 the Supplier fails to notify the Buyer of a Financial Distress Event in accordance with Paragraph 6.1;
 - 7.1.2 the Supplier fails to comply with any part of Paragraph 6.4;
 - 7.1.3 subject to Paragraph 7.2, the Buyer finally rejects a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.5.3;
 - 7.1.4 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not meet within 28 days of the date of the notice of referral pursuant to Paragraph 6.5.2;
 - 7.1.5 the senior representatives who have authority to agree the Financial Distress Service Continuity Plan (acting reasonably) do not agree the Financial Distress Service Continuity Plan after it has been referred pursuant to Paragraph 6.5.2; and/or
 - 7.1.6 the Supplier fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with Paragraph 6.6.4~~1~~.

and the consequences of termination in Clause 14.5.1 shall apply.

- 7.2 A ~~material~~Material Default may only occur under Paragraph 7.1.3 after the expiry of the first five (5) Working Days period for the Supplier to submit a revised draft of the first draft of the Financial Distress Service Continuity Plan starting on and from the date on which the Buyer first notified the Supplier that Supplier must submit a revised draft of the first draft Financial Distress Service Continuity Plan.

8. What happens If your Primary Metric is still good

Without prejudice to the Supplier's obligations and the Buyer's rights and remedies under Paragraph 6, if, following the occurrence of a Financial Distress Event, the Supplier evidences to the Buyer's satisfaction that the Primary Metric shows that the Financial Distress Event no longer exists, then:

- 8.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 6.4 to 6.6; and

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- 8.2 the Buyer shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph ~~6.4.2e~~6.4.2(c).

ANNEX 1: RATING AGENCIES AND CREDIT REFERENCE AGENCIES

Part A: Rating Agencies

[Rating Agency 1]

[Rating Agency 2]

Part B: Credit Reference Agencies

[Credit Reference Agency 1]

[Credit Reference Agency 2]

ANNEX 2: CREDIT RATINGS, CREDIT SCORES AND FINANCIAL INDICATORS

Part A: Credit Rating

[Guidance: Subsidiary entities are unlikely to have a credit rating. The credit rating is most likely to be awarded to the ultimate parent company of a group. For the credit rating provisions to apply, the entity in the supplier's group which has a credit rating should be included as a Monitored Supplier if it is not the Guarantor.]

Entity	Credit rating (long term)	Credit Rating Threshold
Supplier		
Guarantor		
[Key Subcontractor]		
[Monitored Supplier]		

Part B: Credit Score

Entity	Credit score	Credit Score Notification Trigger	Credit Score Threshold
Supplier			
Guarantor			
[Key Subcontractor]			
[Monitored Supplier]			

Part C: Financial Indicators

Financial Indicator	Calculation ¹	Financial Target Threshold:	Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 5.1]
<p>1</p> <p>[Operating Margin]</p> <p>OR</p> <p>[The higher of (a) the Operating Margin for the most recent 12 month period and (b) the average Operating Margin for the last two 12 month periods]</p>	<p>[Operating Margin = Operating Profit / Revenue]</p>	<p>[> [X%]]</p>	<p>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]</p>
<p>2</p> <p>[Free Cash Flow to Net Debt Ratio]</p> <p>OR</p> <p>[Net Debt to EBITDA Ratio]</p>	<p>[Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt]</p> <p>OR</p> <p>[Net Debt to EBITDA ratio = Net Debt / EBITDA]</p>	<p>[> [X%]]</p> <p>OR</p> <p>[< [X]] times</p>	<p>Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon [Free Cash Flow / EBITDA] for the 12 months ending on, and Net Debt at, the relevant [accounting reference date / half year end]</p>
<p>3</p> <p>[Net Debt + Net Pension Deficit to EBITDA ratio]</p>	<p>[Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA]</p>	<p>[< [X]] times</p>	<p>Tested and reported yearly in arrears within 120 days of each accounting reference date based upon EBITDA for the 12 months ending on, and the Net Debt and Net Pension Deficit at, the relevant accounting reference date</p>

Financial Indicator	Calculation ¹	Financial Target Threshold:	Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 5.1]
4 [Net Interest Paid Cover]	$\frac{\text{Net Interest Paid Cover} = \text{Earnings Before Interest and Tax} / \text{Net Interest Paid}}$	$> [X]$ times	Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures for the 12 months ending on the relevant [accounting reference date / half year end]
5 [Acid Ratio]	$\frac{\text{Acid Ratio} = (\text{Current Assets} - \text{Inventories}) / \text{Current Liabilities}}$	$> [X]$ times	Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]
6 [Net Asset value]	$\text{Net Asset Value} = \text{Net Assets}$	$> \text{£}0$	Tested and reported [yearly / half yearly] in arrears within [120 / 90] days of each [accounting reference date / half year end] based upon figures at the relevant [accounting reference date / half year end]
7 [Group Exposure Ratio]	$\frac{\text{Group Exposure}}{\text{Gross Assets}}$	$< [X]\%$	Tested and reported yearly in arrears within 120 days of each accounting reference date based upon figures at the relevant accounting reference date

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Financial Indicator	Calculation ¹	Financial Target Threshold:	Monitoring and Reporting Frequency [if different from the default position set out in Paragraph 5.1]
Financial Target 8 [etc.]	[etc.]	[etc.]	[etc.]

Key: ¹ – See Annex 4 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

ANNEX 3 – ADDITIONAL FDE GROUP MEMBERS AND MONITORED SUPPLIERS

Part A: Additional FDE Group Members

[Guidance: List the entities that the Buyer wants to include in the FDE Group]

1. **[[Guarantor]**
2. **[Key-Subcontractors]**; and
3. **[Monitored Suppliers]**;

Part B: Monitored Suppliers

[Guidance: Insert details of any other entities which the Supplier is required to monitor against the Financial Indicators. These are in addition to the Supplier's monitoring of itself, the Guarantor and the Key Subcontractors. Not all the Financial Indicators may be applicable to a Monitored Supplier, so indicate which of those are to apply in the table below]

Entity Name	Company Number	Applicable Financial Indicators (these are the Financial Indicators from the table in Part C of Annex 2 which are to apply to the Monitored Suppliers)

Schedule 26 (Sustainability)

[Guidance: Part A should always be included, as it incorporates legislative requirements and Government policy on procurement; Part B is optional and Buyers should consider whether they wish to include any of the options. See Part B for further details. Part C should be included if Buyers have not included Schedule 10 (Service Levels) in ~~the~~this Contract.]

1. Definitions

["Modern Slavery Assessment Tool"]	means the modern slavery risk identification and management tool which can be found online at: https://supplierregistration.cabinetoffice.gov.uk/msat]
["Supply Chain Map"]	means details of (i) the Supplier, (ii) all Subcontractors and (iii) any other entity that the Supplier is aware is in its supply chain that is not a Subcontractor, setting out at least: <ul style="list-style-type: none">(a) the name, registered office and company registration number of each entity in the supply chain;(b) the function of each entity in the supply chain; and(c) the location of any premises at which an entity in the supply chain carries out a function in the supply chain; <u>and</u>]
"Waste Hierarchy"	means prioritisation of waste management in the following order of preference as set out in the Waste (England and Wales) Regulation 2011: <ul style="list-style-type: none">(a) Prevention;(b) Preparing for re-use;(c) Recycling;(d) Other Recovery; and(e) Disposal.

Part A

1. Public Sector Equality Duty

1.1 ~~1.1.~~ In addition to legal obligations, where the Supplier is providing a Deliverable to which the Public Sector Equality duty applies, the Supplier shall support the Buyer in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under ~~the~~this Contract in a way that seeks to:

1.1.1 ~~1.1.1.~~ eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

1.1.2 ~~1.1.2.~~ advance:

(a) ~~1.1.2.1.~~ equality of opportunity; and

(b) ~~1.1.2.2.~~ good relations,

between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation, and marriage and civil partnership) and those who do not share it.

2. Employment Law

~~2.1.~~ The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

3. Modern Slavery

3.1 ~~3.1.~~ The Supplier:

3.1.1 ~~3.1.1.~~ shall not use, nor allow its Subcontractors to use forced, bonded or involuntary prison labour;

3.1.2 ~~3.1.2.~~ shall not require any Supplier Staff or Subcontractor Staff to lodge deposits or identity papers with the employer and shall be free to leave their employer after reasonable notice;

3.1.3 ~~3.1.3.~~ warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

3.1.4 ~~3.1.4.~~ warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;

3.1.5 ~~3.1.5.~~ shall make reasonable enquires to ensure that its officers, employees and Subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;

3.1.6 ~~3.1.6.~~ shall have and maintain throughout the Term its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its Subcontractors anti-slavery and human trafficking provisions;

3.1.7 ~~3.1.7.~~ shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under ~~the~~this Contract;

3.1.8 ~~3.1.8.~~ shall prepare and deliver to the Buyer, 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 with its annual certification of compliance with this Paragraph 3;

[Guidance - a statement under section 54 of the Modern Slavery Act would be sufficient for the required 'annual slavery and human trafficking report required by Paragraph 3.18]

- 3.1.9 ~~3.1.9~~ shall not use, nor allow its employees or Subcontractors to use physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or Subcontractors;
- 3.1.10 ~~3.1.10~~ shall not use or allow child or slave labour to be used by its Subcontractors; ~~and~~
- 3.1.11 ~~3.1.11~~ shall report the discovery or suspicion of any slavery ~~or~~ trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its Subcontractors to the Buyer and Modern Slavery Helpline; ~~and relevant national or local law enforcement agencies;~~
- 3.1.12 if the Supplier is in Default under Paragraphs 3.1.1 to 3.1.11 of this Part A of Schedule 26 the Buyer may by notice:
- (a) require the Supplier to remove from performance of this Contract any sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- (b) immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply; and
- 3.1.13 shall, if the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Buyer to follow the Rectification Plan Process to submit a remedial action plan which follows the form set out in Annex D of the Tackling Modern Slavery in Government Supply Chains guidance to PPN 02/23 (Tackling Modern Slavery in Government Supply Chains).
- 3.2 If the Supplier notifies the Buyer pursuant to Clause 3.1.11 it shall respond promptly to the Buyer'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 this Contract.
- 3.3 If the Supplier is in Default under Paragraph 3.1 of this Part A of Schedule 26 [Guidance: Include if Optional paragraph 3.3 of Part B of this Schedule is included or Paragraph 3.3 of Part B of Schedule 26] the Buyer may by notice:
- 3.3.1 require the Supplier to remove from performance of this Contract any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
- 3.3.2 immediately terminate this Contract and the consequences of termination set out in Clause 14.5.1 of the Core Terms shall apply.

4. Environmental Requirements

4.1 ~~4.1.~~ The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws regarding the environment.

4.2 ~~4.2.~~ In performing its obligations under ~~the~~[this](#) Contract, the Supplier shall, where applicable to ~~the~~[this](#) Contract, to the reasonable satisfaction of the Buyer:

4.2.1 ~~4.2.1.~~ prioritise waste management in accordance with the Waste Hierarchy as set out in Law;

4.2.2 ~~4.2.2.~~ be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken by a licensed waste carrier to an authorised site for treatment or disposal and that the disposal or treatment of waste complies with the Law; and

4.2.3 ~~4.2.3.~~ ensure that it and any third parties used to undertake recycling, disposal or other recovery as a consequence of this Contract do so in a legally compliant way, and can demonstrate that reasonable checks are undertaken to ensure this on a regular basis and provide relevant data and evidence of recycling, recovery and disposal.

4.3 ~~4.3.~~ In circumstances that a permit, licence or exemption to carry or send waste generated under this Contract is revoked, the Supplier shall cease to carry or send waste or allow waste to be carried by any Subcontractor until authorisation is obtained from the Environment Agency.

4.4 ~~4.4.~~ In performing its obligations under ~~the~~[this](#) Contract, the Supplier shall to the reasonable satisfaction of the Buyer (where the anticipated Charges in any Contract Year are above £5 million per annum (excluding VAT)), where related to and proportionate to the contract in accordance with PPN 06/21), publish and maintain a credible Carbon Reduction Plan in accordance with PPN 06/21.

4.5 ~~4.5.~~ The Supplier shall meet the applicable Government Buying Standards applicable to Deliverables which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>

5. Supplier Code of Conduct

5.1 ~~5.1.~~ In February 2019, HM Government published a Supplier Code of Conduct setting out the standards and behaviours expected of suppliers who work with government which can be found online at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/779660/20190220-Supplier_Code_of_Conduct_1163536/Supplier_Code_of_Conduct_v3.pdf

The Buyer expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

6. Reporting

The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs 1-5 of this Part A above within fourteen (14) days of such request, [provided that such requests are limited to [two (2)] per requirement per Contract Year].

Part B

[Guidance - All paragraphs and sub-paragraphs in Part B are optional. Buyers will want to select and amend those requirements which are appropriate for their Contract, ensuring that these are relevant and proportional to the subject matter of ~~the~~this Contract. Buyers may want to consider using some or all of these paragraphs when there are key sustainability benefits or risks that need to be managed and/or for higher value/larger Suppliers and/or Contracts. Buyers should also note that some obligations, such as compliance with the Buyer's sustainability requirements, for example net zero commitments or EDI, will require the Buyer to provide the requirements to the Supplier]

1. Equality, Diversity and Inclusion – Further Requirements

1.1 ~~1.1.~~ [In delivering the Deliverables, the Supplier will comply with the Buyer's equality, diversity and inclusion requirements, to be provided to the Supplier by the Buyer.]

1.2 ~~1.2.~~ [The Supplier shall ensure that it fulfils its obligations under ~~the~~this Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.]

2. Environmental – Further Requirements

2.1 ~~2.1.~~ [The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Deliverables.]

2.2 ~~2.2.~~ [The Supplier shall ensure that any Deliverables are designed, sourced and delivered in a manner which is environmentally and socially responsible.]

2.3 ~~2.3.~~ [In delivering the Deliverables, the Supplier must comply with the Buyer's sustainability requirements, to be provided to the Supplier by the Buyer.]

2.4 ~~2.4.~~ [The Supplier warrants that it has obtained relevant Environment Management System (EMS) certified to ISO 14001 or an equivalent certification from a UKAS accredited body and shall comply with and maintain certification requirements throughout the Term.]

2.5 ~~2.5.~~ [In performing its obligations under ~~the~~this Contract, the Supplier shall to the reasonable satisfaction of the Buyer:

2.5.1 ~~2.5.1.~~ [avoid consumable single use items (including packaging) unless otherwise agreed with the Buyer, and unless the use is

- primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Deliverables;]
- 2.5.2 ~~2.5.2.~~ [demonstrate that the whole life cycle impacts (including end of use) associated with the Deliverables that extend beyond direct operations into that of the supply chain have been considered and reduced];
- 2.5.3 ~~2.5.3.~~ [minimise the consumption of resources and use them efficiently (including water and energy), working towards a circular economy including designing out waste and non-renewable resources, using re-use and closed loop systems];
- 2.5.4 ~~2.5.4.~~ [demonstrate protection of the environment including understanding and reduction of biosecurity risks (which include risks to plant and tree health from harmful pests and diseases), and reducing and eliminating hazardous/harmful substances to the environment and preventing pollution];
- 2.5.5 ~~2.5.5.~~ [enhance the natural environment and connecting communities with the environment];
- 2.5.6 ~~2.5.6.~~ [achieve continuous improvement in environmental (and social) performance]and
- 2.5.7 ~~2.5.7.~~ [demonstrate to the Buyer that it has an environmental management system in place that is at least equivalent to the standards required to be certified to ISO 14001].]
- 2.6 ~~2.6.~~ [The Supplier shall inform the Buyer within one Working Day in the event that a permit, licence or exemption to carry or send waste generated under this Contract is revoked.]
- ~~2.7.~~ **[Guidance: Insert any other environmental requirement the Buyer wishes to add, e.g. those in line with the [Government Greening Commitments](#), or for [ICT - the Greening government: ICT and digital services strategy 2020 to 2025](#) and [point 12 of the Technology Code of Practice](#)].**

3. Modern Slavery– Further Requirements

[Guidance - Paragraphs 3.1 to 3.8 are intended for use in medium and high risk contracts. For guidance on classifying contracts as medium or high risk, please see section [31](#) of the Modern Slavery Guidance attached to [PPN 0502/1923 \(Tackling Modern Slavery in Government Supply Chains\)](#). Buyers should consider which requirements, including any additional requirements, are appropriate for their Contract.]

Schedule 26 (Sustainability)

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3.1 ~~3.1.~~ [The Supplier shall comply with any request by the Buyer to complete the Modern Slavery Assessment Tool within sixty (60) days of such request.]

3.2 ~~3.2.~~ [The following shall be added to the definition of "Audit" in Schedule 1 immediately after limb (k):

"(l) carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Staff in a confidential manner and in the native language of such Supplier Staff in respect of workforce conditions, working or employment practices and recruitment practices;"

3.3 ~~3.3.~~ For the purposes of an audit carried out pursuant to limb (l) of the definition of "Audit", in addition to any other rights under ~~the~~this Contract, the Buyer may instruct the Supplier to carry out such an audit of any Subcontractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Buyer within ninety (90) days of such instruction.]

~~3.4. [If the Supplier or the Buyer identifies any occurrence of modern slavery connected to this Contract, the Supplier shall comply with any request of the Buyer to submit a remedial action plan which follows the form set out in Annex D of the guidance *Tackling Modern Slavery in Government Supply Chains*, which can be found at:~~

~~*https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830150/September_2019_Modern_Slavery_Guidance.pdf*~~

~~and such remedial action plan shall be deemed to be a Rectification Plan.]~~

3.4 ~~3.5.~~ [The Supplier shall comply with any request by the Buyer to provide a Supply Chain Map within fourteen (14) days of such request.]

3.5 ~~3.6.~~ [The Supplier shall comply with any request by the Buyer to provide a copy of any reports of any Subcontractor regarding any or all of ~~workforce~~workplace conditions, working or employment practices and recruitment practices within fourteen (14) days of such request.]

3.6 ~~3.7.~~ [The Supplier shall carry out due diligence to ensure workers in its business and its supply chains are not paying illegal or exploitative recruitment fees to secure employment, and where these fees are uncovered shall ensure that workers are remedied.]

~~3.8. [The Supplier shall report the discovery or suspicion of any slavery, forced labour, child labour, involuntary prison labour or labour rights abuses in its operations and supply chains to the Buyer and relevant national or local law enforcement agencies.]~~

4. Further Reporting Requirements

- 4.1 4.1- [The Supplier shall comply with reasonable requests by the Buyer for information evidencing compliance with any of the requirements in Paragraphs [1 and 2] of this Part B above within [thirty (30)] days of such request, [provided that such requests are limited to [two] per requirement per Contract Year].
- 4.2 4.2- [The Supplier shall complete the reports in Table A of this Part B in relation to its provision of the Deliverables under this Contract and provide these to the Buyer on the date and frequency outlined in Table A of this Part B].

Table A

[Guidance - All reports and the content of these reports in Table A are optional. Buyers will want to select and amend those reports and requirements which are appropriate for their Contract, ensuring that these are relevant and proportional to the subject matter of ~~the~~this Contract and do not create unnecessary burdens upon the Supplier.]

Sustainability Report Name	Content of Report	Frequency of Report
[Sustainability - General]	[As proportionate and relevant to the <u>this</u> Contract, the key sustainability impacts identified; the sustainability improvements planned or delivered; and the risks to the Deliverables of climate change, including mitigation, adaptation and continuity plans employed by the Supplier in response to those risks].	[On the anniversary of the Effective Date]
[Waste created]	[By type of material the weight of waste categories by each means of disposal in the Waste Hierarchy with separate figures for disposal by incineration and landfill.]	[Before contract award and on the anniversary of the Effective Date.]
[Waste permits]	[Copies of relevant permits and exemptions for waste, handling, storage and disposal.]	[Before the Effective Date, on the anniversary of the Effective Date and within ten (10) Working Days of there is any change or renewal to license or exemption to

Sustainability Report Name	Content of Report	Frequency of Report
		carry, store or dispose waste]
[Greenhouse Gas Emissions]	<p>[Detail the Scope 1 and Scope 2 GHG emissions associated with the delivery of the contract. Scope 3 emissions to be reported as required (Optional) Emissions reporting should be in accordance with established best practice and internationally accepted standards.</p> <p>Greenhouse gas reporting from emissions sources (Scope 1, Scope 2 and Scope 3), and specific activities as requested by the Buyer. This may include activities such as transportation, energy use and waste disposal.]</p>	[On the anniversary of the Effective Date]
[Water Use]	[Volume in metres cubed.]	[On the anniversary of the Effective Date]
[Other]	[]	[]

Part C

[Guidance - include the following section if you have not included Schedule 10 (Service Levels) in ~~the~~this Contract. If Schedule 10 has been included, the requirement for the Buyer to establish, track, and publish Social Value KPIs in line with PPN 06/20 will be addressed in that section, otherwise it should be addressed by including the paragraphs below.]

1. Social Value

- 1.1 The Supplier shall provide a- Social Value Report to the Buyer as outlined in Table A.

Table A: Social Value Report

Required Detail	Frequency
A high-level summary of the Supplier's performance against the Social Value priorities over the relevant period	[Quarterly]
Performance by the Supplier against	[Quarterly]

each of the- Social Value KPIs set out at Table B over the relevant period	
[Insert any other requirements]	

Table B: Social Value KPIs

[Guidance – use the Model Award Criteria and Reporting Metrics set out in the procurement documentation and in the tenderer’s proposals to establish Social Value KPIs in line with PPN 06/20, and include these below. Where the successful bidder proposes specific commitments in its tender proposal which are in addition to the above, then such commitments will also be used to establish Social Value KPIs.]

The Buyer should discuss Social Value with participants during pre-market engagement to inform the selection of relevant, proportionate and non-discriminatory questions and criteria from the Social Value Model, and to consider whether the market in question has a mature Social Value offering. Such Social Value KPIs will always comprise a combination of a deliverable and a numeric element, being specific, measurable and time-bound commitments, by which performance of that deliverable is to be measured.

The Buyer should ensure that the social value priorities to be delivered and how the Supplier will deliver these priorities are included in ~~the~~[this](#) Contract (for example in Schedule 2 (Specification) and Schedule 8 (Implementation Plan)]

No.	Social Value Title	Description of Deliverable	Target	Frequency of Measurement	Publishable Performance Information
					<p>— [Guidance: It is HMG’s intention to publish the top Social Value KPI for the Government’s most important contracts. Where this publication</p>

Schedule 26 (Sustainability)

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					requirement applies to this Contract, the Authority may use the below to select the single most important Social Value KPI, which may be publishable]
Social Value KPI1	[e.g. Reducing the disability employment gap]	[e.g. Number of disabled people in the contract workforce]	[e.g. 2%]	[Quarterly]	[YES/NO]
Social Value KPI2					[YES/NO]
Social Value KPI3					[YES/NO]

Schedule 28 (ICT Services)

[Guidance Note: this Schedule should be used where ICT Services form any part of the Deliverables. The provisions on IPR have been moved to Schedule 36 (IPR). If you use this Schedule, you will select Part B of Schedule 36, before selecting which IPR option(s) (1-5) apply]

1. Definitions

1.1 ~~1.1.~~ In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Buyer Property"	the property, other than real property and IPR, including the Buyer System, any equipment issued or made available to the Supplier by the Buyer in connection with this Contract;
"Buyer Software"	any software which is owned by or licensed to the Buyer and which is or will be used by the Supplier for the purposes of providing the Deliverables;
"Buyer System"	the Buyer's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Buyer or the Supplier in connection with this Contract which is owned by or licensed to the Buyer by a third party and which interfaces with the Supplier System or which is necessary for the Buyer to receive the Deliverables;
"Commercial off the shelf Software" or "COTS Software"	non-customised software where the IPR may be owned and licensed either by the Supplier or a third party depending on the context, and which is commercially available for purchase and subject to standard licence terms;
"Defect"	any of the following: a) any error, damage or defect in the manufacturing of a Deliverable; or b) any error or failure of code within the Software which causes a Deliverable to malfunction or to produce unintelligible or incorrect results; or c) any failure of any Deliverable to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of

	whether or not it prevents the relevant Deliverable from passing any Test required under this Contract; or d) any failure of any Deliverable to operate in conjunction with or interface with any other Deliverable in order to provide the performance, features and functionality specified in the requirements of the Buyer or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from passing any Test required under this Contract;
"Emergency Maintenance"	ad hoc and unplanned maintenance provided by the Supplier where either Party reasonably suspects that the ICT Environment or the Services, or any part of the ICT Environment or the Services, has or may have developed a fault;
"ICT Environment"	the Buyer System and the Supplier System;
"Licensed Software"	all and any Software licensed by or through the Supplier, its Sub-Contractors or any third party to the Buyer for the purposes of or pursuant to this Contract, including any COTS Software;
"Maintenance Schedule"	has the meaning given to it in Paragraph 8ef8 of this Schedule;
"Malicious Software"	any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
"New Release"	an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;
"Open Source Software"	computer software that has its source code made available subject to an open source licence under which the owner of the copyright and other IPR in such software provides the

	rights to use, study, change and distribute the software to any and all persons and for any and all purposes free of charge;
"Operating Environment"	means the Buyer System and any premises (including the Buyer Premises, the Supplier's premises or third party premises) from, to or at which: <u>(a)</u> a) the Deliverables are (or are to be) provided; or <u>(b)</u> b) the Supplier manages, organises or otherwise directs the provision or the use of the Deliverables; or <u>(c)</u> c) where any part of the Supplier System is situated;
"Permitted Maintenance"	has the meaning given to it in Paragraph 8.2 of 8.2 of this Schedule;
"Quality Plans"	has the meaning given to it in Paragraph 6.1 of 6.1 of this Schedule;
"Sites"	has the meaning given to it in Schedule 1 (Definitions), and for the purposes of this Schedule shall also include any premises from, to or at which physical interface with the Buyer System takes place;
"Software"	Specially Written Software, COTS Software and non-COTS Supplier and third party Software;
"Software Supporting Materials"	has the meaning given to it in Paragraph 9.1 of this Schedule;
"Source Code"	computer programs and/or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent binary code together with all related design comments, flow charts, technical information and documentation necessary for the use, reproduction, maintenance, modification and enhancement of such software;
"Specially Written Software"	any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a Sub-Contractor or other third party on behalf of the Supplier) specifically for the purposes of this Contract, including any

~~modifications or enhancements to COTS Software. For the avoidance of doubt Specially Written Software does not constitute New IPR;~~

"Supplier System" ~~the information and communications technology system used by the Supplier in supplying the Deliverables, including the COTS Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Buyer System);~~

2. When this Schedule should be used

2.1 ~~2.1.~~ This Schedule is designed to provide additional provisions necessary to facilitate the provision of ICT Services which are part of the Deliverables.

3. Buyer due diligence ~~requirements~~ [requirement](#)

3.1 ~~3.1.~~ The Supplier shall satisfy itself of all relevant details, including but not limited to, details relating to the following~~;~~:

3.1.1 ~~3.1.1.~~ suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the ~~Start~~[Effective](#) Date) future Operating Environment;

3.1.2 ~~3.1.2.~~ operating processes and procedures and the working methods of the Buyer;

3.1.3 ~~3.1.3.~~ ownership, functionality, capacity, condition and suitability for use in the provision of the Deliverables of the Buyer Assets; and

3.1.4 ~~3.1.4.~~ existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, assigned to or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.

3.2 ~~3.2.~~ The Supplier confirms that it has advised the Buyer in writing of:

3.2.1 ~~3.2.1.~~ each aspect, if any, of the Operating Environment that is not suitable for the provision of the ICT Services;

3.2.2 ~~3.2.2.~~ the actions needed to remedy each such unsuitable aspect; and

3.2.3 ~~3.2.3.~~ a timetable for and the costs of those actions.

4. Licensed software warranty

4.1 ~~4.1.~~ The Supplier represents and warrants that:

4.1.1 ~~4.1.1.~~ it has and shall continue to have all necessary rights in and to the Licensed Software made available by the Supplier (and/or any Sub-Contractor) to the Buyer which are necessary for the performance of the Supplier's obligations under this Contract including the receipt of the Deliverables by the Buyer;

4.1.2 ~~4.1.2.~~ all components of the Specially Written Software shall:

- (a) ~~4.1.2.1.~~ be free from material design and programming errors;
- (b) ~~4.1.2.2.~~ perform in all material respects in accordance with the relevant specifications contained in Schedule 10 (Service Levels) and Documentation; and
- (c) ~~4.1.2.3.~~ not infringe any IPR.

5. Provision of ICT Services

5.1 ~~5.1.~~ The Supplier shall:

5.1.1 ~~5.1.1.~~ ensure that the release of any new COTS Software in which the Supplier owns the IPR, or upgrade to any Software in which the Supplier owns the IPR complies with the interface requirements of the Buyer and (except in relation to new Software or upgrades which are released to address Malicious Software) shall notify the Buyer three (3) Months before the release of any new COTS Software or ~~Upgrade~~upgrade;

5.1.2 ~~5.1.2.~~ ensure that all Software including upgrades, updates and New Releases used by or on behalf of the Supplier are currently supported versions of that Software and perform in all material respects in accordance with the relevant specification;

5.1.3 ~~5.1.3.~~ ensure that the Supplier System will be free of all encumbrances;

5.1.4 ~~5.1.4.~~ ensure that the Deliverables are fully compatible with any Buyer Software, Buyer System, or otherwise used by the Supplier in connection with this Contract;

5.1.5 ~~5.1.5.~~ minimise any disruption to the Services and the ICT Environment and/or the Buyer's operations when providing the Deliverables.

6. Standards and Quality Requirements

6.1 ~~6.1.~~ The Supplier shall develop, in the timescales specified in the Award Form, quality plans that ensure that all aspects of the Deliverables are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").

6.2 ~~6.2.~~ The Supplier shall seek Approval from the Buyer (not be unreasonably withheld or delayed) of the Quality Plans before implementing them.

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

6.3 ~~6.3.~~ Following the approval of the Quality Plans, the Supplier shall provide all Deliverables in accordance with the Quality Plans.

6.4 ~~6.4.~~ The Supplier shall ensure that the Supplier Personnel shall at all times during the Contract Period:

6.4.1 ~~6.4.1.~~ be appropriately experienced, qualified and trained to supply the Deliverables in accordance with this Contract;

6.4.2 ~~6.4.2.~~ apply all due skill, care, diligence in faithfully performing those duties and exercising such powers as necessary in connection with the provision of the Deliverables; and

6.4.3 ~~6.4.3.~~ obey all lawful instructions and reasonable directions of the Buyer (including, if so required by the Buyer, the ICT Policy) and provide the Deliverables to the reasonable satisfaction of the Buyer.

7. ICT Audit

7.1 ~~7.1.~~ The Supplier shall allow any auditor access to the Supplier premises to:

7.1.1 ~~7.1.1.~~ inspect the ICT Environment and the wider service delivery environment (or any part of them);

7.1.2 ~~7.1.2.~~ review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;

7.1.3 ~~7.1.3.~~ review the Supplier's quality management systems including all relevant Quality Plans.

8. Maintenance of the ICT Environment

8.1 ~~8.1.~~ If specified by the Buyer in the Award Form, the Supplier shall create and maintain a rolling schedule of planned maintenance to the ICT Environment ("**Maintenance Schedule**") and make it available to the Buyer for Approval in accordance with the timetable and instructions specified by the Buyer.

8.2 ~~8.2.~~ Once the Maintenance Schedule has been Approved, the Supplier shall only undertake such planned maintenance (which shall be known as "**Permitted Maintenance**") in accordance with the Maintenance Schedule.

8.3 ~~8.3.~~ The Supplier shall give as much notice as is reasonably practicable to the Buyer prior to carrying out any Emergency Maintenance.

8.4 ~~8.4.~~ The Supplier shall carry out any necessary maintenance (whether Permitted Maintenance or Emergency Maintenance) where it reasonably suspects that the ICT Environment and/or the Services or any part thereof has or may have developed a fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not

possible so as to minimise) disruption to the ICT Environment and the provision of the Deliverables.

9. Intellectual Property Rights in ICT

~~[Guidance note: this paragraph of Schedule 28 contains different ownership options for IPR. Please refer to the Award Form for more detailed guidance, but depending on which of the five IPR ownership Options is chosen, this paragraph should be amended accordingly, with the drafting for the Options not used being deleted, the clauses used renumbered and cross references updated. The five Options are:~~

- ~~• Option 1: (default) Buyer owns New IPR, with limited Supplier rights to New IPR in order to deliver the Contract)~~
- ~~• Option 2: Buyer ownership of New IPR with non-exclusive Supplier rights;~~
- ~~• Option 3: Supplier ownership of New IPR with Buyer rights for the current contract only;~~
- ~~• Option 4: Supplier ownership of New IPR with Buyer rights for the current contract and broader public sector functions;~~
- ~~• Option 5: Options 2, 3, or 4, plus Authority rights to a gain/profit share~~

~~Please refer to section 2.7 of the Model Services Contract Guidance published on Gov.uk for further detail on how these options are intended to operate. Please note, clause references in that guidance may differ in the mid-tier.~~

~~If Option 1 is chosen, when publishing as open source, Buyers **should be** mindful that the terms of any input licence (that is the open source licence for any open source software which has been used to create the Specially Written Software) aligns with the 'output licence' (that is, the licence under which the Buyer will publish the Software as open source).]~~

~~[Guidance note: for Option 1: Buyer owns all New IPR, with limited Supplier rights to New IPR in order to deliver the Contract, please include the following drafting:]~~

~~9.1. Assignments granted by the Supplier: Specially Written Software~~

~~9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:~~

~~9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and~~

~~9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").~~

~~9.1.2. The Supplier shall:~~

~~9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;~~

~~9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and~~

~~9.1.2.3. without prejudice to Paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.~~

~~9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.~~

~~9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer~~

~~9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:~~

~~9.2.1.1. of its own Existing IPR that is not COTS Software;~~

~~9.2.1.2. third party software that is not COTS Software.~~

~~9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty free and non-exclusive licence to use adapt, and sub-licence the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.~~

~~9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph [9.2.2]. If the Supplier cannot obtain such a licence for the Buyer it shall:~~

~~9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and~~

~~9.2.3.2. only use such third party IPR as referred to at Paragraph [9.2.3] if the Buyer Approves the terms of the licence from the relevant third party.~~

~~9.2.4. Where the Supplier is unable to provide a licence to the Supplier's Existing IPR in accordance with Paragraph [9.3.2] above, it must meet the requirement by making use of COTS Software or Specially Written Software.~~

~~9.2.5. The Supplier may terminate a licence granted under Paragraph [9.2.2] by giving at least thirty (30) days' notice in writing if there is a Buyer Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.~~

~~9.3. Licences for COTS Software by the Supplier and third parties to the Buyer~~

- ~~9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~
- ~~9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS Software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~
- ~~9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph [9.3] the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~
- ~~9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty six (36) months:~~
- ~~9.3.4.1. will no longer be maintained or supported by the developer;~~
 - ~~or~~
 - ~~9.3.4.2. will no longer be made commercially available.~~

~~9.4. Buyer's right to assign/novate licences~~

- ~~9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph [9.2] (*Licences for non-COTS IPR from the Supplier and third parties to the Buyer*) to:~~
- ~~9.4.1.1. a Central Government Body; or~~
 - ~~9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.~~
- ~~9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraphs [9.1] and/or [9.2].~~

~~9.5. Licence granted by the Buyer~~

- ~~9.5.1. The Buyer grants to the Supplier a royalty free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software and the Specially Written Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a~~

~~confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential).~~

~~9.6. Open Source Publication~~

~~9.6.1. Unless the Buyer otherwise agrees in advance in writing (and subject to Paragraph 9.6.3) all Specially Written Software and computer program elements of New IPR shall be created in a format, or able to be converted (in which case the Supplier shall also provide the converted format to the Buyer) into a format, which is:~~

~~9.6.1.1. suitable for publication by the Buyer as Open Source; and~~

~~9.6.1.2. based on Open Standards (where applicable);~~

~~and the Buyer may, at its sole discretion, publish the same as Open Source.~~

~~9.6.2. The Supplier hereby warrants that the Specially Written Software and the New IPR:~~

~~9.6.2.1. are suitable for release as Open Source and that the Supplier has used reasonable endeavours when developing the same to ensure that publication by the Buyer will not enable a third party to use them in any way which could reasonably be foreseen to compromise the operation, running or security of the Specially Written Software, New IPRs or the Buyer System;~~

~~9.6.2.2. **have been** developed using reasonable endeavours to ensure that their publication by the Buyer shall not cause any harm or damage to any party using them;~~

~~9.6.2.3. do not contain any material which would bring the Buyer into disrepute;~~

~~9.6.2.4. can be published as Open Source without breaching the rights of any third party;~~

~~9.6.2.5. will be supplied in a format suitable for publication as Open Source ("**the Open Source Publication Material**") no later than the date notified by the Buyer to the Supplier; and~~

~~9.6.2.6. do not contain any Malicious Software.~~

~~9.6.3. Where the Buyer has Approved a request by the Supplier for **any part of the** Specially Written Software or New IPRs to be excluded from the requirement to be in an Open Source format due to the intention to embed or integrate Supplier Existing IPRs and/or Third Party IPRs (and where the Parties agree that such IPRs are not intended to be published as Open Source), the Supplier shall:~~

~~9.6.3.1. as soon as reasonably practicable, provide written details of the nature of the IPRs and items or Deliverables based on IPRs which are to be excluded from Open Source publication; and~~

~~9.6.3.2. include in the written details and information about the impact that inclusion of such IPRs or Deliverables based on such IPRs, will have on any other Specially Written Software and/or New IPRs and the Buyer's ability to publish such other items or Deliverables as Open Source.~~

9. ~~9.7.~~ Malicious Software

9.1 ~~9.7.1.~~ The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.

9.2 ~~9.7.2.~~ If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.

9.3 ~~9.7.3.~~ Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph ~~[9.7.2]~~9.2 shall be borne by the Parties as follows:

9.3.1 ~~9.7.3.1.~~ by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and

9.3.2 ~~9.7.3.2.~~ by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).

~~[Guidance note: for Option 2: Buyer owns all New IPR with non-exclusive Supplier rights, please include the following drafting:]~~

~~9.1. Assignments granted by the Supplier: Specially Written Software~~

~~9.1.1. The Supplier assigns (by present assignment of future rights to take effect immediately on it coming into existence) to the Buyer with full guarantee (or shall procure assignment to the Buyer), title to and all rights and interest in the Specially Written Software together with and including:~~

~~9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and~~

~~9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**").~~

~~9.1.2. The Supplier shall:~~

~~9.1.2.1. inform the Buyer of all Specially Written Software or New IPRs that are a modification, customisation, configuration or enhancement to any COTS Software;~~

~~9.1.2.2. deliver to the Buyer the Specially Written Software and any computer program elements of the New IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven days of completion or, if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone and shall provide updates of them promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Buyer and the Buyer shall become the owner of such media upon receipt; and~~

~~9.1.2.3. without prejudice to Paragraph 9.1.2.2, provide full details to the Buyer of any of the Supplier's Existing IPRs or Third Party IPRs which are embedded or which are an integral part of the Specially Written Software or New IPR and the Supplier hereby grants to the Buyer and shall procure that any relevant third party licensor shall grant to the Buyer a perpetual, irrevocable, non-exclusive, assignable, royalty-free licence to use, sub-license and/or commercially exploit such Supplier's Existing IPRs and Third Party IPRs to the extent that it is necessary to enable the Buyer to obtain the full benefits of ownership of the Specially Written Software and New IPRs.~~

~~9.1.3. The Supplier shall promptly execute all such assignments as are required to ensure that any rights in the Specially Written Software and New IPRs are properly transferred to the Buyer.~~

~~9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer~~

~~9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:~~

~~9.2.1.1. of its own Existing IPR that is not COTS Software;~~

~~9.2.1.2. third party software that is not COTS Software~~

~~9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty free and non-exclusive licence to use adapt, and sub-licence the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.~~

~~9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph [9.2.2]. If the Supplier cannot obtain such a licence for the Buyer it shall:~~

~~9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and~~

~~9.2.3.2. only use such third party IPR as referred to at Paragraph [9.2.3] if the Buyer Approves the terms of the licence from the relevant third party.~~

~~9.2.4. Where the Supplier is unable to provide a licence to the Supplier's Existing IPR in accordance with Paragraph [9.3.2] above, it must meet the requirement by making use of COTS Software or Specially Written Software.~~

~~9.2.5. The Supplier may terminate a licence granted under Paragraph [9.2.2] by giving at least thirty (30) days' notice in writing if there is a Buyer Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.~~

~~9.3. Licences for COTS Software by the Supplier and third parties to the Buyer~~

- ~~9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~
- ~~9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS Software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~
- ~~9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph [9.3] the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~
- ~~9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty six (36) months:~~
- ~~9.3.4.1. will no longer be maintained or supported by the developer;~~
 - ~~or~~
 - ~~9.3.4.2. will no longer be made commercially available.~~

~~9.4. Buyer's right to assign/novate licences~~

- ~~9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph [9.2] (*Licences for non-COTS IPR from the Supplier and third parties to the Buyer*) to:~~
- ~~9.4.1.1. a Central Government Body; or~~
 - ~~9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.~~
- ~~9.4.2. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraphs [9.1] and/or [9.2].~~

~~9.5. Licence granted by the Buyer~~

- ~~9.5.1. The Buyer grants to the Supplier a royalty free, non-exclusive, non-transferable licence during the Contract Period to:~~
- ~~9.5.1.1. use the Buyer Software solely to the extent necessary for providing the Deliverables in accordance with this Contract;~~
 - ~~and~~

~~9.5.1.2. use and exploit the Specially Written Software,
including the right to grant sub-licences to Sub-Contractors provided
that any relevant Sub-Contractor has entered into a confidentiality
undertaking with the Supplier on the same terms as set out in Clause
19 (What you must keep confidential).~~

~~9.6. Malicious Software~~

~~9.6.1. The Supplier shall, throughout the Contract Period, use the latest
versions of anti-virus definitions and software available from an
industry accepted anti-virus software vendor to check for, contain the
spread of, and minimise the impact of Malicious Software.~~

~~9.6.2. If Malicious Software is found, the Parties shall co-operate to reduce
the effect of the Malicious Software and, particularly if Malicious
Software causes loss of operational efficiency or loss or corruption of
Government Data, assist each other to mitigate any losses and to
restore the provision of the Deliverables to its desired operating
efficiency.~~

~~9.6.3. Any cost arising out of the actions of the Parties taken in compliance
with the provisions of Paragraph [9.6.2] shall be borne by the Parties
as follows:~~

~~9.6.3.1. by the Supplier, where the Malicious Software originates
from the Supplier Software, the third party Software
supplied by the Supplier or the Government Data (whilst the
Government Data was under the control of the Supplier)
unless the Supplier can demonstrate that such Malicious
Software was present and not quarantined or otherwise
identified by the Buyer when provided to the Supplier; and~~

~~9.6.3.2. by the Buyer, if the Malicious Software originates from the
Buyer Software or the Buyer Data (whilst the Buyer Data
was under the control of the Buyer).~~

~~9.7. Restrictions on exploiting Specially Written Software~~

~~9.7.1. Notwithstanding the Supplier's ownership of the Specially Written
Software or licence which allows it to exploit and commercialise the
New IPR:~~

~~9.7.1.1. the Supplier must always offer a price and solution to the
Buyer which is in accordance with the Charges and must
licence the New IPR and Supplier Existing IPR to the Buyer
on equivalent terms as apply under this Contract;~~

~~9.7.1.2. where the Supplier proposes to exploit the New IPR, that it
provides a detailed proposal of its plans for exploitation of
the New IPR and the forecast returns, including (but not
limited to) details of the goods and services to be offered by
the Supplier which use the New IPR, the target markets and
territory, the estimated level of orders, the marketing~~

~~strategy; full details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Buyer to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Buyer may reasonably request; and~~

~~9.7.1.3. where the Supplier proposes to discount the prices offered to the Buyer in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 9.7.1.2 above have been applied to the price for the Deliverables offered to the Buyer and other potential End Users;~~

~~9.7.2. The Buyer shall be under no obligation to:~~

~~9.7.2.1. offer the New IPR (where this is owned by the Buyer) or the Buyer Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or~~

~~9.7.2.2. accept any alternative arrangement proposed by the Supplier under this Paragraph and the Buyer shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Buyer) or Buyer Existing IPR applies as applies under this Contract.~~

~~9.7.3. This Contract does not confer any exclusive right on the Supplier to negotiate with the Buyer in relation to the New IPR (where this is owned by the Buyer), Buyer Existing IPR or any Crown IPR and the Buyer shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other person (except to the extent that the Buyer has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).~~

~~9.7.4. The Supplier acknowledges and agrees that the Buyer is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Buyer will need to consider its position and approach on a case by case basis.~~

[Guidance note: for Option 3: Supplier ownership of all New IPR with Buyer rights for the current contract only, please include the following drafting:]

~~9.1. Licences granted by the Supplier: Specially Written Software~~

~~9.1.1. The Supplier shall grant to the Buyer a perpetual, royalty-free and exclusive licence to use, adapt and sub-license the Specially Written Software together with and including:~~

~~9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and~~

~~9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**");~~

~~for any purpose relating to the Deliverables (or substantially equivalent deliverables) [or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function] **[Guidance note: delete wording in square brackets if Option 3 is chosen, and possibly if Option 5 is chosen depending on the agreement]** including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.~~

~~9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer~~

~~9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:~~

~~9.2.1.1. of its own Existing IPR that is not COTS Software;~~

~~9.2.1.2. third party software that is not COTS Software~~

~~9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of~~

~~service and an effective transition of Services to a Replacement Supplier.~~

~~9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph [9.2.2]. If the Supplier cannot obtain such a licence for the Buyer it shall:~~

~~9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and~~

~~9.2.3.2. only use such third party IPR as referred to at Paragraph [9.2.3] if the Buyer Approves the terms of the licence from the relevant third party.~~

~~9.2.4. Where the Supplier is unable to provide a licence to the Supplier's Existing IPR in accordance with Paragraph [9.3.2] above, it must meet the requirement by making use of COTS Software or Specially Written Software.~~

~~9.2.5. The Supplier may terminate a licence granted under Paragraph [9.2.2] by giving at least thirty (30) days' notice in writing if there is a Buyer Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.~~

~~9.3. Licences for COTS Software by the Supplier and third parties to the Buyer~~

~~9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~

~~9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS Software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~

~~9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph [9.3] the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~

~~9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty six (36) months:~~

~~9.3.4.1. will no longer be maintained or supported by the developer;
or~~

~~9.3.4.2. will no longer be made commercially available.~~

~~9.4. Buyer's right to assign/novate licences~~

~~9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph [9.2] (Licences for non-COTS IPR from the Supplier and third parties to the Buyer) to:~~

~~9.4.1.1. a Central Government Body; or~~

~~9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.~~

~~9.4.2. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph [9.1] (Licences granted by the Supplier: Specially Written Software) to:~~

~~9.4.2.1. a Central Government Body; or~~

~~9.4.2.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer~~

~~[provided that such transfer is for any purpose relating to the Deliverables (or substantially equivalent deliverables)]~~ **[Guidance note: delete wording in square brackets if Option 4 is chosen, and possibly if Option 5 is chosen depending on the agreement]**

~~9.4.3. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraphs [9.1] and/or [9.2].~~

~~9.5. Licence granted by the Buyer~~

~~9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential).~~

~~9.6. Malicious Software~~

~~9.6.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.~~

~~9.6.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.~~

~~9.6.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph [9.6.2] shall be borne by the Parties as follows:~~

~~9.6.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and~~

~~9.6.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).~~

~~9.7. Restrictions on exploiting Specially Written Software~~

~~9.7.1. Notwithstanding the Supplier's ownership of the Specially Written Software or licence which allows it to exploit and commercialise the New IPR:~~

~~9.7.1.1. the Supplier must always offer a price and solution to the Buyer which is in accordance with the Charges and must licence the New IPR and Supplier Existing IPR to the Buyer on equivalent terms as apply under this Contract;~~

~~9.7.1.2. where the Supplier proposes to exploit the New IPR, that it provides a detailed proposal of its plans for exploitation of the New IPR and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the New IPR, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Buyer to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Buyer may reasonably request; and~~

~~9.7.1.3. where the Supplier proposes to discount the prices offered to the Buyer in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 9.7.1.2 above have been applied to the price for~~

~~the Deliverables offered to the Buyer and other potential End Users;~~

~~9.7.2. The Buyer shall be under no obligation to:~~

~~9.7.2.1. offer the New IPR (where this is owned by the Buyer) or the Buyer Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or~~

~~9.7.2.2. accept any alternative arrangement proposed by the Supplier under this Paragraph and the Buyer shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Buyer) or Buyer Existing IPR applies as applies under this Contract.~~

~~9.7.3. This Contract does not confer any exclusive right on the Supplier to negotiate with the Buyer in relation to the New IPR (where this is owned by the Buyer), Buyer Existing IPR or any Crown IPR and the Buyer shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other person (except to the extent that the Buyer has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).~~

~~9.7.4. The Supplier acknowledges and agrees that the Buyer is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Buyer will need to consider its position and approach on a case by case basis.~~

[Guidance note: for Option 4: Supplier ownership of all IPR with Buyer rights for the current contract and broader public sector functions, please include the following drafting:]

9.1. Licences granted by the Supplier: Specially Written Software

~~9.1.1. The Supplier shall grant to the Buyer a perpetual, royalty-free and exclusive licence to use, adapt and sub-license the Specially Written Software together with and including:~~

~~9.1.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software; and~~

~~9.1.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR (together the "**Software Supporting Materials**");~~

~~for any purpose relating to the Deliverables (or substantially equivalent deliverables) [or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function] **[Guidance note: delete wording in square brackets if Option 3 is chosen, and possibly if Option 5 is chosen depending on the agreement]** including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of service and an effective transition of Services to a Replacement Supplier.~~

9.2. Licences for non-COTS IPR from the Supplier and third parties to the Buyer

~~9.2.1. Unless the Buyer gives its Approval the Supplier must not use any:~~

~~9.2.1.1. of its own Existing IPR that is not COTS Software;~~

~~9.2.1.2. third party software that is not COTS Software~~

~~9.2.2. Where the Buyer Approves the use of the Supplier's Existing IPR that is not COTS Software the Supplier shall grant to the Buyer a perpetual, royalty-free and non-exclusive licence to use, adapt, and sub-license the same for any purpose relating to the Deliverables (or substantially equivalent deliverables) or for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Central Government Body, any other Central Government Body's) business or function including the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display) for the Contract Period and after expiry of the Contract to the extent necessary to ensure continuity of~~

~~service and an effective transition of Services to a Replacement Supplier.~~

~~9.2.3. Where the Buyer Approves the use of third party Software that is not COTS Software the Supplier shall procure that the owners or the authorised licensors of any such Software grant a direct licence to the Buyer on terms at least equivalent to those set out in Paragraph [9.2.2]. If the Supplier cannot obtain such a licence for the Buyer it shall:~~

~~9.2.3.1. notify the Buyer in writing giving details of what licence terms can be obtained and whether there are alternative software providers which the Supplier could seek to use; and~~

~~9.2.3.2. only use such third party IPR as referred to at Paragraph [9.2.3] if the Buyer Approves the terms of the licence from the relevant third party.~~

~~9.2.4. Where the Supplier is unable to provide a licence to the Supplier's Existing IPR in accordance with Paragraph [9.3.2] above, it must meet the requirement by making use of COTS Software or Specially Written Software.~~

~~9.2.5. The Supplier may terminate a licence granted under Paragraph [9.2.2] by giving at least thirty (30) days' notice in writing if there is a Buyer Cause which constitutes a material Default which, if capable of remedy, is not remedied within twenty (20) Working Days after the Supplier gives the Buyer written notice specifying the breach and requiring its remedy.~~

~~9.3. Licences for COTS Software by the Supplier and third parties to the Buyer~~

~~9.3.1. The Supplier shall either grant, or procure that the owners or the authorised licensors of any COTS Software grant, a direct licence to the Buyer on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~

~~9.3.2. Where the Supplier owns the COTS Software it shall make available the COTS Software to a Replacement Supplier at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~

~~9.3.3. Where a third party is the owner of COTS Software licensed in accordance with this Paragraph [9.3] the Supplier shall support the Replacement Supplier to make arrangements with the owner or authorised licensee to renew the license at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.~~

~~9.3.4. The Supplier shall notify the Buyer within seven (7) days of becoming aware of any COTS Software which in the next thirty six (36) months:~~

~~9.3.4.1. will no longer be maintained or supported by the developer;
or~~

~~9.3.4.2. will no longer be made commercially available.~~

~~9.4. Buyer's right to assign/novate licences~~

~~9.4.1. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph [9.2] (Licences for non-COTS IPR from the Supplier and third parties to the Buyer) to:~~

~~9.4.1.1. a Central Government Body; or~~

~~9.4.1.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer.~~

~~9.4.2. The Buyer may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph [9.1] (Licences granted by the Supplier: Specially Written Software) to:~~

~~9.4.2.1. a Central Government Body; or~~

~~9.4.2.2. to any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Buyer~~

~~[provided that such transfer is for any purpose relating to the Deliverables (or substantially equivalent deliverables)]~~ **[Guidance note: delete wording in square brackets if Option 4 is chosen, and possibly if Option 5 is chosen depending on the agreement]**

~~9.4.3. If the Buyer ceases to be a Central Government Body, the successor body to the Buyer shall still be entitled to the benefit of the licences granted in Paragraphs [9.1] and/or [9.2].~~

~~9.5. Licence granted by the Buyer~~

~~9.5.1. The Buyer grants to the Supplier a royalty-free, non-exclusive, non-transferable licence during the Contract Period to use the Buyer Software solely to the extent necessary for providing the Deliverables in accordance with this Contract, including the right to grant sub-licences to Sub-Contractors provided that any relevant Sub-Contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential).~~

~~9.6. Malicious Software~~

~~9.6.1. The Supplier shall, throughout the Contract Period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software.~~

~~9.6.2. If Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Government Data, assist each other to mitigate any losses and to restore the provision of the Deliverables to its desired operating efficiency.~~

~~9.6.3. Any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph [9.6.2] shall be borne by the Parties as follows:~~

~~9.6.3.1. by the Supplier, where the Malicious Software originates from the Supplier Software, the third party Software supplied by the Supplier or the Government Data (whilst the Government Data was under the control of the Supplier) unless the Supplier can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Buyer when provided to the Supplier; and~~

~~9.6.3.2. by the Buyer, if the Malicious Software originates from the Buyer Software or the Buyer Data (whilst the Buyer Data was under the control of the Buyer).~~

~~9.7. Restrictions on exploiting Specially Written Software~~

~~9.7.1. Notwithstanding the Supplier's ownership of the Specially Written Software or licence which allows it to exploit and commercialise the New IPR:~~

~~9.7.1.1. the Supplier must always offer a price and solution to the Buyer which is in accordance with the Charges and must licence the New IPR and Supplier Existing IPR to the Buyer on equivalent terms as apply under this Contract;~~

~~9.7.1.2. where the Supplier proposes to exploit the New IPR, that it provides a detailed proposal of its plans for exploitation of the New IPR and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the New IPR, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Buyer to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Buyer may reasonably request; and~~

~~9.7.1.3. where the Supplier proposes to discount the prices offered to the Buyer in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 9.7.1.2 above have been applied to the price for~~

~~the Deliverables offered to the Buyer and other potential End Users;~~

~~9.7.2. The Buyer shall be under no obligation to:~~

~~9.7.2.1. offer the New IPR (where this is owned by the Buyer) or the Buyer Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or~~

~~9.7.2.2. accept any alternative arrangement proposed by the Supplier under this Paragraph and the Buyer shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Buyer) or Buyer Existing IPR applies as applies under this Contract.~~

~~9.7.3. This Contract does not confer any exclusive right on the Supplier to negotiate with the Buyer in relation to the New IPR (where this is owned by the Buyer), Buyer Existing IPR or any Crown IPR and the Buyer shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other person (except to the extent that the Buyer has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).~~

~~9.7.4. The Supplier acknowledges and agrees that the Buyer is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Buyer will need to consider its position and approach on a case by case basis.~~

[Guidance note: for Option 5: Supplier ownership of all new IPR with Authority rights and a gain/profit share, please use the appropriate drafting taken from either Options 2, 3 or Option 4, tailored as appropriate, and include the following additional drafting]:

9.8. Gain share

~~9.8.1. The Supplier is permitted to commercially exploit the Specially Written Software and/or New IPRs or any material reproducing them provided that it pays to the Buyer an amount to be calculated using one of the following options, such option to be agreed in writing by the parties prior to any commercial exploitation:~~

~~9.8.1.1. a levy for the use of the Specially Written Software and/or New IPRs including copyright to be calculated at [...] % of the Supplier's selling/licensing price; or~~

~~9.8.1.2. a profit sharing arrangement on the basis of a levy payable to the Buyer in respect of the Supplier's exploitation of the Specially Written Software and/or New IPRs. This levy expressed as a percentage of the profit and shall be determined as follows:~~

~~gross sale or licence price, i.e. the price for which the Supplier invoices its customer~~

~~minus~~

~~the allowable costs as prescribed by the Buyer for this purpose~~

~~The profit so determined shall be shared between the Supplier and the Buyer as below, but in no circumstances will any loss be shared:~~

~~9.8.1.3. The first [...] per cent shall be retained by the Supplier;~~

~~9.8.1.4. The next [...] per cent shall be shared between the Supplier and the Buyer in the ratio of [...];~~

~~9.8.1.5. The remaining profit shall be shared between the Supplier and the Buyer in the ratio of [...].~~

~~9.8.2. The Supplier shall promptly inform the Buyer if any of the Specially Written Software and/or New IPRs are capable of exploitation outside of the Contract.~~

~~9.8.3. Sales involving, or licences to reproduce, adaptations, extractions, translations or enhancements of the Specially Written Software and/or New IPRs shall attract levy in accordance with the Contract unless the Buyer agrees in writing that an allowance may be made for software that was not developed at the Crown's or Buyer's expense.~~

~~9.8.4. The following provisions shall apply to this Contract:~~

~~9.8.4.1. The Supplier shall provide as soon as possible after delivery of the sale/licensed articles a statement, in a form prescribed by the Buyer, of the calculable profitability showing the gross selling/licence price and a summary of the allowable costs together with a certificate from its statutory auditors that the statement is correct and complete and that it complies with the accounting conventions agreed by the Buyer for the purpose.~~

~~9.8.4.2. The Supplier shall provide such facilities as may be necessary for the Buyer, if it so desires, to verify the statements and for this purpose the Supplier shall maintain proper books of accounts and records at its premises and shall make them available for inspection whether physically or otherwise at all reasonable times by representatives of the Buyer.~~

~~9.8.4.3. The liability of the Supplier to the Buyer for any sum due under this Contract including interim payment of levy for exploitation of the Specially Written Software and/or New IPRs shall accrue on the date of delivery to the third party licensee/sub-licensee excluding the Supplier's works or, where the licence so prescribes, upon shipment.~~

~~9.8.5. If within three years of its creation, any Intellectual Property in the Specially Written Software and/or New IPRs has not been commercially exploited by the Supplier, and the Supplier is not using its best endeavours to do so, the Supplier shall on written request by the Buyer promptly assign the Intellectual Property Rights in the Specially Written Software and/or New IPRs to the Buyer. Each party shall bear its own costs in such assignment.~~

10. **[Supplier-Furnished Terms]**

~~10.3. Software Licence Terms~~

~~10.3.1. Terms for licensing of non-COTS third party software in accordance with Paragraph [9.3] are detailed in [insert reference to relevant Schedule].~~

~~10.3.2. Terms for licensing of COTS Software in accordance with Paragraph [9.4] are detailed in [insert reference to relevant Schedule].~~

10.1 **10.4. Software as a Service Terms**

10.1.1 ~~10.4.1. Additional terms for provision of a Software as a Service solution are detailed in [insert reference to relevant Schedule].~~

[Guidance Note: If you need to purchase standard SAAS only, a CCS Framework may be the most appropriate contract to use. If a system developed and managed under this Contract contains SAAS

elements, you will need to ensure that you are able to continue to buy that SAAS on VFM commercial terms. SAAS tends to be provided based on Supplier-furnished terms, and the IPR position will need to reflect this. See Schedule 36 also.

10.2 **~~10.5.~~ Software Support & Maintenance Terms**

10.2.1 **~~10.5.1.~~ Additional terms for provision of Software Support & Maintenance Services are detailed in [insert reference to relevant Schedule]**

Schedule 28A (Agile Development Additional Terms)

[Guidance Note: Note that the following provisions relating to Agile development only envisages it being a small part of the Deliverables, and for such development to be undertaken by the Supplier largely independently of the Buyer. If ~~the~~[this](#) Contract is for a full Agile development and/or for agile development where there is joint development work undertaken by the Supplier and Buyer together then an alternative more suitable form of contract should be considered.

You should ensure that the process set out in this Schedule aligns with the Authority's particular usage of Agile, and amend where required – the use of Agile methods is at varying levels of maturity across Central Government and the Public Sector, from some Authorities who use some Agile techniques within "Waterfall"-style (i.e. linear, sequential programmes) to others who use true Lean Agile. In any event consider any knock on effects that may arise from use of Agile development, such as charging structure and risk profile.

You should also consider the interaction of this Schedule with Schedule 8 (Implementation Plan and Testing), Schedule 28 (ICT Services), ~~and~~ Schedule 2 (Specification), [Schedule 4 \(Tender\)](#), and [Schedule 3 \(Charges\)](#). This Schedule (28A) is intended to cover the function of the Agile process, rather than the performance or functionality requirements of any ICT/DDaT. The Data and Digital Playbook published on Gov.uk also has some helpful information on Agile development, including best practice on testing and iterative development. [The new Contracting for Agile Guidance Note should also be considered in detail.](#)

The definitions set out in Paragraph 1 below are those that are required in addition to those set out in Schedule 1 (Definitions) and Schedule 28 (ICT Services)]

1. Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions) and the definitions in Schedule 28 (ICT Services):

"Agile"	means an iterative and incremental approach to software design and systems development;
"Agile Development Project"	has the meaning given in Paragraph 2.1.1 of this Schedule;
"Project Team"	has the meaning given to it in Paragraph 2.1.2a 2.1.2(a) of this Schedule;
"Project Vision"	has the meaning given to it in Paragraph 2.1.2b 2.1.2(b) of this Schedule;

"Release"	means in relation to any Deliverables (including Specially Written Software and New IPR (which are in the nature of software)) the stage in the development process whereby those Deliverables are intended to be put in to live operation or production following successful completion of acceptance tests;
"Requirement Tracking Tool"	means the Supplier's requirement tracking tool for use in connection with the provision of the Deliverables that is approved by the Buyer and is accessible to relevant Buyer staff remotely;
"Sprint"	means the process pursuant to which the software is written for a given User Story in a defined timebox or with a defined output as described in Paragraph 2 of this Schedule;
"User Story"	means one or more sentences written in the everyday or business language of a user of a system that captures use requirements which together constitute the requirements for a given Deliverable, agreed by the Parties in accordance with the provisions of Paragraph 2.3- of this Schedule plus any associated image or visual implementation; and
"Velocity Measure"	means the rate of productivity measured over time taking account of the complexity of the Deliverables being provided.

2. Agile development

2.1 Overall Approach

- 2.1.1 The Supplier will manage those parts of the Deliverables which are identified as Agile development projects ("**Agile Development Projects**") in accordance with a recognised Agile project management methodology (such as DSDM Atern) approved by the Buyer in writing in advance and deliver them in accordance with this Paragraph 2.
- 2.1.2 For each Agile Development Project, the Supplier will document and agree with the Buyer in writing:
- (a) ~~a)~~ the team to perform the services ("**Project Team**") including their names, roles, experience and relative seniority, on the basis that the size and/or composition of the Project Team may be subject to amendment by written agreement of the Parties; and

- (b) ~~b)~~ the overarching aims and objectives of the project ("**Project Vision**") having regard always to the Buyer's requirements.

2.2 Sprints

Each Agile Development Project will be divided into a number of Sprints, to be agreed in writing.

2.3 Release Planning: High-level User Stories and Sub-Stories

2.3.1 The Supplier will use the Buyer's requirements and the Project Vision to:

- (a) ~~a)~~ identify and agree User Stories defining the scope of the relevant Deliverables;

- (b) ~~b)~~ identify any Buyer dependencies relevant to a particular User Story and the point within such User Story when that dependency is required,

and present such User Stories and dependencies to the Buyer for its Approval.

2.3.2 The Supplier will, at the start of the Agile Development Project in consultation with the Buyer, propose acceptance criteria and acceptance tests relating to the relevant Deliverables in compliance with Schedule 8 (Implementation Plan and Testing) for the Buyer's Approval.

2.3.3 The Supplier will, at the start of each Sprint, propose acceptance tests for each User Story based on the acceptance criteria in Paragraph 2.3.2 and any additional criteria applicable to a Release for Approval by the Buyer.

2.3.4 During the Agile Development Project, the Supplier will be responsible for preparing and drafting and updating User Stories, dependencies and acceptance criteria and tests for Approval by the Buyer.

2.4 Release Planning: Initial Story Mapping

The Supplier will promptly and on a continuous basis in consultation with the Buyer:

2.4.1 categorise and group User Stories by function (user activity category);

2.4.2 allocate User Stories to a Release and validate the inclusion of User Stories in that Release; and

2.4.3 assign an indicative priority for each User Story within a particular Release using agreed indicative categories such as "must have" or "good to have",

for Approval by the Buyer.

2.5 Release Planning: Point and Velocity Estimation

2.5.1 The Supplier will promptly and on a continuous basis:

- (a) ~~a)~~ estimate feature complexity for each requirement/User Story allocated to a Release;
- (b) ~~b)~~ estimate the Velocity Measure of the Project Team in delivering a Release and the time required by the Project Team to complete such Release; and
- (c) ~~c)~~ upload each requirement/User Story and each of the estimates referred to in paragraphs [2.5.1\(a\)](#) and [2.5.1\(b\)](#) above into Requirement Tracking Tool.

2.5.2 In doing so, the Supplier will have regard to any potential input from the Buyer or third party resources located in other time zones and the impact that this may have on the timely completion of a Release's delivery.

2.6 Release Planning: Determine Release Date and Re-prioritise

2.6.1 The Supplier will review and revalidate the indicative User Story priorities set out at Paragraph 2.4.3 above on a continuous basis. If, as a result of such review, the Supplier believes that the Release will not be achieved within its defined time frame as set out at paragraph 2.5 above:

- (a) ~~a)~~ if this is caused by a change made by the Buyer and the Buyer accepts this, the Supplier will request a Variation;
- (b) ~~b)~~ if this is due to an underestimation of the effort required or because the Supplier has failed to achieve the anticipated Velocity Measure, the Supplier will provide, at its cost, such additional resources as may be required to ensure that the Release achieves its defined timeframe; or
- (c) ~~c)~~ if this is caused partly by a change made by the Buyer and partly by an underestimate of the effort required or because the Supplier has failed to achieve the anticipated Velocity Measure, the Supplier will request a Variation in respect of that proportion of the delay caused by the change made by the Buyer and the Supplier will provide, at its cost, additional resources as may be required in respect of the proportion of the delay caused by the Supplier.

2.6.2 Alternatively, the Parties may agree in writing such changes to any User Story or User Story priorities (including reprioritising, amending, modifying or removing any User Stories prior to the commencement of a Release) as are reasonably required and such amended details will be recorded in the Requirement Tracking Tool.

2.7 Release Planning: General

- 2.7.1 The Supplier will promptly inform the Buyer if it believes that any User Stories are not suitable for development using an Agile project methodology.
- 2.7.2 The Supplier will regularly update the Requirement Tracking Tool to provide a close to real time overview of status of the Agile Development Project, Sprint status, Sprint backlog, and the progress/status of individual User Stories.

2.8 Sprint Planning

- 2.8.1 Each Sprint will last for between **[2 and 4]** weeks unless otherwise agreed in writing between the Parties.
- 2.8.2 At the start of each Sprint, the Supplier will re-estimate the feature story complexity value of each User Story and notify the Buyer if there are any significant increases or decreases in the complexity of the Sprint and agree in writing which User Stories should be removed from the Sprint.
- 2.8.3 If the Buyer agrees, the Parties may add or remove User Stories from a particular Release to take account of any changes in estimated complexity, or amend the scheduled Release date. If the Buyer does not agree, no such changes will be made.
- 2.8.4 During the course of each Sprint, the Supplier will:
- (a) ~~a)~~ develop the selected User Stories using the agreed test-driven development methodology;
 - (b) ~~b)~~ once developed, make any Deliverables related to that User Story available to the Buyer in an agreed test area and mark the User Story as completed in the Requirement Tracking Tool;
 - (c) ~~c)~~ test all developed User Stories, including carrying out robust regression and component testing as agreed in writing between the parties or set out in any agreed requirements, to ensure that they function correctly and fulfil the relevant acceptance criteria; and
 - (d) ~~d)~~ submit completed User Stories to the Buyer for final review and Approval,
- in each case taking all reasonable steps to successfully develop and complete all User Stories allocated to a Release by the completion of the relevant Release.
- 2.8.5 The Supplier will promptly notify the Buyer if it believes any amendments to the scope or content of a Sprint are required to achieve the Release, including adding, removing and amending User Stories within a Sprint.

- 2.8.6 If the Parties agree in writing to remove a User Story from a Sprint after the Sprint has commenced:
- (a) ~~a)~~ and the request is made by the Buyer, then the Velocity Measure for that Sprint will be adjusted as though the Supplier had developed such User Stories in the course of that Sprint; and
 - (b) ~~b)~~ and the request is made by the Supplier and agreed to by the Buyer, then the Velocity Measure for that Sprint will be adjusted to take account of the fact that the Supplier has failed to develop such User Stories in the course of that Sprint.
- 2.8.7 For the purposes of Paragraphs 2.8.1 to 2.8.6, any changes to Releases or Sprints will be subject to written agreement and will be recorded in the Requirement Tracking Tool.

2.9 Release completion and acceptance testing for Sprints

- 2.9.1 Following the completion of the development stage of each Sprint where there will be a Release, the Buyer will, in accordance with Schedule 8 (Implementation Plan and Testing):
- (a) ~~a)~~ perform the acceptance tests in order to validate the content of the Release against the Project Vision and the acceptance criteria; and
 - (b) ~~b)~~ identify any errors, bugs, unexpected behaviours or other failure of the Release to comply with the functional requirements or specifications of the acceptance criteria or the Project Vision.
- 2.9.2 As part of the Sprint planning process, the Supplier will propose for the Buyer's Approval a reasonable period of time within each Sprint for the Supplier to correct any Defects and to rectify any issues identified in the acceptance testing process set out in Paragraph 2.9.1 above or otherwise identified by Buyer in its review of the Release.
- 2.9.3 Notwithstanding Paragraph 2.3.2, the Buyer may specify in writing additional acceptance tests or testing criteria required to be performed and used by the Supplier in respect of any iteration or Sprint, as part of the Agile project methodology.

Schedule 29 (Key Supplier Staff)

1. Key Supplier Staff

- 1.1 The Annex 1 ([Key Role](#)) to this Schedule lists the key roles ("~~Key Roles~~") and names of the persons who the Supplier shall appoint to fill those Key Roles at the Start Date ("~~Key Staff~~").
- 1.2 The Supplier shall ensure that the Key Staff fulfil the Key Roles at all times during the **Contract** Period.
- 1.3 The Buyer may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Staff.
- 1.4 The Supplier shall not and shall procure that any Subcontractor shall not remove or replace any Key Staff unless:
 - 1.4.1 requested to do so by the Buyer or the Buyer Approves such removal or replacement (not to be unreasonably withheld or delayed);
 - 1.4.2 the person concerned resigns, retires or dies or is on ~~maternity~~[parental](#) or long-term sick leave; or
 - 1.4.3 the person's employment or contractual arrangement with the Supplier or Subcontractor is terminated for material breach of contract by the employee.
- 1.5 The Supplier shall:
 - 1.5.1 notify the Buyer promptly of the absence of any Key Staff (other than for short-term sickness or holidays of two (2) weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 1.5.2 ensure that any Key Role is not vacant for any longer than ten (10) Working Days;
 - 1.5.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Staff and, except in the cases of death, unexpected ill health or a material breach of the Key Staff's employment contract, this will mean at least three (3) Months' notice;
 - 1.5.4 ensure that all arrangements for planned changes in Key Staff provide adequate periods during which incoming and outgoing staff work together to transfer responsibilities and ensure that such change does not have an adverse impact on the provision of the Deliverables; and
 - 1.5.5 ensure that any replacement for a Key Role has a level of qualifications and experience appropriate to the relevant Key Role and is fully competent to carry out the tasks assigned to the Key Staff whom ~~he or she has~~[they have](#) replaced.

~~[Subject to Contract]~~

Schedule 29 (Key Supplier Staff), [Crown Copyright 2023, \[Subject to Contract\]](#)

~~Crown Copyright 2022~~

- 1.6 The Buyer may require the Supplier to remove or procure that any Subcontractor shall remove any Key Staff that the Buyer considers in any respect unsatisfactory. The Buyer shall not be liable for the cost of replacing any Key Staff.

Annex 1- Key Roles

Key Role	Key Staff	Contract Details

Schedule 30 (Exit Management)

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Exclusive Assets"	Supplier Assets used exclusively by the Supplier [or a Key Subcontractor] in the provision of the Deliverables;
"Exit Information"	has the meaning given to it in Paragraph 3.1 of this Schedule;
"Exit Manager"	the person appointed by each Party to manage their respective obligations under this Schedule;
"Net Book Value"	the current net book value of the relevant Supplier Asset(s) calculated in accordance with the Tender (if stated) or (if not stated) the depreciation policy of the Supplier (which the Supplier shall ensure is in accordance with Good Industry Practice);
"Non-Exclusive Assets"	those Supplier Assets used by the Supplier [or a Key Subcontractor] in connection with the Deliverables but which are also used by the Supplier [or Key Subcontractor] for other purposes;
"Replacement Goods"	any goods which are substantially similar to any of the Goods and which the Buyer receives in substitution for any of the Goods following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Replacement Services"	any services which are substantially similar to any of the Services and which the Buyer receives in substitution for any of the Services following the End Date, whether those goods are provided by the Buyer internally and/or by any third party;
"Termination Assistance Period"	the period specified in a Termination Assistance Notice for which the Supplier is required to provide the Termination Assistance as such period may be extended pursuant to Paragraph 5.2 of this Schedule;
"Transferable Assets"	Exclusive Assets which are capable of legal transfer to the Buyer;
"Transferable Contracts"	Sub-Contracts, licences for Supplier's Software, licences for Third Party Software or other agreements which are necessary to enable the Buyer or any Replacement Supplier to provide the Deliverables or the Replacement Goods and/or Replacement Services, including in relation to licences all relevant Documentation;
"Transferring Assets"	has the meaning given to it in Paragraph 8.2.1 of this Schedule;
"Transferring Contracts"	has the meaning given to it in Paragraph 8.2.3 of this

Schedule; and

“Virtual Library”

the data repository hosted by the Supplier containing the accurate information about ~~the~~this Contract and the Deliverables in accordance with Paragraph ~~2.2~~of 2.2 of this Schedule.

2. Supplier must always be prepared for contract exit

- 2.1 The Supplier shall within thirty (30) days from the StartEffective Date provide to the Buyer a copy of its depreciation policy to be used for the purposes of calculating Net Book Value.
- 2.2 During the Contract Period, the Supplier shall within thirty (30) days from the StartEffective Date (or such other period as is specified in the Award Form) create and maintain a Virtual Library containing:
 - 2.2.1 a detailed register of all Supplier Assets (including description, condition, location and details of ownership and status as either Exclusive Assets or Non-Exclusive Assets and Net Book Value) and Sub-contracts and other relevant agreements required in connection with the Deliverables; and
 - 2.2.2 a configuration database detailing the technical infrastructure, a schedule of the IPRs (consistent with Annex 1 of Schedule 36 (Intellectual Property)) which the Buyer reasonably requires to benefit from the Deliverables (including who is the owner of such IPRs, the contact details of the owner and whether or not such IPRs are held in escrow), any plans required to be delivered by the Supplier pursuant to Schedule 14 (Business Continuity and Disaster Recovery) or Schedule 24 (Financial Difficulties) and operating procedures through which the Supplier provides the Deliverables, and the Supplier shall ensure the Virtual Library is structured and maintained in accordance with open standards and the security requirements set out in this Contract and is readily accessible by the Buyer at all times. All information contained in the Virtual Library should be maintained and kept up to date in accordance with the time period set out in the Award Form.
- 2.3 ~~Where Schedule 7 (Staff Transfer) applies to this Contract, the~~The Supplier shall add to the Virtual Library a list of Supplier Staff and Staffing Information (as that term is defined in Schedule 7 (Staff Transfer)) in connection with the Deliverables in accordance with the timescales set out in Paragraphs 1.1, 1.2 of Part E of Schedule 7 (Staff Transfer).
- 2.4 The Supplier shall:
 - 2.4.1 ensure that all Exclusive Assets listed in the Virtual Library are clearly physically identified as such; and
 - 2.4.2 procure that all licences for Third Party Software and all Sub-Contracts shall be assignable and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the

Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.

- 2.5 Each Party shall appoint an Exit Manager within three (3) Months of the ~~Start~~[Effective](#) Date. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the expiry or termination of this Contract.

3. Assisting re-competition for Deliverables

- 3.1 The Supplier shall, on reasonable notice, provide to the Buyer and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), such information (including any access) as the Buyer shall reasonably require in order to facilitate the preparation by the Buyer of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence (the "**Exit Information**").
- 3.2 The Supplier acknowledges that the Buyer may disclose the Supplier's Confidential Information (excluding the Supplier's or its Subcontractors' prices or costs) to an actual or prospective Replacement Supplier to the extent that such disclosure is necessary in connection with such engagement.
- 3.3 The Supplier shall provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and notify the Buyer within five (5) Working Days of any material change to the Exit Information which may adversely impact upon the provision of any Deliverables (and shall consult the Buyer in relation to any such changes).
- 3.4 The Exit Information shall be accurate and complete in all material respects and shall be sufficient to enable a third party to prepare an informed offer for those Deliverables; and not be disadvantaged in any procurement process compared to the Supplier.

4. Exit Plan

- 4.1 The Supplier shall, within three (3) Months after the Start Date, deliver to the Buyer a plan which complies with the requirements set out in Paragraph 4.3 of this Schedule and is otherwise reasonably satisfactory to the Buyer (the "**Exit Plan**").
- 4.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within twenty (20) Working Days of the latest date for its submission pursuant to Paragraph 4.1, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 4.3 The Exit Plan shall set out, as a minimum:
 - 4.3.1 how the Exit Information is obtained;

- 4.3.2 a mechanism for dealing with partial termination on the assumption that the Supplier will continue to provide the remaining Deliverables under this Contract;
 - 4.3.3 the management structure to be employed during the Termination Assistance Period;
 - 4.3.4 a detailed description of both the transfer and cessation processes, including a timetable;
 - 4.3.5 how the Deliverables will transfer to the Replacement Supplier and/or the Buyer;
 - 4.3.6 details of any contracts which will be available for transfer to the Buyer and/or the Replacement Supplier upon the Expiry Date together with any reasonable costs required to effect such transfer;
 - 4.3.7 the scope of Termination Assistance that may be required for the benefit of the Buyer (including which services set out in Annex 1 are applicable);
 - 4.3.8 how Termination Assistance will be provided, including a timetable and critical issues for providing Termination Assistance;
 - 4.3.9 any charges that would be payable for the provision of Termination Assistance (calculated in accordance with Paragraph 4.4 below) together with a capped estimate of such charges;
 - 4.3.10 proposals for the training of key members of the Replacement Supplier's staff in connection with the continuation of the provision of the Deliverables following the Expiry Date;
 - 4.3.11 proposals for providing the Buyer or a Replacement Supplier copies of all documentation relating to the use and operation of the Deliverables and required for their continued use;
 - 4.3.12 proposals for the assignment or novation of all services utilised by the Supplier in connection with the supply of the Deliverables;
 - 4.3.13 proposals for the identification and return of all Buyer Property in the possession of and/or control of the Supplier or any third party;
 - 4.3.14 proposals for the disposal of any redundant Deliverables and materials;
 - 4.3.15 how the Supplier will ensure that there is no disruption to or degradation of the Deliverables during the Termination Assistance Period; and
 - 4.3.16 any other information or assistance reasonably required by the Buyer or a Replacement Supplier.
- 4.4 Any charges payable as a result of the Supplier providing Termination Assistance shall be calculated and charged in accordance with Schedule 3 (Charges). The Supplier shall be entitled to increase or vary the Charges only if it can demonstrate in the Exit Plan that the provision of Termination Assistance requires additional resources and, in any event, any change to

the Charges resulting from the provisions of Termination Assistance will be strictly proportionate to the level of resources required for the provision of the Termination Assistance Services.

4.5 The Supplier shall:

4.5.1 maintain and update the Exit Plan (and risk management plan) no less frequently than:

- (a) ~~a)~~ every **[six (6) months]** throughout the Contract Period;
- (b) ~~b)~~ no later than **[twenty (20) Working Days]** after a request from the Buyer for an up-to-date copy of the Exit Plan;
- (c) ~~c)~~ as soon as reasonably possible following a Termination Assistance Notice, and in any event no later than **[ten (10) Working Days]** after the date of the Termination Assistance Notice;
- (d) ~~d)~~ as soon as reasonably possible following, and in any event no later than **[twenty (20) Working Days]** following, any material change to the Deliverables (including all changes under the Variation Procedure); and

4.5.2 jointly review and verify the Exit Plan if required by the Buyer and promptly correct any identified failures.

4.6 Only if (by notification to the Supplier in writing) the Buyer agrees with a draft Exit Plan provided by the Supplier under Paragraph 4.2 or 4.4 (as the context requires), shall that draft become the Exit Plan for this Contract.

4.7 A version of an Exit Plan agreed between the parties shall not be superseded by any draft submitted by the Supplier.

5. Termination Assistance

5.1 The Buyer shall be entitled to require the provision of Termination Assistance at any time during the Contract Period by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least four (4) Months prior to the Expiry Date or as soon as reasonably practicable (but in any event, not later than one (1) Month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:

5.1.1 the nature of the Termination Assistance required; and

5.1.2 the start date and period during which it is anticipated that Termination Assistance will be required, which shall continue no longer than twelve (12) Months after the End Date.

5.2 The Buyer shall have an option to extend the Termination Assistance Period beyond the initial period specified in the Termination Assistance Notice in one or more extensions, in each case provided that:

5.2.1 no such extension shall extend the Termination Assistance Period beyond the date eighteen (18) Months after the End Date; and

- 5.2.2 the Buyer shall notify the Supplier of any such extension by serving not less than twenty (20) Working Days' written notice upon the Supplier.
- 5.3 The Buyer shall have the right to terminate its requirement for Termination Assistance by serving not less than (20) Working Days' written notice upon the Supplier.
- 5.4 In the event that Termination Assistance is required by the Buyer but at the relevant time the parties are still agreeing an update to the Exit Plan pursuant to Paragraph 4, the Supplier will provide the Termination Assistance in good faith and in accordance with the principles in this Schedule and the last Buyer approved version of the Exit Plan (insofar as it still applies).

6. Termination Assistance Period

- 6.1 Throughout the Termination Assistance Period the Supplier shall:
 - 6.1.1 continue to provide the Deliverables (as applicable) and otherwise perform its obligations under this Contract and, if required by the Buyer, provide the Termination Assistance;
 - 6.1.2 provide to the Buyer and/or its Replacement Supplier any reasonable assistance and/or access requested by the Buyer and/or its Replacement Supplier including assistance and/or access to facilitate the orderly transfer of responsibility for and conduct of the Deliverables to the Buyer and/or its Replacement Supplier;
 - 6.1.3 use all reasonable endeavours to reallocate resources to provide such assistance without additional costs to the Buyer;
 - 6.1.4 subject to Paragraph 6.3, provide the Deliverables and the Termination Assistance at no detriment to the Service Levels, the provision of the Management Information or any other reports nor to any other of the Supplier's obligations under this Contract;
 - 6.1.5 at the Buyer's request and on reasonable notice, deliver up-to-date contents of the Virtual Library to the Buyer; and
 - 6.1.6 seek the Buyer's prior written consent to access any Buyer Premises from which the de-installation or removal of Supplier Assets is required.
- 6.2 If it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.1.2 without additional costs to the Buyer, any additional costs incurred by the Supplier in providing such reasonable assistance shall be subject to the Variation Procedure.
- 6.3 If the Supplier demonstrates to the Buyer's reasonable satisfaction that the provision of the Termination Assistance will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Service Levels, the Parties shall vary the relevant Service Levels and/or the applicable Service Credits accordingly.

7. Obligations when the contract is terminated

- 7.1 The Supplier shall comply with all of its obligations contained in the Exit Plan.
- 7.2 Upon termination or expiry or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Deliverables and the Termination Assistance), the Supplier shall:
- 7.2.1 cease to use the Government Data;
 - 7.2.2 vacate any Buyer Premises;
 - 7.2.3 remove the Supplier Equipment together with any other materials used by the Supplier to supply the Deliverables and shall leave the Sites in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Sites or any objects contained thereon, other than fair wear and tear, which is caused by the Supplier;
 - 7.2.4 provide access during normal working hours to the Buyer and/or the Replacement Supplier for up to twelve (12) Months after expiry or termination to:
 - (a) ~~a)~~ such information relating to the Deliverables as remains in the possession or control of the Supplier; and
 - (b) ~~b)~~ such members of the Supplier Staff as have been involved in the design, development and provision of the Deliverables and who are still employed by the Supplier, provided that the Buyer and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to such requests for access.
- 7.3 Upon partial termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Assistance and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Assistance or for statutory compliance purposes.
- ~~7.4 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Buyer to the Supplier in relation to the Deliverables shall be terminated with effect from the end of the Termination Assistance Period.~~

8. Assets, Sub-contracts and Software

- 8.1 Following notice of termination of this Contract and during the Termination Assistance Period, the Supplier shall not, without the Buyer's prior written consent:
- 8.1.1 terminate, enter into or vary any Sub-contract or licence for any software in connection with the Deliverables; or
 - 8.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Supplier Assets or acquire any new Supplier Assets.
- 8.2 Within twenty (20) Working Days of receipt of the up-to-date contents of the Virtual Library provided by the Supplier, the Buyer shall notify the Supplier setting out:
- 8.2.1 which, if any, of the Transferable Assets the Buyer requires to be transferred to the Buyer and/or the Replacement Supplier ("**Transferring Assets**");
 - 8.2.2 which, if any, of:
 - (a) ~~a)~~ the Exclusive Assets that are not Transferable Assets; and
 - (b) ~~b)~~ the Non-Exclusive Assets,the Buyer and/or the Replacement Supplier requires the continued use of; and
 - 8.2.3 which, if any, of Transferable Contracts the Buyer requires to be assigned or novated to the Buyer and/or the Replacement Supplier (the "**Transferring Contracts**"), in order for the Buyer and/or its Replacement Supplier to provide the Deliverables from the expiry of the Termination Assistance Period. The Supplier shall provide all reasonable assistance required by the Buyer and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts are required to provide the Deliverables or the Replacement Goods and/or Replacement Services. Where requested by the Supplier, the Buyer and/or its Replacement Supplier shall discuss in good faith with the Supplier which Transferable Contracts are used by the Supplier in matters unconnected to the Services or Replacement Services.
- 8.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell the Transferring Assets to the Buyer and/or the Replacement Supplier for their Net Book Value less any amount already paid for them through the Charges.
- 8.4 Risk in the Transferring Assets shall pass to the Buyer or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title shall pass on payment for them.

- 8.5 Where the Buyer and/or the Replacement Supplier requires continued use of any Exclusive Assets that are not Transferable Assets or any Non-Exclusive Assets, the Supplier shall as soon as reasonably practicable:
- 8.5.1 procure a non-exclusive, perpetual, royalty-free licence for the Buyer and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 8.5.2 procure a suitable alternative to such assets, the Buyer or the Replacement Supplier to bear the reasonable proven costs of procuring the same.
- 8.6 The Supplier shall as soon as reasonably practicable assign or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.
- 8.7 The Buyer shall:
- 8.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 8.7.2 once a Transferring Contract is novated or assigned to the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 8.8 The Supplier shall hold any Transferring Contracts on trust for the Buyer until the transfer of the relevant Transferring Contract to the Buyer and/or the Replacement Supplier has taken place.
- 8.9 The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is assigned or novated to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.

9. No charges

~~9.1~~ Unless otherwise stated, the Buyer shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with this Schedule.

10. Dividing the bills

~~40.1~~ All outgoing, expenses, rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Buyer and/or the Replacement and the Supplier as follows:

10.1 ~~40.1.1~~ the amounts shall be annualised and divided by three hundred and sixty five (365) to reach a daily rate;

10.2 ~~40.1.2~~ the Buyer or Replacement Supplier (as applicable) shall be responsible for or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and

10.3 ~~40.1.3~~ the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.

~~ANNEX~~Annex 1: ~~SCOPE OF TERMINATION ASSISTANCE~~Scope of Termination Assistance

[Guidance: Please see paragraph 7.7 of the Model Services Contract Guidance published on Gov.uk for further detail on choosing Termination Assistance Services]

1. Scope of Termination Assistance

- 1.1 The Buyer may specify that any of the following services will be provided by the Supplier as part of its Termination Assistance:
 - 1.1.1 notifying the Subcontractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.2 providing assistance and expertise as necessary to examine all operational and business processes (including all supporting documentation) in place and re-writing and implementing processes and procedures such that they are appropriate for use by the Buyer and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - 1.1.3 providing details of work volumes and staffing requirements over the twelve (12) Months immediately prior to the commencement of Termination Assistance;
 - 1.1.4 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Deliverables and ~~re-writing~~re-writing and implementing these during and for a period of twelve (12) Months after the Termination Assistance Period;
 - 1.1.5 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Deliverables and re-writing and implementing these such that they are appropriate for the continuation of provision of the Deliverables after the Termination Assistance Period;
 - 1.1.6 agreeing with the Buyer an effective communication strategy and joint communications plan which sets out the implications for Supplier Staff, Buyer staff, customers and key stakeholders;
 - 1.1.7 agreeing with the Buyer a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
 - 1.1.8 providing an information pack listing and describing the Deliverables for use by the Buyer in the procurement of the Replacement Deliverables;

- 1.1.9 answering all reasonable questions from the Buyer and/or the Replacement Supplier regarding the Deliverables;
- 1.1.10 agreeing with the Buyer and/or the Replacement Supplier a plan for the migration of the Government Data to the Buyer and/or the Replacement Supplier;
- 1.1.11 providing access to the Buyer and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding six (6) Months afterwards for the purpose of the smooth transfer of the provision of the Deliverables to the Buyer and/or the Replacement Supplier:
 - (a) ~~a)~~ to information and documentation relating to the Deliverables that is in the possession or control of the Supplier or its Subcontractors (and the Supplier agrees and will procure that its Subcontractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and
 - (b) ~~b)~~ following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Staff who have been involved in the provision or management of the provision of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors, including those employees filling the relevant Key Staff positions and Key Staff with specific knowledge in respect of the Exit Plan;
- 1.1.12 knowledge transfer services, including:
 - (a) ~~a)~~ making available to the Buyer and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff at the time of termination or expiry as are nominated by the Buyer and/or the Replacement Supplier (acting reasonably);
 - (b) ~~b)~~ transferring all training material and providing appropriate training to those Buyer and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Deliverables;
 - (c) ~~c)~~ providing as early as possible for transfer to the Buyer and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Deliverables which may, as appropriate, include information, records and documents;
 - (d) ~~d)~~ providing the Supplier and/or the Replacement Supplier with access to sufficient numbers of the members of the Supplier Staff or Subcontractors' personnel of suitable experience and skill and as have been involved in the design, development, provision or management of provision

of the Deliverables and who are still employed or engaged by the Supplier or its Subcontractors; and

- (e) ~~e)~~ allowing the Buyer and/or the Replacement Supplier to work alongside and observe the performance of the Services by the Supplier at its Sites used to fulfil the Services (subject to compliance by the Buyer and the Replacement Supplier with any applicable security and/or health and safety restrictions,

and any such person who is provided with knowledge transfer services will sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require)).

1.2 The Supplier will:

- 1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.12 for agreement by the Buyer at the time of termination or expiry of this Contract; and
- 1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.7, providing skills and expertise of a suitable standard.

1.3 To facilitate the transfer of knowledge from the Supplier to the Buyer and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services to the operations staff of the Buyer and/or the Replacement Supplier.

1.4 The information which the Supplier will provide to the Buyer and/or the Replacement Supplier pursuant to Paragraph 1.1.11 shall include:

- 1.4.1 copies of up-to-date procedures and operations manuals;
- 1.4.2 product information;
- 1.4.3 agreements with third party suppliers of goods and services which are to be transferred to the Buyer and/or the Replacement Supplier; and
- 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Buyer pursuant to this Schedule,

and such information shall be updated by the Supplier at the end of the Termination Assistance Period.

1.5 During the Termination Assistance Period the Supplier shall grant any agent or personnel (including employees, consultants and suppliers) of the Replacement Supplier and/or the Buyer access, during business hours and upon reasonable prior written notice, to any Sites for the purpose of effecting a prompt knowledge transfer provided that:

- 1.5.1 any such agent or personnel (including employees, consultants and suppliers) having such access to any Sites shall:

- (a) ~~a)~~ sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and

~~[Subject to Contract]~~

Schedule 30 (Exit Management), [Crown Copyright 2023, \[Subject to Contract\]](#)

~~Crown Copyright 2022~~

(b) ~~b)~~ during each period of access comply with the security, systems and facilities operating procedures of the Supplier relevant to such Site and that the Buyer deems reasonable; and

1.5.2 the Buyer and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

Schedule 31 (Buyer Specific Terms)

[Insert: relevant ~~Buyer-specific~~Buyer-specific terms]

[Guidance note: ~~MoD-specific~~MoD-specific terms and HMRC-specific terms provided below as an example only. Other government departments need not include these terms. Buyers should seek legal advice if they plan to use these terms with Schedule 33 (Scottish Law) or 34 (Northern Irish Law), as further amendments may be required]

MOD-SPECIFIC TERMS [Guidance note: for MOD use only]

1. DEFCONS and DEFFORMS

- 1.1 The DEFCONS and DEFFORMS listed in Annex 1 to this Schedule are incorporated into this Contract.
- 1.2 In the event of a conflict between any DEFCONS and DEFFORMS listed in Annex 1 and the other terms in this Contract, the DEFCONS and DEFFORMS shall prevail.

ANNEX 1 - DEFCONS & DEFFORMS

The full text of Defence Conditions (DEFCONS) and Defence Forms (DEFFORMS) are available electronically via <https://www.gov.uk/guidance/knowledge-in-defence-kid>.

The following MOD DEFCONS and DEFFORMs form part of this contract:

1. DEFCONS

<u>DEFCON No</u>	<u>Version</u>	<u>Description</u>

2. DEFFORMs (Ministry of Defence Forms)

<u>DEFFORM No</u>	<u>Version</u>	<u>Description</u>

HMRC-SPECIFIC TERMS

[Guidance note: for HMRC use only]

HMRC'S MANDATORY TERMS

- A. For the avoidance of doubt, references to 'this Contract' mean this Contract between the Supplier and the Buyer.
- B. References to 'the Buyer' (the Commissioners for His Majesty's Revenue and Customs).
- C. This Contract incorporates the Buyer's mandatory terms set out in this Schedule 31.
- D. In case of any ambiguity or conflict, the Buyer's mandatory terms in this Schedule 31 will supersede any other terms in this Contract.
- E. For the avoidance of doubt, the relevant definitions for the purposes of the defined terms set out in the Buyer's mandatory terms in this Schedule 31 are the definitions set out at Paragraph 1 of this Schedule 31.
- F. For the avoidance of doubt, the HMRC specific terms below are for HMRC use and should not be used by any other organisation.

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

~~"MOD Site"~~ ~~shall include any of Her Majesty's Ships or Vessels and Service Stations;~~

~~"Officer in charge"~~ ~~shall include Officers Commanding Service Stations, Ships' Masters or Senior Officers, and Officers superintending Government Establishments;~~

"Connected Company" means, in relation to a company, entity or other person, the Affiliates of that company, entity or other person or any other person associated with such company, entity or other person;

"Documentary Deliverable"

means any Deliverable that is in the form of a written document;

"Prohibited Transactions"

means any arrangement involving the use of offshore entities the main purpose of which, or one of the main purposes of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them, on or in connection with the payments made by or on behalf of the Buyer under or in connection with the payments made by or on behalf of the Buyer under or pursuant to this Contract, or in the case of any Key Sub-contractor and its Connected Companies, United Kingdom Tax which would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under the relevant subcontract. Prohibited Transactions do not include transactions made between the Supplier and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business;

"Sanitised Personal Data"

means data derived from Personal Data Processed by the Supplier in connection with this Contract which has had any designatory data identifiers removed so that an individual cannot be identified;

"Tax"

means

- (a) all forms of tax whether direct or indirect;
- (b) national insurance contributions in the United Kingdom and similar contributions or obligations in any other jurisdiction;
- (c) all statutory, governmental, state, federal, provincial, local government or municipal charges, duties, imports, contributions, levies or liabilities (other than in return for goods or services supplied or performed or to be performed) and

	<u>withholdings; and</u>
	<u>(d) any penalty, fine, surcharge, interest, charges or costs relating to any of the above,</u>
	<u>in each case wherever chargeable and whether of the United Kingdom and any other jurisdiction; and</u>
<u>"Tax Revenue"</u>	<u>means any Tax, levy or duty due to be collected by the Buyer and/or any reimbursement of Tax, levy or duty, correctly paid to the Buyer, as a result of a Default by the Supplier.</u>

2. ~~Access to MOD sites~~ Compliance with Tax Laws

2.1 The Supplier represents and warrants that:

2.1.1 in the three (3) years prior to the Effective Date, it has been in full compliance with all applicable securities and Tax Laws and regulations in the United Kingdom and in the jurisdiction in which it is established; and

2.1.2 it has notified the Buyer in writing of any Occasions of Tax Non Compliance and any litigation, enquiry or investigation in which it or its Subcontractors are involved that is in connection with, or which may lead to, any Occasion of Tax Non Compliance.

2.2 The Supplier shall at all times comply with all Laws relating to Tax and with the equivalent legal provisions of the country in which the Supplier is established.

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

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

~~2.3 The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a MOD Site. Sleeping accommodation and messing facilities, if required, may be~~

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

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

~~2.5 Out-patient medical treatment given to the Supplier's representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas shall be free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier's representatives back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.~~

~~2.6 Accidents to the Supplier's representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc. Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.~~

~~2.7 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier's representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.~~

- 2.3 ~~2.8~~ ~~The Supplier shall, wherever possible, arrange for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers' cheques). If banking or other suitable facilities are not available, the Buyer shall, upon request by the Supplier and subject to any limitation required by the Supplier, make arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the Supplier's representatives are attached. All such advances made~~ provide to the Buyer the name and, as applicable, the Value Added Tax registration number, PAYE collection number and either the Corporation Tax or self-assessment reference of any agent, supplier or Subcontractor prior to the commencement of any work under this Contract by that agent, supplier or Subcontractor. Where requested by the Buyer ~~shall be recovered from~~, the Supplier will not employ or will cease to employ any agent, supplier or Subcontractor.
- 2.4 Where an amount of Tax, including any assessed amount, is due from the Supplier an equivalent amount may be deducted by Buyer from the amount of any sum due to the Supplier under this Contract.
- 2.5 The Supplier must indemnify the Buyer against costs or penalty levied or assessed on the Buyer resulting at any time in respect of the Supplier's failure to account for or to pay any Tax relating to payments made to the Supplier under this Contract. Any amounts due under this Paragraph 2.5 must be paid to the Buyer not less than 5 Working Days before the date upon which the Tax or other liability is payable by the Buyer.
- 2.6 The Supplier shall promptly provide all information which demonstrates how the Supplier complies with its Tax obligations.
- 2.7 The Buyer can terminate this Contract immediately by giving notice to the Supplier if the Supplier fails to comply (or if the Buyer otherwise becomes aware that the Supplier has failed to comply) with any of the terms of this Paragraph 2.
- 2.8 The Buyer may internally share any information which it receives under this Paragraph 2, for the purpose of the collection and management of revenue for which the Buyer is responsible.

3. DEFCONS and DEFFORMS Use of Off-shore Tax Structures

- 3.1 The Supplier must not, and will ensure that its Connected Companies, Key Subcontractors (and their respective Connected Companies) will not, have or put in place (unless agreed with the Buyer) any arrangements involving the use of offshore companies other offshore entities the main purpose, or one of the main purposes, of which is to achieve a reduction in United Kingdom Tax of any description which would otherwise be payable by it or them on or in connection with the payments made by or on behalf of the Buyer under or pursuant to this Contract or, in the case of any Key Sub-contractor and its Connected Companies, United Kingdom Tax which

would be payable by it or them on or in connection with payments made by or on behalf of the Supplier under to the relevant subcontract ("Prohibited Transactions"). Prohibited Transactions do not include transactions made between the Supplier and its Connected Companies or a Key Subcontractor and its Connected Companies on terms which are at arms-length and are entered into in the ordinary course of the transacting parties' business.

3.2 The Supplier must notify the Buyer in writing (with reasonable supporting detail) of any proposal for the Supplier or any of its Connected Companies, or for a Key Subcontractor (or any of its Connected Companies), to enter into any Prohibited Transaction. The Supplier must notify the Buyer within a reasonable time to allow the Buyer to consider the proposed Prohibited Transaction before it is due to be put in place.

3.3 In the event of a Prohibited Transaction being entered into in breach of Paragraph 3.1 above, or if circumstances arise which may result in such a breach, the Supplier and/or the Key Subcontractor (as applicable) shall discuss the situation with the Buyer and, in order to ensure future compliance with Paragraphs 3.1 and 3.2, the Parties (and the Supplier shall procure that the Key Subcontractor, where applicable) shall agree (at no cost to the Buyer) timely and appropriate changes to any such arrangements by the undertakings concerned.

3.4 The Buyer can terminate this Contract immediately by giving notice to the Supplier if the Supplier fails to comply (or if the Buyer otherwise becomes aware that the Supplier has failed to comply) with any of the terms of this Paragraph 3.

4. Compliance with Tax and Finance Legislation

4.1 The Supplier will comply with, and ensure that all Subcontractors and Supplier Staff will comply with:

4.1.1 the obligations set out in Section 182 of the Finance Act 1989 and Section 18 of the Commissioners for Revenue and Customs Act 2005 to maintain the confidentiality of Government Data. The Supplier acknowledges a breach of these obligations may lead to a prosecution under Section 182 of the Finance Act 1989 and/or Section 19 of the Commissioners for Revenue and Customs Act 2005; and

4.1.2 Section 123 of the Social Security Administration Act 1992, which may apply to the fulfilment of some or all of the Deliverables. The Supplier acknowledges that a breach of its obligations under Section 123 of the Social Security Administration Act 1992 may lead to a prosecution under that Act.

4.2 The Supplier must regularly (not less than once every 6 months) remind all Supplier Staff in writing of the obligations of Supplier Staff set out in

Paragraph 4.1 above. The Supplier must monitor the Supplier Staff's compliance with these obligations.

4.3 The Supplier must ensure that all Supplier Staff who will have access to Government Data sign a declaration, in a form acceptable to the Buyer, acknowledging that they understand and have been informed about the application and effect of Section 18 and 19 of the Commissioners for Revenue and Customs Act 2005. The Supplier will provide a copy of each such signed declaration to the Buyer upon request.

5. Supply Chain Protection

5.1 Unless otherwise agreed by the Buyer must ensure that each subcontract with a Key Subcontractor includes obligations on the Key Subcontractor which are no less onerous than those imposed on the Supplier under this Contract in respect of:

5.1.1 the tax compliance requirements set out at Paragraph 2; and

5.1.2 use of off-shore tax structures set out at Paragraph 3.

5.2 In addition to its rights under the Core Terms and Schedule 27 (Key Subcontractor), at the Buyer's request the Supplier must terminate any subcontract where the relevant subcontractor has failed to comply with the terms of its Subcontract equivalent to those set out in Paragraphs 3 and 4.

6. Responsibility for Losses

6.1 In spite of Clause 19.1 of the Core Terms, the Supplier does not limit or exclude its liability for the indemnity given under Paragraph 2.6.

6.2 In spite of Clause 19.2 of the Core Terms, the Supplier acknowledges that the Buyer may, amongst other things recover from the Supplier the following Losses to the extent that they arise as a result of a Default by the Supplier:

6.2.1 the total amount of Tax Revenue which would have been collected and/or the total amount of any benefit or tax credit overpayment which would not have been made by or on behalf of the Buyer had the Default not occurred; and

6.2.2 any operational and/or administrative costs and expenses incurred by the Buyer in connection with dealing with a loss of Tax Revenue and/or any overpayment of any benefit or tax credit made as a result of a Default.

7. Invoicing

In addition to the invoicing requirements set out in the Core Terms, the Supplier must ensure that it receives a purchase order number from the Buyer prior to

providing any Deliverables. The Supplier acknowledges that if it does provide Deliverables prior to obtaining a purchase order number then the Supplier does so at its own risk and the Buyer is not required to pay any Charges without a valid purchase order number having been provided.

8. Non-solicitation

The Supplier must not, and must ensure that no Subcontractor will, during the Contract Period and for 12 months following the termination or expiry of this Contract either directly or indirectly solicit (or seek to attempt to solicit) from the employment of the Buyer or from the employment of any Service Recipient and/or Revenue and Customs Digital Technology Services (RCDTS) any person employed by the Buyer, Service Recipient and/or RCDTS in the receipt and/or administration of the Deliverables.

9. Protection of Buyer Personal Data

9.1 In addition to the data protection responsibilities set out in the Core Terms and Schedule 20 (Processing Data):

9.1.1 insofar as the Processes Sanitised Personal Data, the Supplier must not reverse engineer or unencrypt such Sanitised Personal Data or use any data matching techniques to reconstitute the Personal Data from which the Sanitised Personal Data is derived; and

9.1.2 the Supplier must not without the prior written consent of the Buyer convert any Personal Data for “big data” analysis or purposes or match or compare any Personal Data with or against any other Personal Data (whether the Supplier’s or any third party’s). Where the Buyer consents to the Supplier’s use of Personal Data for the steps described in this Paragraph 9.1.2, the Supplier must only do so strictly to the degree necessary to fulfil its obligations under this Contract.

10. Service Levels [Guidance Note: This paragraph 10 should be deleted if Schedule 10 (Service Levels) is not used]

[Guidance Note: The Service Level regime within the Mid-Tier can be tailored on a procurement-by-procurement basis to meet HMRC requirements]

11. Standards

11.1 In addition to the Standards set out in the Core Terms and elsewhere within this Contract, the Supplier must comply with:

11.1.1 and feed into the Buyer’s incident and problem management processes and procedures;

11.1.2 the security requirements in Schedule 16 (Security) which will, as a minimum, be ISO27001 and the government-sponsored cyber essentials[.]; and]

11.1.3 [other HMRC-specific standards requirements to be inserted].

12. Security *[Guidance Note: This paragraph 12 can be deleted if there are no additional security requirements over and above those contained within the Core Terms and Schedule 16 (Security) (if used)]*

12.1 In addition to the security requirements set out in the Core Terms and elsewhere within this Contract, the Supplier must comply with:

12.1.1 [other HMRC-specific security requirements to be inserted].

13. Insurance Requirements

13.1 In addition to the insurance requirements set out in Schedule 22 (Insurance Requirements), where any of the insurances are stated to have a minimum limit “in the aggregate”:

13.1.1 if a claim which does not relate to this Contract is notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim being paid by the insurers which could reduce the level of cover available below that minimum, the Supplier must immediately provide to the Buyer:

- (a) details of that policy; and
- (b) its proposed solution for maintaining the minimum limit of indemnity specified; and
- (c) if the level of insurance cover available falls below that minimum because a claim which does not relate to this Contract are paid by insurers, the Supplier must:
 - (i) ensure that the insurance cover is reinstated to maintain the minimum limit of indemnity specified for claims relating to this Contract; or
 - (ii) if the Supplier is unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately provide the Buyer with details of the relevant policy and its proposed solution for maintaining the minimum limit of indemnity specified.

14. Testing **[Guidance Note: This paragraph 14 should be deleted if Schedule 8 (Implementation Plan and Testing) is not used]**

14.1 In addition to the testing requirements set out in Schedule 8 (Implementation Plan and Testing), the Supplier must:

14.1.1 set out all Documentary Deliverables in the Test Plan or Implementation Plan (as applicable);

14.1.2 comply with the HMRC Test Principles as described in the HMRC Organisational Test Strategy set out in Annex 1 (or as updated by the Buyer and notified to the Supplier from time to time) when developing the Test Strategy (as defined in Schedule 8 (Implementation Plan and Testing)); and

14.1.3 cooperate with the Buyer's third party test provider which carries out end-to-end test management and system integration on behalf of the Buyer in accordance with Annex 2.

14.1.4 The Supplier must provide the Documentary Deliverable for review by the Buyer in accordance with the timescales set out in the Test Plan or Implementation Plan (as applicable).

14.1.5 The Buyer will then notify the Supplier within 10 Working Days of receiving the relevant Documentary Deliverable whether it has been approved or rejected. If the Buyer rejects the Documentary Deliverable, it will give the Supplier its reasons for doing so and the Supplier must then revise the Documentary Deliverable accordingly and resubmit to the Buyer within ten (10) Working Days of the Buyer's rejection.

14.1.6 The Supplier must notify the Buyer immediately if it is unable to submit a Documentary Deliverable by the date specified in the Test Plan or Implementation Plan (as applicable). If the Buyer is not able to approve a Documentary Deliverable by that specified date, the Buyer can, without limiting its other rights, request that the Supplier provide a Rectification Plan.

15. Benchmarking **[Guidance Note: This paragraph 15 should be deleted if Schedule 12 (Benchmarking) is not used]**

In addition to the benchmarking requirements set out in Schedule 12 (Benchmarking), the Buyer is entitled to initiate a Benchmark Review (as defined in Schedule 12 (Benchmarking)) to help the Buyer to determine whether or not extend the Contract Period for the Extension Period.

16. Confidentiality, Transparency and Publicity

16.1 In addition to the confidentiality requirements set out in Clause 19 of the Core Terms (Confidentiality), the Supplier shall not, and shall take reasonable steps to ensure that Supplier Staff shall not:

16.1.1 make any press announcement or publicise this Contract or any part of this Contract in any way, or

16.1.2 use the Buyer's name or brand in any promotion or marketing or announcement of orders, except with the prior written consent of the Buyer.

16.2 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

16.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Buyer shall be responsible for determining in its absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other terms of this Contract, the Supplier hereby gives his consent for the Buyer to publish the Agreement in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to this Contract, to the general public. The Buyer may consult with the Supplier to inform its decision regarding any redactions but the Buyer shall have the final decision at its absolute discretion.

16.4 The Supplier shall assist and co-operate with the Buyer to enable the Buyer to publish this Contract.

~~3.1 The DEFCONS and DEFORMS listed in Annex 1 to this Schedule are incorporated into this Contract.~~

3.2 In the event of a conflict between any DEFCONs and DEFFORMS listed in Annex 1 and the other terms in ~~the~~ Contract, the DEFCONs and DEFFORMS shall prevail.

ANNEX 1 - ~~DEFCONS & DEFFORMS~~ HMRC TEST PRINCIPLES

The full text of Defence Conditions (DEFCONs) and Defence Forms (DEFFORMS) are available electronically via <https://www.gov.uk/acquisition-operating-framework>.

The following MOD DEFCONs and DEFFORMs form part of this contract:

DEFCONS

DEFCON No	Version	Description

[Guidance Note: This Annex can be deleted if paragraph 14 above (Testing) is deleted/not used]

HMRC's Test Principles from HMRC Organisational Test Strategy Document Version 2.1 Dated 1 January 2018

<u>Ref</u>	<u>Test Principle (TP)</u>
<u>TP1</u>	<u>Agile By Default - HMRC will use Agile techniques as the preferred delivery approach and take on board GSDM concepts of building quality in, everyone is responsible for quality, fast feedback, tests are an asset of the product, faster delivery into production, clear and consistent view of testing and optimise value. Further details can be found at Section 6.</u>
<u>TP2</u>	<u>Greatly reduce our reliance on end to end testing - HMRC's ambition is for components/services to become independently testable and deployable over time, where possible. To support that ambition each component/service must understand its interactions with dependent systems and run thorough discrete integration tests (system integration in the small) on these interactions. System integration in the large tests (sometimes called end to end testing) should only be used to</u>

	<p><u>validate end to end connectivity and/or data flows, where integration in the small tests cannot cover. This should result in components/services having better contracts with their dependencies, enabling us to move ever closer to independent testing and deployment of releases.</u></p>
<u>TP3</u>	<p><u>Risk Based Testing - focus testing on the highest risk areas according to a documented testing risk assessment. Predictive testing and Failure Mode & Effects Analysis (FMEA) will support the Risk Based Testing approach through historical project data relating to defect trends. The risk based testing approach must be a joint sign-off between the HMRC change owner and the CDIO IT service owner.</u></p>
<u>TP4</u>	<p><u>Test Early - testing representatives need early sight of IT change to ensure they are properly assessed for testing requirements in terms of scope, timescales and budget, as well as for ensuring clear and unambiguous acceptance criteria.</u></p>
<u>TP5</u>	<p><u>Allow sufficient time for testing - give due consideration to the risks associated with a test, ensuring sufficient iterations/cycles are planned and that there is time for defect detection, defect resolution and retest.</u></p>
<u>TP6</u>	<p><u>Defect Prevention - HMRC expect the test process to evolve and improve through post implementation analysis, root cause analysis and test process improvement. By doing this, improved defect prevention can be achieved.</u></p>
<u>TP7</u>	<p><u>Test Automation - automate as much as possible to allow early testing of both functional and non-functional requirements. Automated testing will be at the forefront of our drive to make substantial cost savings by implementing an automation first policy.</u></p>
<u>TP8</u>	<p><u>Test Stage containment - fix defects within iteration/ test stage where they</u></p>

	<p><u>are detected wherever possible rather than defer the risk until a later iteration/test stage.</u></p>
<p><u>TP9</u></p>	<p><u>Definition of Done, Test Entry Reviews & Test Exit Reviews – For Agile</u> <u>“Definition of Done” has been assessed and agreed for all Epics, Features and User Stories in scope and has been accepted by the Product Owner. For other deliveries all tests under the control of a formal test plan must be subjected to a test entry review to ensure the entry criteria have been met i.e. testing starts when the entry criteria have been met so if the scheduled start date is missed, management action is needed to maintain the test schedule or slippage will occur; all tests must be subjected to a test exit review to ensure that the exit criteria have been met and the test can be formally declared as complete. The Team delivering the outcome should provide evidence of Definition of Done/Exit Criteria at Review.</u></p>
<p><u>TP10</u></p>	<p><u>Suspension & resumption of testing - under circumstances set out in a test plan, testing may be suspended and then later resumed; such actions will be recorded and may result in project risks and/or issues being raised, depending on the nature of the interruption to testing.</u></p>
<p><u>TP11</u></p>	<p><u>Test Completion - every test will have an associated test completion condition to formally close the test activity. Test Completion Reports should be produced as required.</u></p>
<p><u>TP12</u></p>	<p><u>Re-testing and Regression testing - when defects are fixed they will be subjected to re-test to confirm that the fix is effective; consideration must also be given to the need to administer regression tests, based on the balance of risk for the underlying changes made for the fix and any other changes made in the release.</u></p>

<p><u>TP13</u></p>	<p><u>Consider the timing of non-functional testing - should not always be left until the end as there could be cases where critical components should be tested early to de-risk the overall solution. Virtualisation can be an effective way of quickly standing up a test environment to carry out non-functional testing early in the lifecycle.</u></p>
<p><u>TP14</u></p>	<p><u>Re-use of test artefacts - to maintain value in testing the management of test assets for re-use is key.</u></p>
<p><u>TP15</u></p>	<p><u>User Centred Testing - HMRC puts the user at the forefront of all products it delivers. User testing must be integrated into the Test Lifecycle to ensure that the system satisfies the needs of the customer as specified in the Business and functional requirements (for Agile User Stories and Epics) and provides confidence in its use. There is no separate user acceptance test stage in the HMRC test lifecycle, we need to test functions and Business processes and Business products that our customers and colleagues will use in their daily work throughout the IT lifecycle to ensure we are focused on delivery that quality in use.</u></p>
<p><u>TP16</u></p>	<p><u>Defect Management Process - incidents that occur during any testing process need to be managed properly. It is expected that robust Defect Management Procedures will be applied during test execution.</u></p>
<p><u>TP17</u></p>	<p><u>Test Environments/Virtualisation - HMRC expect appropriate test environments to be available in a timely fashion to allow testing to be completed. HMRC has a strategic drive towards Virtualised Environments but recognises other environments may be used in the interim.</u></p>
<p><u>TP18</u></p>	<p><u>Use of test management tools - all categories of test tools will be considered for use by each project/service team.</u></p>

<u>TP19</u>	<u>Testing must be measurable – this ensures the value of testing can be established in terms of time, cost and quality.</u>
<u>TP20</u>	<u>Adoption of standards - wherever possible use existing corporate, national and international standards, as well as tracking emerging standards to ensure on-going use of industry best practice. Any deviation from standards must be justified and documented.</u>

ANNEX 2 – TEST SERVICE REQUIREMENTS

[Guidance Note: This Annex can be deleted if paragraph 14 above (Testing) is deleted/not used]

1.1 The Supplier must:

- 1.1.1 provide sufficient, appropriate and empowered resource to review and approve the Buyer's end to end test strategy ("**E2E Test Strategy**") and/or end to end test plan ("**E2E Test Plan**");
- 1.1.2 confirm its agreement to the Buyer's E2E Test Strategy and/or E2E Test Plan within the timelines set by the E2E Test Provider;
- 1.1.3 provide to the E2E Test Provider the Test Strategy and Test Plan (based on the E2E Test Strategy and/or Plan) detailing the testing they will deliver and how it will be executed;
- 1.1.4 provide sufficient, appropriate and empowered resource to input to test workshops and discussions;
- 1.1.5 provide appropriate live service resource to input to decisions in relation to operational acceptance testing (OAT) and system integration testing (SIT) requirements;
- 1.1.6 provide test progress and test completion metrics to the E2E Test Provider's test manager on a weekly basis;
- 1.1.7 supply details of any defects in Testing to the E2E Test Provider and provide sufficient, appropriate and empowered resource to input to both the Buyer's and the E2E Test Provider's problem review forums, at the same complying with the defect management process as defined in the E2E Test Strategy and/or Plan;
- 1.1.8 complete their delivery activities on time and in accordance with the E2E Test Strategy and/or Plan including meeting the exit criteria for system testing;
- 1.1.9 carry out any operational testing which has been sub-contracted to the Supplier by the Buyer;
- 1.1.10 carry out performance and volume testing;
- 1.1.11 carry out component testing, component integration testing and system testing;

- 1.1.12 provide and maintain the test environments in a timely manner as defined in the E2E Test Strategy and/or Plan;
- 1.1.13 provide test data to be used in SIT; and
- 1.1.14 provide sufficient, appropriate and empowered resource to provide technical support for the resolution of defects during SIT.

[Link-to-previous setting changed from off in original to on in modified.]

~~[Subject to Contract]~~

Schedule 31 (Buyer Specific Terms), Crown Copyright 2023, [Subject to Contract]

~~Crown Copyright 2022~~

ANNEX 3 – PERFORMANCE LEVELS

[Guidance Note: HMRC-specific Service Level regime to be inserted if required. This Annex should be deleted if the Service Level regime envisaged by Schedule 10 is sufficient or if there are no applicable Service Levels]

DEFFORMs (Ministry of Defence Forms)

DEFFORM No	Version	Description

[Link-to-previous setting changed from off in original to on in modified.]

~~Mid-Tier Contract – Version 1.1~~

v.1.2

Schedule 33 (Scottish Law)

[Guidance Note: PPNs referenced throughout this Contract are not applicable to procurements under the Public Contracts (Scotland) Regulations 2015. Buyers may wish to take advice on relevant SPPNs, available at: <https://www.gov.scot/collections/scottish-procurement-policy-notes-sppns/>]

This is the schedule referred to in the foregoing agreement between [NAME OF PARTY] and [NAME OF PARTY] dated [DATE]

1. When you should use this Schedule

This Schedule 33 may be included to adapt the Core Terms and Schedules so that ~~the~~this Contract is under Scottish Law.

2. Changes to the Core Terms

- 2.1 Clause 8.1.1(c), (Appointing Subcontractors) – “assign, novate or transfer its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.” shall be replaced by “novate, transfer or enter into assignment of its rights and/or obligations under the Sub-Contract that relate exclusively to this Contract to the Buyer or a Replacement Supplier.”
- 2.2 ~~2.1~~ Clause 8.3.1 e8.3.1e), (When Sub-Contracts can be ended) – “Regulation 57 of the Public Contracts Regulations 2015” shall be replaced by “Regulation 58 of the Public Contracts (Scotland) Regulations 2015”.
- 2.3 Clause 9.7, (Rights and protection) – “All third party warranties and indemnities covering the Deliverables must be assigned for the Buyer’s benefit by the Supplier for free.” shall be replaced by “The Supplier must enter into assignment of all third party warranties and covering the Deliverables for the Buyer’s benefit for free.”
- 2.4 ~~2.2~~ Clause 23, (Other people’s rights in this contract) – “Contract Rights of Third Parties Act (CRTPA)” shall be replaced by “Contract (Third Party Rights) (Scotland) Act 2017 (CTPRSA)”. References to “CRTPA” shall be replaced by “CTPRSA”. Clause 27.1, (Transferring responsibilities) – “The Supplier cannot assign, novate or in any other way dispose of this Contract or any part of it without the Buyer’s written consent.” shall be replaced by “CTPRSA”. The Supplier cannot enter into assignment, novation or any other way of disposition of this Contract or any part of it without the Buyer’s written consent.”

Subject to Contract

Schedule 33 (Scottish Law), Crown Copyright 2023, [Subject to Contract]

~~Crown Copyright 2022~~

2.5 Clause 27.3, (Transferring responsibilities) – “The Buyer can assign, novate or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.” shall be replaced by “The Buyer can enter into assignation, novation or transfer its Contract or any part of it to any Crown Body, public or private sector body which performs the functions of the Buyer.”

2.6 ~~2.3~~ Clause 39 (Resolving Disputes):

2.6.1 ~~2.3.1~~ Clause 39.3 – add the following wording: “The governing law and jurisdiction provisions of CEDR’s Model Mediation Agreement shall be deemed to be amended to refer to the laws of Scotland and the Court of Session.”

2.6.2 ~~2.3.2~~ Clause 39.3 - The term “Courts of England and Wales” shall be amended to read “Court of Session”

2.6.3 ~~2.3.3~~ Clause 39.5 – Conduct of Arbitration.

- (a) The words “under the London Court of International Arbitration rules current at the time of the Dispute” shall be deleted.
- (b) The seat or legal place of the arbitration shall be amended so that it takes place in “Edinburgh” as opposed to “London”.
- (c) Add the following wording “The arbitration shall be conducted in accordance with the Arbitration (Scotland) Act 2010 subject to disapplication in whole or in part of any of the default rules of the Scottish Arbitration Rules comprising Schedule 1 to that Act as the Parties may agree.”

2.7 ~~2.4~~ Clause 40 (Which law applies) – the words “English Law” shall be replaced by “the Law of Scotland”.

3. Changes to the Schedules

[Guidance Note: The pension schemes referenced in Part D of Schedule 7 may not apply where this Schedule is used. Buyers may wish to take advice as to whether these provisions are appropriate, or an alternative is required.]

3.1 Schedule 1 – Definitions shall be amended as follows:

3.1.1 (f) of the definition of “Auditor” shall be replaced by “successors or any party that of any of the above that have entered into assignation with any party listed above”.

3.1.2 ~~3.1.1~~ The definition of “CRTPA” shall be replaced by “CTPRSA” ~~the~~ this Contract (Third Party Rights) (Scotland) Act 2017”.

3.1.3 ~~3.1.2~~ In the definition of “Dispute” the reference to “English law” shall be replaced by “the Law of Scotland” and the reference to the “English courts” shall be replaced by the “courts of Scotland”.

Subject to Contract

Schedule 33 (Scottish Law), [Crown Copyright 2023, \[Subject to Contract\]](#)

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- 3.1.4 ~~3.1.3~~ The definition of EIR shall be amended to add “or the Environmental Information (Scotland) Regulations 2004”.
- 3.1.5 ~~3.1.4~~ The definition of FOIA shall be amended to add, after “the Freedom of Information Act 2000” the words “or the Freedom of Information (Scotland) Act 2002”.
- 3.1.6 ~~3.1.5~~ Part (d) of the definition of “Insolvency Event” will be deleted and replaced with “that person has been served with a charge for payment which has expired, and a creditor has been granted an attachment order by a court, which is executed in relation to the property of that person, or such other process is enforced or pursued against the whole or any part of that person’s property”. In part (f) of the definition, (f)(iv) will be deleted in its entirety.
- 3.1.7 ~~3.1.6~~ In the definition of “Losses” the word “tort” shall be replaced with “delict”.
- 3.1.8 ~~3.1.7~~ In part (a) of the definition of “Intellectual Property Rights” the words “Know-How” and “trade secrets” refer to pre-existing know-how and trade secrets only.
- 3.1.9 ~~3.1.8~~ “Working Day”: the words “or public holiday in England and Wales” shall be replaced by “when banks in Edinburgh are open for business”.
- 3.2 Where Service Recipients want to join with the Buyer to contract collectively under ~~the~~this Contract, the following provisions of Schedule 17 – Service Recipients will be amended as follows:
- 3.2.1 Paragraph 3.4 shall be amended to read “Each of the Service Recipients will acquire a third-party right for the purposes of the CRTPSA and may enforce the relevant provisions of ~~the~~this Contract pursuant to CRTPSA”.
- 3.2.2 Paragraph 3.6.2 shall be amended so that reference to “CRTPA” is replaced with “CRTPSA”.
- 3.3 Clause 1.5 of Annex 1 (Form of Guarantee) of Schedule 23 – Guarantee shall be replaced by “references to a person are to be construed to include that the Guarantee has person's that it may enter into assignation with or transferees or successors in title, whether direct or indirect;”.
- 3.4 ~~3.3~~ Where a Guarantee is selected, the following provisions of Schedule 23 – Guarantee shall be amended as follows:
- 3.4.1 ~~3.3.1~~ Annex 1 – Form of Guarantee WHEREAS (B) “deed” replaced by “contract”
- 3.4.2 ~~3.3.2~~ Throughout the whole Schedule delete all references to “deed of Guarantee” merely express as “Guarantee”
- 3.4.3 ~~3.3.3~~ Clause 4.1 Delete references to “England and Wales” when referring to addresses.

Subject to Contract

Schedule 33 (Scottish Law), Crown Copyright 2023, [Subject to Contract]
~~Crown Copyright 2022~~

- 3.4.4 ~~3.3.4~~ Clause 12 – the word ~~“assignment”~~ shall be amended to ~~“assignment”~~.
- 3.4.5 ~~3.3.5~~ Clause 14 – ~~“Contract (Rights of Third Parties) Act 1999”~~ shall be amended to ~~“Contract (Third Party Rights) (Scotland) Act 2017”~~.
- 3.4.6 ~~3.3.6~~ Clause 16 Governing Law (add ~~“and Jurisdiction”~~). References to ~~“Courts of England”~~ to be replaced by ~~“Court”~~ Courts of Session Scotland. References to ~~“English”~~ to be replaced by ~~“Scottish”~~. References to ~~“England and Wales”~~ to be replaced by ~~“Scotland”~~.
- 3.4.7 ~~3.3.7~~ Alter execution strip to read as follows:

~~“IN WITNESS WHEREOF~~ these presents consisting of this ~~page~~ and the ~~{}~~ preceding ~~{}~~ pages, together with the schedule in ~~{}~~ parts [and plan], are executed ~~in duplicate~~ as follows:

- ~~SIGNATURE:~~
- ~~NAME:~~
- ~~POSITION:~~
- ~~PLACE OF SIGNING:~~
- ~~DATE:~~
- ~~WITNESS:~~
- ~~WITNESS NAME:~~
- ~~WITNESS ADDRESS:”~~

SUBSCRIBED for and on behalf of [NAME OF COMPANY] by [a director][the secretary][an authorised signatory] in the presence of a witness on the [DATE] day of [MONTH][YEAR] at [PLACE OF SUBSCRIPTION]:

Signature _____

Name (block capitals) _____

[Director][Secretary]
[Authorised Signatory]

Witness signature _____

Witness name (block capitals) _____

Witness address _____

- 3.5 Paragraph 1.5.4 of Schedule 27 – Key Subcontractors shall be replaced by “a provision enabling the Supplier to enter into assignment, novation or otherwise transfer any of its rights and/or obligations under the Key Sub Contract to the Buyer;”.
- 3.6 Paragraph 3.1.4 (Buyer due diligence requirement) of Schedule 28 – ICT Services shall be replaced by “existing contracts (including any licences, support, maintenance and other contracts relating to the Operating Environment) referred to in the Due Diligence Information which may be novated to, entered into assignment with or managed by the Supplier under this Contract and/or which the Supplier will require the benefit of for the provision of the Deliverables.”
- 3.7 Changes to Schedule 30 – Exit Management:
- 3.7.1 Paragraph 2.4.2 (Supplier must always be prepared for contract exit) shall be amended to read “procure that all licences for Third Party Software and all Sub-Contracts shall be able to enter into assignment and/or capable of novation (at no cost or restriction to the Buyer) at the request of the Buyer to the Buyer (and/or its nominee) and/or any Replacement Supplier upon the Supplier ceasing to provide the Deliverables (or part of them) and if the Supplier is unable to do so then the Supplier shall promptly notify the Buyer and the Buyer may require the Supplier to procure an alternative Subcontractor or provider of Deliverables.”.
- 3.7.2 Throughout the whole Schedule delete all references to “assignment” and replace with “assignment”.
- 3.7.3 Paragraph 8.2.3 (Assets, Sub-contracts and Software): “...the Buyer requires to be assigned or novated to the Buyer...” shall be replaced by “the Buyer requires an assignment to be entered into or novated to the Buyer...”.
- 3.7.4 Paragraph 8.6 shall be replaced by “The Supplier shall as soon as reasonably practicable enter into an assignment or procure the novation of the Transferring Contracts to the Buyer and/or the Replacement Supplier. The Supplier shall execute such documents and provide such other assistance as the Buyer reasonably requires to effect this novation or assignment.”.
- 3.7.5 Paragraph 8.7.2 shall be replaced by “once a Transferring Contract is novated or an assignment entered into with the Buyer and/or the Replacement Supplier, discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.”.

Subject to Contract

Schedule 33 (Scottish Law), Crown Copyright 2023, [Subject to Contract]

~~Crown Copyright 2022~~

- 3.7.6 Paragraph 8.9 shall be replaced by “The Supplier shall indemnify the Buyer (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a counterparty to a Transferring Contract which is as a result of assignment or novation to the Buyer (and/or Replacement Supplier) pursuant to Paragraph 8.6 in relation to any matters arising prior to the date of assignment or novation of such Transferring Contract. Clause 23 (Other people's rights in this contract) shall not apply to this Paragraph 8.9 which is intended to be enforceable by third party beneficiaries by virtue of the CRTPA.”.
- 3.7.7 Paragraph 1.4.4 of Annex 1 (Scope of Termination Assistance) shall be replaced by “key support contact details for third party supplier personnel under contracts which are to be novated or an assignment entered into to the Buyer pursuant to this Schedule,”.
- 3.8 Paragraph 8.2.4 (Limits of Use) of Schedule 35 – Lease Terms shall be replaced by “The Buyer must not allow to exist any lien, assignation nor mortgage pledge or otherwise deal with the Equipment in a manner inconsistent with either the Supplier's interest or the Owner's interest in the Equipment.”.
- 3.9 Changes to Schedule 36 – Intellectual Property Rights:
- 3.9.1 Throughout the whole Schedule delete all references to “assignment” and replace with “assignment”.
- 3.9.2 Throughout the whole Schedule delete all references to “assign in writing” and replace with “enter into an assignment in writing”.
- 3.9.3 Throughout the whole Schedule delete all references to “must promptly assign to the Buyer” and replace with “ must promptly enter into an assignment to the Buyer”.
- 3.10 ~~3.4~~ The following wording shall be read in to each of the Schedules to this Contract, before Paragraph ~~4~~1: ““This is the schedule referred to in the foregoing agreement between [NAME OF PARTY] and [NAME OF PARTY] dated [DATE].””

4. References to Legislation

Where legislation applicable to England and Wales only is expressly mentioned in this Contract it shall have the effect of substituting the equivalent legislation applicable in Scotland.

Schedule 34 (Northern Ireland Law)

[Guidance Note: PPNs referenced throughout will need to reviewed by the Buyers to confirm if the PPNs referenced are applicable to Northern Ireland public bodies. Buyers may wish to take advice on relevant PPNs, available at:

1. When you should use this Schedule

This Schedule 34 may be included to adapt the Core Terms and Schedules so that ~~the~~[this](#) Contract is under Northern Ireland Law.

2. Changes to the Core Terms

2.1 Clause 32 – (Equality Diversity and Human Rights)

2.1.1 Clause 32.1.1 substitute the following wording: “protections against discrimination on the grounds of race, sex, gender reassignment, religion or belief, religious belief or political opinion, disability, sexual orientation, pregnancy, maternity, age or otherwise; and”

2.1.2 Clause 32.2 substitute the following wording: “The Supplier must use all reasonable endeavours, and inform the Buyer of the steps taken, to prevent anything that is considered to be unlawful discrimination by any court or tribunal, or the Northern Ireland Human Rights Commission (or any successor organisation) when working on ~~the~~[this](#) Contract.”

2.2 Clause 39 (Resolving Disputes):

2.2.1 Clause 39.2 substitute the following wording: “If the Parties cannot resolve the Dispute via commercial negotiation, they can attempt to settle it by mediation using the Dispute Resolution Service of Northern Ireland (DRS) Code of Practice current time at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by DRS. If either Party does not wish to use, or continue to use mediation, or mediation does not resolve the Dispute, the Dispute must be resolved using Clauses 39.3 to 39.5”.

2.2.2 Clause 39.3: the term “courts of England and Wales” shall be amended to read “courts of Northern Ireland”.

2.2.3 Clause 39.4: the seat or legal place of the arbitration shall be amended, so that it takes place in Belfast as opposed to London.

2.3 Clause 40 (Which law applies): the term “English law” shall be replaced with “the law of Northern Ireland”.

Subject to Contract

Schedule 34 (Northern Ireland Law), [Crown Copyright 2023, \[Subject to Contract\]](#)

~~Crown Copyright 2022~~

3. Changes to Schedules

3.1 Schedule 1 (Definitions)

- 3.1.1 “Dispute”: reference to “English law” and “English Courts” to be replaced with “the law of Northern Ireland” and “the courts of Northern Ireland”.
- 3.1.2 “Employment Regulations” substitute the following wording: “the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced and/or the Service Provision Change (Protection of Employment) Regulations (Northern Ireland) 2006 as amended or replaced;”.
- 3.1.3 “Equality and Human Rights Commission”: replace with “The Northern Ireland Human Rights Commission” and substitute definition with: “the Northern Ireland body named as such as may be renamed or replaced by an equivalent body from time to time;”.
- 3.1.4 “Insolvency Event”: reference to section 123 of the Insolvency Act 1986 to be replaced with article 103 of the Insolvency (Northern Ireland) Order 1989, reference to section 222 of the Insolvency Act 1986 to be replaced with article 186 of the Insolvency (Northern Ireland) Order 1989, and reference to a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 to be replaced with Schedule A1 of the Insolvency (Northern Ireland) Order 1989.
- 3.1.5 “Prescribed Person” substitute the following wording “a list of prescribed persons to which a whistleblower may make a disclosure is contained within Appendix 1 to the Guide to the Public Interest Disclosure (Northern Ireland) Order 1998;”.
- 3.1.6 “Working Day”: reference to “England and Wales” replaced by “Northern Ireland”.

3.2 Schedule 6 (Transparency Reports)

If this Schedule 34 (Northern Ireland Law) is included in [the this](#) Contract, then Schedule 6 (Transparency Reports) is excluded from ~~the~~[the this](#) Contract and does not apply to ~~the~~[the this](#) Contract.

3.3 Schedule 7 (Staff Transfers)

[Guidance Note: The pension schemes referenced in Part D of Schedule 7 may not apply where this Schedule is used. Buyers may wish to take advice as to whether these provisions are appropriate, or an alternative is required.]

3.3.1 Paragraph 1 (Definitions)

(a) “Employee Liability”:

- ~~●~~ substitute the following wording: “compensation for discrimination on grounds of sex, race, disability, age, religion or belief, religious belief or political opinion, gender reassignment, marriage or civil partnership,

pregnancy and maternity or sexual orientation or claims for equal pay;”

- ~~•~~ substitute the following wording “any investigation by the Northern Ireland Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;”.

3.3.2 Part A: Staff Transfer at the Start Date - Transferring Employees from the Buyer to the Supplier

- (a) Paragraph 2.4.1 substitute the following wording: “for discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, religious belief or political opinion, or equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees in relation to any alleged act or omission of the Supplier and/or any Subcontractor; or”.
- (b) Paragraph 6.1.1 substitute the following wording: “the requirements of Part 1 of the Pensions (No 2) Act (Northern Ireland) 2008, article 235 of the Pensions (Northern Ireland) Order 2005 and the Transfer of Employment (Pension Protection) Regulations (Northern Ireland) 2005 for all transferring staff; and”.

3.3.3 Part B: Staff Transfer at the Start Date - Transfer from a Former Supplier on Re-procurement

- (a) Paragraph 2.4(a)(i)(A) substitute the following wording: “for discrimination, including on the grounds of race, sex, disability, age, gender re-assignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, or religious belief or political opinion; or”.
- (b) Paragraph 7.1.1 substitute the following wording: “the requirements of Part 1 of the Pensions (No 2) Act (Northern Ireland) 2008, article 235 of the Pensions (Northern Ireland) Order 2005 and the Transfer of Employment (Pension Protection) Regulations (Northern Ireland) 2005 for all transferring staff; and”.

3.3.4 Part C: No Staff Transfer on the Start Date

- (a) Paragraph 1.5.1 substitute the following wording: “for discrimination including on the grounds of sex, race, disability, age, gender re-assignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, religious belief or political opinion;”.

Subject to Contract

Schedule 34 (Northern Ireland Law), [Crown Copyright 2023, \[Subject to Contract\]](#)

~~Crown Copyright 2022~~

- 3.3.5 Part D: Pensions
- (a) Paragraph 10.3(b): reference to section 75 and section 75A of the Pensions Act 1995 to be replaced with article 75 and article 75A of the Pensions (Northern Ireland) Order 1975.
 - (b) Paragraph 11.3(b): reference to sections 75 and 75A of the Pensions Act 1995 to be replaced with articles 75 and 75A of the Pensions (Northern Ireland) Order 1975 respectively.
- 3.3.6 Part E: Staff Transfer on Exit
- (a) Paragraph 1.7.7 substitute the following wording: “a complete copy of the information required to meet the minimum record keeping requirements under the Working Time Regulations (Northern Ireland) 2016 and the National Minimum Wage Regulations 1999; and”
 - (a) Paragraph 2.6.1(a) substitute the following wording: “discrimination, including on the grounds of sex, race, disability, age, gender re-assignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief, religious belief or political opinion; or”.
 - (b) Annex E2: Staffing Information (Pensions) substitute the following wording: “Is the scheme an occupational pension scheme as defined in the Pension Schemes (Northern Ireland) Act 1993?”.
- 3.4 Schedule 23 (Guarantee) Annex 1 - Form of Guarantee
- 3.4.1 Clause 4.1: delete references to “England and Wales” when referring to addresses.
 - 3.4.2 Clause 16: change title to “Governing Law and Jurisdiction”; references to “courts of England” to be replaced by “courts of Northern Ireland”, references to “English law” to be replaced by the “the law of Northern Ireland”.
 - 3.4.3 Clause 16.4: substitute Guidance Note with the following wording:
[Guidance Note: Include the above provision when dealing with the appointment of a Northern Irish process agent by a non-Northern Irish incorporated Guarantor]
 - 3.4.4 Clause 16.5 substitute the following wording: “[The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in Northern Ireland] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in Northern Ireland for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of

Subject to Contract

Schedule 34 (Northern Ireland Law), [Crown Copyright 2023, \[Subject to Contract\]](#)

~~Crown Copyright 2022~~

notices and demands, service of process or any other legal summons served in such way.]”

3.5 Schedule 26 (Sustainability)

3.5.1 Part A

- (a) Paragraph 1.1 substitute the following wording: “In addition to the applicable equality and anti-discrimination legal obligations in Northern Ireland, the Supplier shall support the Buyer in fulfilling its obligations to promote equality of treatment under Section 75 of the Northern Ireland Act 1998 and in a way that seeks to:”.
- (b) Paragraph 1.1.1 substitute the following wording: “eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010 and the equivalent legislation in Northern Ireland;”.
- (c) Paragraph 1.1.2.2 substitute the following wording: “good relations between those with a protected characteristic (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, religious belief or political opinion, sex, sexual orientation, and marriage and civil partnership) and those who do not share it;”.
- (d) Paragraph 5.1 substitute the following wording: “NOT USED”.

3.6 Schedule 32 (Background Checks)

Paragraph 3.2.3 substitute the following wording: “conduct an “Enhanced” Access NI Check,”.

Schedule 35 (Lease Terms)

1. Introduction

The Buyer has decided to lease Equipment under ~~the~~[this](#) Contract using the Schedules, this Schedule 35 (Lease Terms), the Core Terms and each Equipment Order Form.

2. Definitions

In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Actual Delivery Date"	the date on which a piece of Equipment is actually delivered to the Buyer;
"Additional Charges"	the amounts so specified in Schedule 3 (Charges) or an Equipment Order;
"Delivery Place"	the place for delivery specified in the Equipment Order;
"Deposit"	the deposit amount set out in the Equipment Order;
"Due Delivery Date"	the date specified as the due date for delivery of a piece of Equipment in the Equipment Order;
"Equipment"	those devices, machines, tools and/or vehicles set out in Schedule 2 (Specification) and ordered by the Buyer as may be supplemented in the this Contract or in an Equipment Order;
"Equipment Order"	the agreement specifying the piece of Equipment or the pieces of Equipment that the Buyer will hire from the Supplier under the this Contract which will be in the form prescribed by the Buyer or in an equivalent form as agreed by the Parties from time to time;
"Equipment Specific Maintenance"	<ul style="list-style-type: none">(a) topping up between routine maintenance visits of consumables;(b) repairs outside of normal routine maintenance but excluding costs occasioned by wilful damage, neglect, accident damage or top ups of consumables between routine maintenance visits; and(c) replacements of any components which wear out due to fair wear and tear during

the Lease Period, except where such replacement is occasioned by the lack of care or abuse of the piece of Equipment by the Buyer;

"Excess"	has the same meaning given to it in Paragraph 8.9.18.3.1 ;
"Lease Payments"	the Deposit, Rentals and Additional Charges (exclusive of any applicable VAT) payable to the Owner by the Buyer under the this Contract for the full and proper performance by the Supplier of its obligations under the this Contract;
"Lease Period"	in relation to a piece of Equipment, the period commencing on the Actual Delivery Date for that piece of Equipment and ending on the Return Date for that piece of Equipment unless extended or terminated early in accordance with this Contract;
"Lease Terms"	the terms and conditions of supply and lease set out in this Schedule 35;
"Owner"	the person who has title to the Equipment and who is listed as the Owner in the Equipment Order;
"Purchase Option"	the Buyer's option to purchase the Equipment as more fully described in Paragraph 9;
"Purchase Option Price"	the price of the Purchase Option set out in the Equipment Order;
"Rental"	the amount specified in the Equipment Order;
"Return Date"	the date so specified in the Equipment Order or as varied by the application of Paragraph 5.55.1.5 ;
"Termination Sum"	for any piece of Equipment, the aggregate of: <ul style="list-style-type: none">(a) a) any Rentals due but unpaid up to the date of termination;(b) b) any other sum due or to become due to the Supplier hereunder by reason of any breach by the Buyer prior to the date of termination of any of its obligations under the Lease Terms; and(c) e) the termination rental charges calculated in accordance with thethis Contract or, if lower, 50% of the Rentals

that would have been payable under the Lease Terms but for the termination; and

"Total Loss" any event which, in the opinion of the insurers of the piece of Equipment, renders the piece of Equipment incapable of economic repair if it is lost, stolen or destroyed.

3. Exclusion of certain Core Terms

~~3.1~~ When the Parties have entered into a Contract which incorporates the Lease Terms, the following Core Terms are modified in respect of ~~the~~[this](#) Contract:

3.1 ~~3.1.1~~ Clause 3.1.2 does not apply to ~~the~~[this](#) Contract;

3.2 ~~3.1.2~~ Clause 3.2 does not apply to ~~the~~[this](#) Contract;

3.3 ~~3.1.3~~ Clause 9.7 does not apply to ~~the~~[this](#) Contract;

3.4 ~~3.1.4~~ Clause 14.2 does not apply to the Buyer extending the Lease Period of any Equipment;

3.5 ~~3.1.5~~ Clause 14.3 does not apply to the Buyer terminating the hire of any Equipment; and

3.6 ~~3.1.6~~ Clause 15.2 does not apply where the Buyer must pay a Termination Sum or any amount under Paragraph 11.

4. Equipment Orders

4.1 Each Equipment Order is subject to and incorporates the Lease Terms so that no other terms and conditions which the Supplier tries to impose under any quotation, confirmation of order, delivery note, invoice or similar document are part of ~~the~~[this](#) Contract.

4.2 The Parties agree that any other terms or conditions (whether or not inconsistent with the terms of this Contract) contained or referred to in any correspondence or any documentation submitted by the Supplier which are elsewhere implied by custom, practice or course of dealing do not apply.

4.3 The Supplier must send a confirmation of the Equipment Order to the Buyer by electronic means (or in any other method as the Parties may agree from time to time) within **[forty-eight (48)]** hours of receipt of the Equipment Order and the confirmation will confirm the order details including:

4.3.1 a description of the piece of Equipment ordered;

4.3.2 details of any optional extras ordered and any conversion work to be carried out;

4.3.3 the anticipated delivery details; and

4.3.4 the name and address of the Supplier.

5. Hiring Equipment

5.1 Lease

5.1.1 ~~5.1~~ In consideration of the payment of the Lease Payments, the Supplier will hire the Equipment to the Buyer in a timely manner and in accordance ~~the~~ this Contract and the requirements notified to the Supplier in the Equipment Order.

5.1.2 ~~5.2~~ The Deposit is a deposit against default by the Buyer of payment of any Lease Payments or any loss of or damage caused to the Equipment. The Buyer must, on the Actual Delivery Date, pay the Deposit to the Supplier. If the Buyer fails [without due cause] to make any Lease Payments in accordance with the Equipment Order, or causes any loss or damage to the Equipment (in whole or in part), the Supplier can apply the Deposit against that default, loss or damage. The Buyer must pay to the Supplier any sums deducted from the Deposit within ten (10) Working Days of a demand for the same. The Supplier must refund the Deposit (or balance of the Deposit) within [five (5)] Working Days after the end of the Lease Period.

5.1.3 ~~5.3~~ The Supplier must advise the Buyer on the selection and specification of the Equipment and, where applicable, any conversion work to be carried out in respect of them so as to ensure that the Equipment will be of sufficient quality and suitable for the requirements of the Buyer.

5.1.4 ~~5.4~~ Before the Due Delivery Date of any piece of Equipment the Buyer can amend or cancel and remove that piece of Equipment from the Equipment Order by notifying the Supplier. If the Buyer does cancel all or part of an Equipment Order:

(a) ~~5.4.1~~ for standard specification pieces of Equipment, the Buyer can cancel any Equipment Order or part of any Equipment Order which has not been delivered. The Buyer will pay the Supplier's reasonable and proven costs already incurred on the cancelled Equipment Order as long as the Supplier uses all reasonable endeavours to minimise these costs, including an attempt to redeploy the ordered Equipment to an alternative customer. [Where the Equipment is a vehicle, cancellation terms for converted vehicles or vehicles above 3.5 tonnes should be agreed by the Buyer and Supplier prior to award of ~~the~~ this Contract];

(b) ~~5.4.2~~ in all other circumstances (including where the Equipment is not standard specification or less than [thirty (30) days] notice is given), the Supplier will use all reasonable endeavours to allocate the piece of Equipment to an alternative buyer. If the Supplier is unable to re-allocate the piece of Equipment, the Buyer must pay the Supplier any cancellation charges reasonably, properly and

proven to be incurred by the Supplier provided that the Supplier can prove to the reasonable satisfaction of the Buyer that the Supplier has taken all reasonable efforts to minimise such charges; and

(c) ~~5.4.3~~ where the amendment or cancellation of an Equipment Order is directly or indirectly due to the Supplier's failure to comply with its obligations under ~~the~~this Contract, the Buyer has no liability to the Supplier in respect of the amendment or cancellation.

5.1.5 ~~5.5~~ If the Buyer wants to keep any piece of Equipment after the expiry of the current Lease Period then the Buyer must give written notice to the Supplier [one (1) Month] prior to the end of the Lease Period and the Supplier must confirm its agreement (which the Supplier cannot unreasonably refuse). The Rentals payable in relation to any extensions of a Lease Period are (unless otherwise agreed between the Parties) calculated:

(a) ~~5.5.1~~ where the extension is for [twenty-eight (28)] days or less, proportionately based on the original Rental for the piece of Equipment and the Parties shall agree (such agreement not to be unreasonably withheld or delayed) the revised Agreement Mileage for that vehicle as soon as reasonably practicable; or

(b) ~~5.5.2~~ where the extension is for more than [twenty-eight (28)] days, using the same method that was used to calculate the original Rentals.

5.2 Delivery and Installation

5.2.1 ~~5.6~~ The Supplier must give the Buyer confirmation of the anticipated Due Delivery Date for each piece of Equipment within [five (5)] Working Days of receipt of the Equipment Order.

5.2.2 ~~5.7~~ The Supplier will deliver the Equipment to the Delivery Place or as otherwise reasonably directed by the Buyer.

5.2.3 ~~5.8~~ If the Buyer has specified that the Supplier must install the Equipment at the Delivery Place, the Supplier must at the Buyer's expense install the Equipment at the Delivery Place. The Buyer must make sure that a duly authorised representative of the Buyer is present at the installation of the Equipment.

5.2.4 ~~5.9~~ The Supplier will, at the Supplier's cost, deliver the Equipment to the Buyer in a good working and clean condition on the Due Delivery Date.

5.2.5 ~~5.10~~ [If the Equipment is a vehicle, on delivery, the mileage of each piece of Equipment must not exceed one hundred (100) miles unless, due to the nature of the piece of Equipment, it is impractical to do so in which event the Supplier must minimise the delivery mileage and the Supplier must ensure that any delivery mileage is

deducted for the purposes of calculating any Excess/under Mileage. On delivery, each piece of Equipment must contain not less than a quarter a tank of fuel.]

- [5.2.6](#) **5.11** The Supplier can only deliver Equipment before the Due Delivery Date if the Buyer agrees to early delivery before the Supplier attempts delivery.
- [5.2.7](#) **5.12** Any defects to a piece of Equipment notified to the Supplier by the Buyer must be rectified within **[fourteen (14) days]** at no cost to the Buyer.
- [5.2.8](#) **5.13** A piece of Equipment is only delivered once a duly authorised representative of the Buyer signs a delivery note (which quotes the Supplier's order number and full details of the piece of Equipment) to confirm delivery of the Equipment but that signature is not evidence that the Equipment complies with the requirements of the Equipment Order.
- [5.2.9](#) **5.14** If, for any reason, the Buyer is unable to take delivery of a piece of Equipment on or after the Due Delivery Date the Supplier must, at its own expense, store or arrange for the storage of the Equipment for a reasonable time and must safeguard the Equipment until actual delivery.
- [5.2.10](#) **5.15** The Supplier must make sure (at its own cost) that each piece of Equipment is delivered in a new and unused condition unless the Buyer requests otherwise. The Buyer can at its sole discretion reject a piece of Equipment which is not in the condition requested and/or in respect of which the delivery note does not include the required information.
- [5.2.11](#) **5.16** If the Supplier does not deliver a piece of Equipment by the agreed time or specified date then the Buyer can withhold payment of the Lease Payments for that piece of Equipment until the time when the Supplier actually delivers it.
- [5.2.12](#) **5.17** If the Supplier becomes aware that a piece of Equipment cannot be delivered by the agreed Due Delivery Date or if a piece of Equipment is not actually delivered by its Due Delivery Date, the Supplier shall inform the Buyer of the revised delivery date. Where the Buyer has indicated that the timing of delivery is critical, the Supplier must provide an alternative piece of Equipment of the same specification or one with equivalent specification by the Due Delivery Date until the time as the piece of Equipment is actually delivered.- If the Supplier cannot supply an alternative piece of Equipment by the Due Delivery Date, the Supplier must meet and promptly refund to the Buyer all and any additional costs incurred by the Buyer for provision of a piece of Equipment of the same specification or one with equivalent specification.

5.2.13 ~~5.18~~ To facilitate delivery and, if applicable, installation, the Buyer must provide all requisite materials, facilities, access and suitable working conditions to enable delivery and, if applicable, installation to be carried out safely and efficiently.

6. Title, Possession And Risk

- 6.1 The Equipment is the property of the Owner at all times and the Buyer will not have any right, title or interest in or to the Equipment apart from the right to possess and use the Equipment in accordance with ~~the~~[this](#) Contract.
- 6.2 The Buyer accepts a piece of Equipment by signing a delivery form and the Lease Period for that piece of Equipment starts unless the Buyer notifies the Supplier that the piece of Equipment is not in accordance with the agreed specification or otherwise not in conformity with the requirements of the Equipment Order by telephone and confirmed in writing, email or facsimile within [seventy-two \(72\)](#) hours of delivery.
- 6.3 Once the Buyer notifies the Supplier of non-acceptance, the Parties will agree a course of action to take.
- 6.4 Except where non-acceptance is due to default of the Buyer, in the event of non-acceptance the Supplier will, at its own expense make an equivalent alternative piece of Equipment available for use by the Buyer until the time that the Supplier actually delivers an acceptable piece of Equipment to the Buyer.- If non-acceptance is due to the default of the Buyer, the Buyer can cancel the part of the Equipment Order relating to that piece of Equipment but must pay reasonable cancellation charges to the Supplier.
- 6.5 From the time of acceptance of a piece of Equipment, the Buyer bears the risk of loss or damage to the Equipment however caused and whether insured or not, provided that the Buyer does not bear the risk of loss or damage:
 - 6.5.1 caused by the negligence of the Supplier, its Subcontractors or its agents; or
 - 6.5.2 while the Supplier has possession of the Equipment, including for any maintenance.
- 6.6 The Supplier must give, and must make sure that the Owner gives, the Buyer quiet possession of the Equipment and the Supplier warrants that the Buyer can peaceably hold the Equipment throughout the Lease Period free of any interference from the Supplier, the Owner or any person acting through the Supplier.

7. Supplier's Obligations

7.1 Warranty

7.1.1 ~~7.1~~ The Supplier warrants that the Equipment substantially conforms to its specification (as made available by the Supplier), be of satisfactory quality and fit for any purpose held out by the Supplier.

7.1.2 ~~7.2~~ The Supplier must use all reasonable endeavours to remedy, free of charge, any material defect in the Equipment which manifests itself within ~~[twelve (12)]~~ Months from the Actual Delivery Date, provided that:

- (a) ~~7.2.1~~ the Buyer notifies the Supplier of any defect in writing within ~~[ten (10)]~~ Working Days of the defect occurring ~~[or of becoming aware of the defect]~~;
- (b) ~~7.2.2~~ the Buyer permits the Supplier to make a full examination of the alleged defect;
- (c) ~~7.2.3~~ the defect did not materialise as a result of misuse, neglect, alteration, mishandling or unauthorised manipulation by any person other than the Supplier's authorised personnel;
- (d) ~~7.2.4~~ the defect did not arise out of any information, design or any other assistance supplied or furnished by the Buyer or on its behalf; and
- (e) ~~7.2.5~~ the defect is directly attributable to defective material, workmanship or design.

7.1.3 ~~7.3~~ To the extent that the Equipment comprises or contains equipment or components which were not manufactured or produced by the Supplier, the Buyer is only entitled to any warranty or other benefit that the Supplier has received from the manufacturer.

7.1.4 ~~7.4~~ The Supplier must transfer to the Buyer, so far as is possible, the benefits of any manufacturers' warranties relating to the fitness and performance of the Equipment.

7.1.5 ~~7.5~~ If the Supplier does not remedy any material defect in the Equipment in accordance with Paragraph ~~7.2~~7.1.2, the Supplier must, at the Buyer's request, accept the return of part or all of the Equipment and make an appropriate reduction to the Rentals payable during the remaining term of the agreement and, if relevant, return any Deposit (or any part of it).

7.2 **Maintenance**

7.2.1 ~~7.6~~ Where the Buyer selects the maintenance option in the Equipment Order, the Supplier is responsible for the costs of:

- (a) ~~7.6.1~~ normal routine maintenance in accordance with manufacturers' maintenance recommendations as amended from time to time; and
- (b) ~~7.6.2~~ any Equipment Specific Maintenance, provided that the costs have been duly authorised by the Supplier and a service outlet approved by the Supplier carries out the maintenance.

7.2.2 ~~7.7~~ If the Supplier replaces any components which wear out due to fair wear and tear, the replacement component must be new and of the same or equivalent specification.

7.2.3 ~~7.8~~ If the Parties agree that the Buyer will pay any additional maintenance or repair costs, the Supplier must advise the Buyer of the costs as soon as practicable which must then be subject to approval in writing by the Buyer and the Supplier must submit an invoice to the Buyer within ~~[twenty-one (21)]~~ days of the cost being incurred.

7.3 **Indemnity**

~~7.9~~ The Supplier indemnifies the Buyer against all reasonable Losses incurred whilst the Equipment is unavailable for use by the Buyer due a Default or due to the negligence of the Supplier, its servants or agents.

7.4 **Equipment Collection**

7.4.1 ~~7.10~~ At the Supplier's cost, the Supplier must collect the Equipment from the agreed collection point at the expiry or termination of the Lease Period within ~~[five (5)]~~ Working Days after the expiry or termination of the Lease Period.

7.4.2 ~~7.11~~ The Supplier must agree a note of the condition of the Equipment with the authorised representative of the Buyer at the time of collection and state the condition and mileage on an inspection form.

7.4.3 ~~7.12~~ If Supplier does not collect the Equipment at the agreed time and collection point, the Supplier indemnifies the Buyer against all Losses due to the failure to collect the Equipment as agreed.

7.5 **Relief Equipment**

7.5.1 ~~7.13~~ If, whilst in the United Kingdom, a piece of Equipment becomes not fit for any of the purposes for which Equipment of its type is commonly used and the Equipment Order states that the Buyer requires relief Equipment, the Supplier must make relief Equipment available for the Buyer's use within the conditions specified in ~~the~~ [this](#) Contract for a period up to ~~[twenty-eight (28)]~~ days for any one event.

7.5.2 ~~7.14~~ The Supplier must provide relief Equipment that is, where reasonably possible, a comparable model to the piece of Equipment which has become unfit for purpose.

7.5.3 ~~7.15~~ The Buyer must return the relief Equipment as directed by the Supplier within ~~[two (2)]~~ Working Days of being informed that the original Equipment is fit for all of the purposes for which Equipment of its type is commonly used.

7.5.4 ~~7.16~~ The Buyer must use and insure the relief Equipment on the terms specified within this Contract.

7.5.5 ~~7.17~~ Where a piece of Equipment is withdrawn from service under Paragraph ~~7.13~~7.5.1 above, if the Supplier does not provide relief Equipment to the Buyer within ~~[five (5)]~~ Working Days of withdrawal, the Rentals in respect of that piece of Equipment are suspended and do not resume until relief Equipment has been provided or the Equipment has been returned to the Buyer. The suspension of Rentals is calculated on a daily basis.

8. Buyer's Obligations

8.1 Modifications

~~8.1~~ The Buyer must not alter, tamper with or modify any Equipment without the Supplier's written consent, which cannot be unreasonably withheld or delayed.

8.2 Limits of Use

8.2.1 ~~8.2~~ While a piece of Equipment is in its control, the Buyer must:

- (a) ~~8.2.1~~ keep and operate the Equipment in a suitable environment, use it only for the purposes for which it is intended, and operate it in a proper manner by trained competent staff in accordance with any operating instructions provided by the Supplier;
- (b) ~~8.2.2~~ take such steps (including compliance with all safety and usage instructions provided by the Supplier) as may be necessary to make sure, so far as is reasonably practicable, that the Equipment is at all times safe and without risk to health when it is being set, used, cleaned or maintained by a person at work;
- (c) ~~8.2.3~~ not overload the Equipment or use it for sub-hire or reward activities, any use for which it was not intended or any form of sporting competition;
- (d) ~~8.2.4~~ make sure that only persons qualified to do so operate the Equipment and that each operator holds any necessary permits, including a valid operator's licence or a valid driving licence where appropriate;
- (e) ~~8.2.5~~ not without the prior written consent of the Supplier, attach the Equipment to any land or building so as to cause the Equipment to become a permanent or immovable fixture on the land or building. If the Equipment does become affixed to any land or building then the Equipment must be capable of being removed without material injury to the land or building and the Buyer must repair and make good any damage caused by the affixation or removal of the Equipment from any land or building;
- (f) ~~8.2.6~~ not do or allow to be done anything which will or might jeopardise the right, title and/or interest of the Owner or the

Supplier in the Equipment and, where the Equipment has become affixed to any land or building, the Buyer must take use reasonable endeavours to ensure that the Supplier can enter the land or building and recover the Equipment both during the Lease Period and for a reasonable period after the Lease Period, including by procuring from any person having an interest in the land or building, a waiver in writing and in favour of the Supplier of any rights the person may have or acquire in the Equipment and a right for the Supplier to enter onto the land or building to remove the Equipment;

(g) ~~8.2.7~~ not allow the Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Equipment is confiscated, seized or taken, the Buyer must notify the Supplier and the Buyer must at its sole expense use its best endeavours to procure an immediate release of the Equipment;

(h) ~~8.2.8~~ not do or allow anything to be done which could invalidate the insurances referred to in Paragraph ~~8.9~~[8.3.1](#); and

(i) ~~8.2.9~~ not use the Equipment for any unlawful purpose.

8.2.2 ~~8.3~~ The Buyer must make sure that at all times the Equipment is identifiable as being the Owner's property and wherever possible must make sure that a visible sign is attached to the Equipment labelling it as the Owner's property.

8.2.3 ~~8.4~~ The Buyer must not sell or offer to sell the Equipment and can only part with possession or control of the Equipment to an authorised user in the employment of the Buyer.

8.2.4 ~~8.5~~ The Buyer must not allow to exist any lien nor assign mortgage pledge or otherwise deal with the Equipment in a manner inconsistent with either the Supplier's interest or the Owner's interest in the Equipment.

8.2.5 ~~8.6~~ The Buyer must keep the Supplier fully informed of all material matters relating to the Equipment.

8.2.6 ~~8.7~~ The Buyer must at all times keep the Equipment in the possession or control of the Buyer and keep the Supplier informed of its location.

8.2.7 ~~8.8~~ The Buyer must allow the Supplier or its duly authorised representative to inspect the Equipment at all reasonable times and, to enable the Supplier to do so, the Buyer must allow the Supplier entry to the Delivery Place or any premises at which the Equipment may be located, and must grant reasonable access and facilities for such inspection.

8.3 Insurance

~~8.9~~ The Buyer must (unless self-insuring):

8.3.1 ~~8.9.1~~ insure the Equipment from the Actual Delivery Date and keep the Equipment insured during the Lease Period and until the agreed date of collection by the Supplier, or its nominated agent to the full replacement value of the Equipment under a fully comprehensive policy of insurance in the name of the Buyer bearing endorsements recording the interest of the Supplier and any other persons the Supplier nominates as loss payee. The insurance policy referred to above may be subject to such uninsured amount ("**Excess**") as may be applicable from time to time and the Buyer indemnifies the Supplier against any Losses with the Excess;

8.3.2 ~~8.9.2~~ punctually pay all premiums due under the insurance policy and otherwise comply with all the terms and conditions thereof and produce to the Supplier on demand the policy, evidence of the adequacy of the insurance and evidence that all premiums have been duly paid. If the Buyer does not pay any premium the Supplier can do so and the Buyer must reimburse the Supplier;

8.3.3 ~~8.9.3~~ apply all money received in respect of such insurances in the repairing of damage to or in restoring or replacing the Equipment; and

8.3.4 ~~8.9.4~~ on termination of the lease of a piece of Equipment for Total Loss, pay the Termination Sum together with all other sums due on termination. If the Buyer pays the Supplier all amounts due on termination for Total Loss the Supplier must pay to the Buyer a refund of Rentals of an amount equal to any insurance proceeds the Supplier receives.

8.4 Maintenance

8.4.1 ~~8.10~~ The Buyer must ensure that at all times the Equipment is maintained and operated in accordance with the manufacturer's recommendations and warranty stipulations and that the Equipment is kept clean and in a good state of repair.

8.4.2 ~~8.11~~ The Buyer must maintain operating and maintenance records of the Equipment and make copies of those records readily available to the Supplier, together with any additional information relating to the Equipment as the Supplier may reasonably require.

8.4.3 ~~8.12~~ If any piece of Equipment is involved in an accident which is not a Total Loss the Buyer must have repairs carried out promptly at the Buyer's own expense by either a retailer holding the franchise for the Equipment or an accredited insurance repair specialist approved by the Supplier. The Buyer is responsible for ensuring that those repairs are properly carried out.

8.5 Fines and Penalties

8.13 The Buyer is liable for all fines, fees or penalties incurred by any operator of a piece of Equipment provided under ~~the~~[this](#) Contract. The Supplier must in all cases send to the Buyer any notice or other communication the Supplier receives in respect of fines, fees or penalties.

8.6 Taking Overseas

8.6.1 **8.14** The Buyer must not take or allow any Equipment to be taken out of the United Kingdom without the previous written consent of the Supplier, which cannot be unreasonably withheld or delayed.

8.6.2 **8.15** If the Supplier grants consent the Buyer must pay a repatriation insurance premium to an association approved by the Supplier to make sure that the Equipment can, if necessary, be returned to the United Kingdom without cost to the Supplier.

8.6.3 **8.16** The Buyer must make sure that any Equipment is not taken outside of the United Kingdom for a period of more than **[twenty-eight (28)]** days without the previous written consent of the Supplier which cannot be unreasonably withheld or delayed.

8.7 Actions upon Termination of Lease or Expiry of Lease Period

8.17 On expiry of the Lease Period or in the event of early termination of the lease in respect of any Equipment the Buyer must:

8.7.1 ~~8.17.1~~ make the Equipment available for collection by the Supplier on the date assigned for collection. The Supplier will be bound by all obligations under this Contract until the time when the Supplier actually collects the Equipment which the Supplier shall do promptly;

8.7.2 ~~8.17.2~~ complete an inspection form with the Supplier on the Return Date and ensure that the Equipment is returned and that the Equipment is in a condition consistent with its age and mileage making due allowance for fair wear and tear;

8.7.3 ~~8.17.3~~ remove all personal effects and any other items belonging to the Buyer;

8.7.4 ~~8.17.4~~ if the Supplier notifies the Buyer that the Equipment is not in the condition required under Paragraph ~~8.17.2~~[8.7.2](#), pay to the Supplier the amount that the Buyer and the Supplier agree as the cost of rectification. In the event of any dispute regarding the condition of the Equipment, an independent assessment must be carried out by a properly qualified and experienced consultant appointed by the Supplier and the Buyer. Any consultant must act as an expert and not as an arbitrator and their decision is final;

8.7.5 ~~8.17.5~~ in the event of a dispute the Equipment or other form of evidence acceptable to the Buyer must be held by the Supplier until an independent assessment has been made in accordance with Paragraph ~~8.17.4~~[8.7.4](#) above. The costs of the independent

consultant must be borne equally between the Buyer and the Supplier provided that both Parties act reasonably at all times during the dispute; and

8.7.6 ~~8.17.6~~ in the event of damage to any Equipment the Supplier must forward an invoice to the Buyer within **[twenty-one (21)]** days following the Return Date. In the case of dispute the Buyer will notify the Supplier of what is in dispute within **[twenty-one (21)]** days of receipt of invoice or pay the invoice in accordance with the payment terms. Any such dispute must be resolved in accordance with Clause 39 of the Core Terms (Resolving disputes).

9. Purchase Option

- 9.1 Subject to Paragraph 9.2, the Supplier must make sure that the Buyer has the option, exercisable by not less than **[twenty (20)]** Working Days' written notice to the Supplier, to purchase the Equipment from the Owner on the last Working Day of the Lease Period at the Purchase Option Price.
- 9.2 The Buyer can only exercise the Purchase Option if the Buyer has paid in full all amounts due to the Supplier under ~~the~~[this](#) Contract up to the date of exercise of the Purchase Option.
- 9.3 On completion of the purchase of the Equipment under this Paragraph 9, the title to the Equipment as the Owner had on the Actual Delivery Date will transfer to the Buyer. The Equipment will transfer to the Buyer in the condition and at the location in which it is found on the date of transfer.

10. Termination Of A Lease

- 10.1 Without affecting any other right or remedy available to them, the Supplier can terminate the hire of any piece of Equipment with immediate effect by giving written notice to the Buyer if:
 - 10.1.1 the Buyer fails to pay any amount due under this Contract on the due date for payment and remains in Default not less than **[forty (40)]** Working Days after being notified in writing to make such payment;
 - 10.1.2 there is a material default of any other term of these Lease Terms by the Buyer which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of **[thirty (30)]** Working Days after being notified in writing to do so; or
 - 10.1.3 there is a consistent repeated failure by the Buyer to comply with any of the terms of ~~the~~[this](#) Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with them having the intention or ability to give effect to the terms of ~~the~~[this](#) Contract.
- 10.2 The hire of a piece of Equipment terminates automatically if a Total Loss occurs in relation to the Equipment.
- 10.3 At any time, the Buyer can terminate the hire of any piece of Equipment by giving **[ten (10)]** days' written notice to the Supplier.

11. Consequences Of Expiry Or Termination

- 11.1 Where the lease of any piece of Equipment is terminated for any reason, the Supplier's consent to the Buyer's possession of the Equipment will terminate and the Supplier can, by its authorised representatives, without notice and at the Buyer's expense, retake possession of the Equipment and for this purpose may enter the Delivery Place or any premises at which the Equipment is located.
- 11.2 Where Paragraph 10 applies, the standard early termination charges apply and the Supplier must invoice the Buyer as appropriate within **[twenty one (21)]** days following the termination.
- 11.3 The following table indicates the number of Month's rental that the Supplier can invoice to the Buyer as a result of the lease of a piece of Equipment being terminated early based on the length of the Equipment lease and at which point during the Lease Period the lease of the Equipment is early terminated.

YEAR OF TERMINATION	SCHEDULED LEASE PERIOD			
	2 YEARS	3 YEARS	4 YEARS	5 YEARS 5 YEARS
YEAR 1	2 months	5 months	6 months	7 months
YEAR 2	1 month	3 months	4 months	5 months
YEAR 3		1 month	2 months	3 months
YEAR 4			1 month	2 months
YEAR 5				1 month

- 11.4 ~~11.3~~ Where Paragraph 10 applies or where the lease of a piece of Equipment is terminated for any other reason (including Total Loss but excluding termination pursuant to Clause 14 of the Core Terms) the Buyer must, within **[thirty (30)]** days of the termination pay the Supplier the Termination Sum by way of agreed liquidated damages.
- 11.5 ~~11.4~~ The Supplier agrees that any payments made pursuant to Paragraphs 11.2 or ~~11.3~~11.4 above is the Suppliers sole and exclusive remedy in respect of the termination which resulted in the payment of money as provided for in those Paragraphs.
- 11.6 ~~11.5~~ Where the Buyer terminates ~~the~~this Contract under Clause 14 of the Core Terms and then makes other arrangements for the supply of the Equipment, the Buyer can recover the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Buyer from the Supplier. The Buyer must use reasonable endeavours to

~~[Subject to Contract]~~

Schedule 35 (Lease Terms), [Crown Copyright 2023](#), ~~[Subject to Contract]~~

~~Crown Copyright 2022~~

mitigate any additional expenditure. Where ~~the~~[this](#) Contract is terminated under Clause 14 of the Core Terms, the Buyer will not make any further payments to the Supplier until the Buyer has established the final cost of making those other arrangements.

12. The Owner

~~12.1~~ If the Owner and the Supplier are not the same person, the Owner can enforce:

[12.1](#) ~~12.1.1~~ Paragraph 6.1; and

[12.2](#) ~~12.1.2~~ each of the following Paragraphs of the Lease Terms as if it was the Supplier:

[12.2.1](#) ~~a)~~ Paragraph ~~7.15~~[7.5.3](#);

[12.2.2](#) ~~b)~~ Paragraph ~~7.16~~[7.5.4](#);

[12.2.3](#) ~~c)~~ Paragraph 8;

[12.2.4](#) ~~d)~~ Paragraph 10.1.2; and

[12.2.5](#) ~~e)~~ Paragraph 11.1.

[12.3](#) ~~12.2~~

Annex A

Schedule 35 (Lease Terms) – Equipment Order Form Template

[Buyer guidance: This Equipment Order Form, when completed and executed by both Parties, forms an Equipment Order. An Equipment Order can be completed and executed using an equivalent document or available electronic purchase order system. If an electronic purchasing system is used instead of signing as a hard-copy, the text below must be copied into the electronic order form]

ORDER REFERENCE: **[Insert Buyer's Equipment Order number]**

DATE OF ORDER: **[Insert Date the order is placed]**

THE BUYER: **[Insert Buyer's name]**

BUYER CONTACT **[Insert business address and contact number]**

INVOICE CONTACT **[Insert business address for equipment invoicing]**

THE SUPPLIER: **[Insert name of Supplier]**

SUPPLIER ADDRESS: **[Insert registered address]**

SUPPLIER ACCOUNT
MANAGER: **Insert registered address]**

THE DELIVERABLES

[Buyer guidance: Insert the details for the Equipment and/or services which are the subject of ~~the~~ this Contract. For example:

Equipment: **[Insert Description of Equipment]**

Quantity: **[Insert Number of items]**

Owner: **[Insert Name of the owner of the Equipment]**

Services: **[Insert Description of any additional services]**

Delivery Place: **[Insert all addresses where the Equipment is to be delivered and/or the services are to be performed]**

Time and Date of Delivery **[Insert the Due Delivery Date]**

LEASE PERIOD

The Lease Period shall be the period of **[Insert[] months / quarters / years** from the Actual Delivery Date until the Return Date which is **[Insert[] months / quarters / years** after the Actual Delivery Date.

[Buyer guidance: Extension periods are agreed in accordance with Paragraph 6.5 of the Lease Terms]

PRICE AND PAYMENT

Deposit payable by the Buyer **[Insert Deposit payable (including any applicable discount but excluding VAT)]**

Rentals payable by the Buyer **[Insert Rentals payable (including any applicable discount but excluding VAT)]**

[Buyer guidance: where the Buyer requests and the Supplier provides the requested services then the Buyer shall pay the corresponding charges]

Additional Charges for services **[Insert additional charges payable by the Buyer (including any applicable discount but excluding VAT):]**

Purchase Option Price **[Insert the Purchase Option Price (excluding VAT)]**

Payment Method **[Insert payment method(s) and necessary details]**

Invoicing and Payment

The Supplier shall issue invoices **[Delete monthly]/[quarterly]** and the Buyer shall pay the Supplier within thirty (30) days of receipt of a valid invoice, submitted in accordance with this Equipment Order Form and the provisions of ~~the~~[this](#) Contract.

Termination Rental Charges

The termination rental charge shall be calculated as follows:

SPECIAL TERMS

[Buyer guidance: specify whether any clauses apply to this Equipment Order in addition to the Lease Terms that are needed.]

Special Term 1

Special Term 2

~~[Subject to Contract]~~
Schedule 35 (Lease Terms), [Crown Copyright 2023, \[Subject to Contract\]](#)
~~Crown Copyright 2022~~

BY SIGNING AND RETURNING THIS ORDER THE SUPPLIER AGREES that they have read the Lease Terms and by signing below agree to be bound by the terms.

For and on behalf of the Buyer:

Name and Title	
Signature	
Date	

For and on behalf of the Supplier:

Name and Title	
Signature	
Date	

Schedule 36 ~~Schedule 36~~ (Intellectual Property Rights)

[Guidance: Part A of this Schedule should be used (and Part B should be deleted and marked as “Not Used”) where ICT Services do not form any part of the Deliverables. This set of clauses does not cover COTS/non-COTS Software and IPRs.

Part B of this Schedule should be used (and Part A should be deleted and marked as “Not Used”) where ICT Services form any part of the Deliverables. This set of clauses covers COTS/non-COTS Software and IPRs, and was previously included in Schedule 28 (ICT Services), and should be used when you are otherwise using optional Schedule 28.

Once you choose either Part A or Part B, you will need to decide which drafting options will apply for any IPR developed under this Contract. There are 5 options – see below for these. Once complete, you should only have one set of IPR clauses]

<u>Part A: Intellectual Property Rights (no ICT Services)</u>	<u>1</u>
<u>Option 1</u>	<u>1</u>
<u>1. General Provisions and Ownership of IPR</u>	<u>1</u>
<u>2. Licences in respect of Supplier Existing IPR</u>	<u>2</u>
<u>3. Licences granted by the Buyer</u>	<u>4</u>
<u>4. Licences in respect of Third-party IPR</u>	<u>5</u>
<u>5. Open Licence Publication</u>	<u>6</u>
<u>6. Patents</u>	<u>7</u>
<u>Option 2</u>	<u>8</u>
<u>11. General Provisions and Ownership of IPR</u>	<u>8</u>
<u>12. Licences in respect of Supplier Existing IPR</u>	<u>9</u>
<u>13. Licences granted by the Buyer</u>	<u>11</u>
<u>14. Buyer approval for Supplier to exploit New IPR and Buyer Existing IPR</u>	<u>12</u>
<u>15. Provision of information on New IPR</u>	<u>13</u>
<u>16. Licences in respect of Third-party IPR</u>	<u>13</u>
<u>17. Patents</u>	<u>14</u>
<u>Option 3</u>	<u>15</u>
<u>21. General Provisions and Ownership of IPR</u>	<u>15</u>
<u>22. Licences in respect of New IPR and Supplier Existing IPR</u>	<u>16</u>

<u>23.</u>	<u>Buyer approval for Supplier to exploit Buyer Existing IPR</u>	<u>18</u>
<u>24.</u>	<u>Licences granted by the Buyer</u>	<u>19</u>
<u>25.</u>	<u>Provision of information on New IPR</u>	<u>20</u>
<u>26.</u>	<u>Licences in respect of Third-party IPR</u>	<u>20</u>
<u>27.</u>	<u>Patents</u>	<u>21</u>
<u>Option 4</u>		<u>22</u>
<u>31.</u>	<u>General Provisions and Ownership of IPR</u>	<u>22</u>
<u>32.</u>	<u>Licences in respect of New IPR and Supplier Existing IPR</u>	<u>23</u>
<u>33.</u>	<u>Buyer approval for Supplier to exploit Buyer Existing IPR</u>	<u>25</u>
<u>34.</u>	<u>Licences granted by the Buyer</u>	<u>26</u>
<u>35.</u>	<u>Provision of information on New IPR</u>	<u>27</u>
<u>36.</u>	<u>Licences in respect of Third-party IPR</u>	<u>27</u>
<u>37.</u>	<u>Patents</u>	<u>28</u>
<u>Option 5</u>		<u>29</u>
<u>41.</u>	<u>Royalties</u>	<u>29</u>
<u>42.</u>	<u>Clawback</u>	<u>32</u>
<u>Part B: Intellectual Property Rights (ICT Services)</u>		<u>33</u>
<u>Option 1</u>		<u>34</u>
<u>1.</u>	<u>Intellectual Property Rights – General Provisions</u>	<u>34</u>
<u>2.</u>	<u>Ownership and delivery of IPR created under this Contract</u>	<u>35</u>
<u>3.</u>	<u>Use of Supplier Existing IPRs and Third Party IPRs</u>	<u>36</u>
<u>4.</u>	<u>Licences in respect of Supplier Existing IPR that is not COTS Software</u>	<u>37</u>
<u>5.</u>	<u>Licences granted by the Buyer</u>	<u>39</u>
<u>6.</u>	<u>Open Licence Publication</u>	<u>40</u>
<u>7.</u>	<u>Patents</u>	<u>42</u>
<u>Option 2</u>		<u>43</u>
<u>10.</u>	<u>Intellectual Property Rights – General Provisions</u>	<u>43</u>
<u>11.</u>	<u>Ownership and delivery of IPR created under this Contract</u>	<u>44</u>
<u>12.</u>	<u>Use of Supplier Existing IPRs and Third Party IPRs</u>	<u>45</u>
<u>13.</u>	<u>Licences in respect of Supplier Existing IPR that is not COTS Software</u>	<u>46</u>
<u>14.</u>	<u>Licences granted by the Buyer</u>	<u>48</u>
<u>15.</u>	<u>Buyer approval for Supplier to exploit New IPR</u>	<u>50</u>

<u>16.</u>	<u>Provision of information on New IPR</u>	<u>52</u>
<u>17.</u>	<u>Patents</u>	<u>52</u>
<u>Option 3</u>		<u>53</u>
<u>20.</u>	<u>Intellectual Property Rights – General Provisions</u>	<u>53</u>
<u>21.</u>	<u>Ownership and delivery of IPR created under this Contract</u>	<u>54</u>
<u>22.</u>	<u>Licence of New IPR and Specially Written Software</u>	<u>54</u>
<u>23.</u>	<u>Use of Supplier Existing IPRs and Third Party IPRs</u>	<u>56</u>
<u>24.</u>	<u>Licences in respect of Supplier Existing IPR that is not COTS Software</u>	<u>58</u>
<u>25.</u>	<u>Licences to COTS software</u>	<u>60</u>
<u>26.</u>	<u>Licences granted by the Buyer</u>	<u>60</u>
<u>27.</u>	<u>Buyer approval for Supplier to exploit Buyer Existing IPR</u>	<u>61</u>
<u>28.</u>	<u>Provision of information on New IPR</u>	<u>61</u>
<u>29.</u>	<u>Patents</u>	<u>62</u>
<u>Option 4</u>		<u>63</u>
<u>30.</u>	<u>Intellectual Property Rights – General Provisions</u>	<u>63</u>
<u>31.</u>	<u>Ownership and delivery of IPR created under this Contract</u>	<u>64</u>
<u>32.</u>	<u>Licence of New IPR and Specially Written Software</u>	<u>64</u>
<u>33.</u>	<u>Use of Supplier Existing IPRs and Third Party IPRs</u>	<u>66</u>
<u>34.</u>	<u>Licences in respect of Supplier Existing IPR that is not COTS Software</u>	<u>68</u>
<u>35.</u>	<u>Licences to COTS software</u>	<u>70</u>
<u>36.</u>	<u>Licences granted by the Buyer</u>	<u>70</u>
<u>37.</u>	<u>Buyer approval for Supplier to exploit Buyer Existing IPR</u>	<u>71</u>
<u>38.</u>	<u>Provision of information on New IPR</u>	<u>71</u>
<u>39.</u>	<u>Patents</u>	<u>72</u>
<u>Option 5</u>		<u>73</u>
<u>40.</u>	<u>Royalties</u>	<u>73</u>
<u>41.</u>	<u>Clawback</u>	<u>76</u>

[Part A: Intellectual Property Rights – No ICT Services]

[Guidance note: this Part A of the Schedule on Intellectual Property Rights (IPRs) ~~can~~should be amended depending on how you need to arrange ownership and ~~licencing~~licensing of all New IPR created for or pursuant to the contract. There are ~~now~~5 suggested options available.

- **Option 1: Buyer owns all New IPR with limited Supplier rights to all New IPR in order to deliver ~~the~~this Contract. ~~This was the option available under the previous version of the Mid-tier Contract.~~**

~~The new options are:~~

- **~~Option 2: Buyer ownership of all New IPR with non-exclusive Supplier rights;~~**
- **~~Option 3: Supplier ownership of all New IPR with Buyer rights for the current contract only;~~**
- **~~Option 4: Supplier ownership of New IPR with Buyer rights for the current contract and broader public sector functions; and~~**
- **~~Option 5: Options 2, 3, or 4, plus Buyer rights to a gain/profit share royalties~~**

Once you have chosen an Option (or Options, if you are using Option 5 as a 'bolt on' to Options 2, 3, or 4), you should delete the unused options.

Option 1 should be considered for use in situations where the Buyer should retain ownership of any New IPR. In this situation, the Buyer will not look to publish the New IPR under Open Licence.

Option 2 should be considered for use in situations where the Buyer should retain ownership of any New IPR but where the Supplier should be able to use any New IPR developed, subject to Buyer approval. In this situation, the Buyer will not look to publish the New IPR under Open Licence.

Option 3 should be considered for use where (a) there is no clear benefit in the Buyer owning the New IPR, or (b) where any New IPR created cannot easily be separated from the ~~Supplier's~~Supplier Existing IPR (e.g. Software As A Service (SAAS)), but where a licence is only needed for the current contracted ~~service (and future replacement of that service)~~Deliverable and the IPR in question will not be needed for other services.

Option 4 is similar to Option 3, except it should be used where the licence to the Buyer for the IPR in question should extend to cover other contracts and services, which may include contracts and services not yet awarded, and broader public sector functions.

Option 5 should be considered if a Buyer has invested significant resource or funding in the development of the project and intends to seek a return on that investment. Includes a right for the Buyer to request ownership of unexploited IPR after 3 years (except when used with Option 2).

Please refer to ~~section 2.7 of the Model Services Contract~~the Mid-Tier Guidance published on Gov.uk document for further detail on how these options are intended to operate. ~~Please note, clause references in that guidance may differ in the Mid-Tier.~~

When publishing as open ~~source~~licence, Buyers should be mindful that the terms of any input licence (that is the open source licence for any open source IP which has been used to create the New IPR) aligns with the 'output licence'

(that is, the licence under which the Buyer will publish the New IPR as open source licence).

Carefully check cross-references as these may need to be updated when unused clauses are deleted

Part A: Intellectual Property Rights (no ICT Services)

[Guidance note: for Option 1: Buyer owns all New IPR, with limited Supplier rights to New IPR in order to deliver ~~the~~this Contract, please include the following drafting:]

Option 1

1. ~~Intellectual Property Rights~~General Provisions and Ownership of IPR

- 1.1. Any New IPR created under this Contract is owned by the Buyer.
- 1.2. ~~1.1.~~ Each Party keeps ownership of its own Existing IPR.
- 1.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 1.1 and 1.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.4. —Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under ~~the~~this Contract or otherwise agreed in writing.
- 1.5. ~~1.2.~~ Except as expressly granted elsewhere under ~~the~~this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 1.6. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.
- 1.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 2 and 4, the Supplier must, within 10 Working Days notify the Buyer:
 - 1.7.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
 - 1.7.2. the Deliverables affected.
- 1.8. For the avoidance of doubt:

1.8.1. except as provided for in Paragraphs 2.3.2.2(c)(1) or 4.1.2.2 and 4.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 2 and 4;

1.8.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

1.8.2.1. sections 55 and 56 of the Patents Act 1977;

1.8.2.2. section 12 of the Registered Designs Act 1949; or

1.8.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

2. ~~1.3.~~ **Licences granted by the Supplier:** in respect of Supplier Existing IPR

2.1. ~~1.3.1. Where the Buyer orders Deliverables which contain or rely upon~~ The Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 4.3.2.2.3 in respect of each Deliverable where:

2.1.1. the Supplier Existing IPR is embedded in the Deliverable;

2.1.2. the Supplier Existing IPR is necessary for the Buyer to use the Deliverable for its intended purpose; or

2.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR.

2.2. The categories of Supplier Existing IPR described in Paragraph 2.1 are mutually exclusive.

2.3. ~~1.3.2.~~ The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable that:

2.3.1. in the case of Supplier Existing IPR embedded in a Deliverable:

2.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

2.3.1.2. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR for any of the purposes set out in Paragraph 2.4; and

2.3.1.3. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the

sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

2.3.2. in the case of Supplier Existing IPR that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

2.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs for any of the purposes set out in Paragraph 2.4;

2.3.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

2.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

2.3.2.4. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph.

2.4. For the purposes of Paragraph 2.3, the relevant purposes are:

- 2.4.1. ~~1.3.2.1. to allow the Buyer~~ or any End User to ~~use and~~ receive and use the Deliverables; ~~or~~
- 2.4.2. ~~1.3.2.2. to use, sub-licence or~~ to allow the Buyer to commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items; and
- 2.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

3. ~~1.4.~~ **Licences granted by the Buyer and New IPR**

3.1. The Buyer grants the Supplier a licence to the New IPR and Buyer Existing IPR that:

- 3.1.1. is non-exclusive, royalty-free and non-transferable;
 - 3.1.2. is sub-licensable to any Sub-contractor where:
 - 3.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and
 - 3.1.2.2. the sub-licence does not purport to provide the sub- licensee with any wider rights than those granted to the Supplier under this Paragraph;
 - 3.1.3. ~~1.4.1. Any New IPR created under the Contract is owned by the Buyer. The Buyer gives~~ allows the Supplier ~~a licence and any~~ sub- licensee to use, copy and adapt any Buyer Existing IPR and New IPR for the purpose of fulfilling its obligations ~~during the~~ under this Contract; ~~Period.~~; and
 - ~~1.4.2. Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.~~
 - ~~1.4.3. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule 36 and keep this updated throughout the Contract Period.~~
 - 3.1.4. terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.
- 3.2. When the licence granted under Paragraph 3.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 3.1.2:

3.2.1. immediately cease all use of the Buyer Existing IPR and New IPR (including the Government Data within which the Buyer Existing IPR or New IPR may subsist);

3.2.2. either:

3.2.2.1. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR and the Government Data; or

3.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR and the Government Data (as the case may be); and

3.2.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

4. Licences in respect of Third-party IPR

4.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

4.1.1. Approval is granted by the Buyer; and

4.1.2. one of the following conditions is met:

4.1.2.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 4.2;

4.1.2.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 4.1.2.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer has agreed to accept the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

4.1.2.3. the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

4.2. The Third Party IPR licence referred to in Paragraph 4.1 is the licence set out in Paragraph 2.3 as if:

4.2.1. the term Third Party IPR were substituted for the term Supplier Existing IPR; and

4.2.2. the term third party were substituted for the term Supplier, in each place they occur.

5. ~~4.5.~~ Open Licence Publication

[Guidance note: This Paragraph should be included where the Buyer intends to publish the New IPR as Open Licence under the Government's standard Open Licence. This might be applicable where there is a public interest in collaborating with the private sector and making the New IPR freely available to other suppliers and wider users. This Paragraph will not be appropriate where the Buyer is permitted to and intends to exploit the and New IPR itself on a commercial basis, as it will undermine such commercial exploitation.]

5.1. ~~4.5.1.~~ Subject to Paragraph ~~4.5.4~~5.5, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items.

5.2. The Supplier warrants that:

5.2.1. ~~4.5.2. Subject to Paragraph 1.5.4, the Supplier hereby warrants that~~ the New IPR Items are suitable for release under Open Licence;

5.2.2. in developing the New IPR is has used reasonable endeavours to ensure that:

5.2.2.1. the publication by the Buyer will not:

(a) allow a third party to use them in any way that could reasonably be foreseen to compromise the operation or security of the New IPRs;

(b) cause any harm or damage to any party using them; or

(c) breach the rights of any third party;

5.2.2.2. they do not contain any material which would bring the Buyer into disrepute if published.

5.3. The Supplier must not include in the New IPR provided for publication by Open Licence any Supplier Existing IPRs unless the Supplier consents to:

5.3.1. their publication by the Buyer under Open Licence; and

5.3.2. their subsequent licence and treatment as Open Licence under the terms of the licence chosen by the Buyer.

5.4. ~~1.5.3.~~ The Supplier ~~will~~ **must** supply any or all New IPR Items in a format (whether it is provided in any other format or not) suitable for publication under an Open Licence (~~“the~~ **Open Licence Publication Material**~~”~~) within thirty (30-days) Working Days of written request from the Buyer (~~“~~**Buyer Open Licence Request**~~”~~).

5.5. ~~1.5.4.~~ The Supplier may within fifteen (15-days) Working Days of ~~a~~ Buyer Open Licence Request under Paragraph ~~1.5.3~~5.4 request in writing that the Buyer excludes all or part of:

5.5.1. ~~1.5.4.1.~~ the New IPR Items; or

5.5.2. ~~1.5.4.2.~~ Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph ~~1.5.3~~5.4,

from Open Licence publication.

5.6. The Supplier's request under Paragraph 5.5 must include the Supplier's assessment of the impact the Buyer's agreeing to the request would have on its ability to publish other New IPR Items under an Open Licence.

5.7. ~~1.5.5.~~ Any decision to Approve any such request from the Supplier ~~pursuant to~~ **under** Paragraph ~~1.5.4~~5.5 shall be at the Buyer's sole discretion, not to be unreasonably withheld, or delayed, or ~~conditioned~~ **made subject to unreasonable conditions**.

~~1.5.6. Subject to Clause 15 of the Core Terms, the Buyer will not be liable in the event that any Supplier Existing IPR or Third Party IPR is included in the Open Licence Publication Material published by the Buyer.~~

6. Patents

6.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

[Guidance note: for Option 2: Buyer owns all New IPR with non-exclusive Supplier rights, please include the following drafting:]

Option 2

11. General Provisions and Ownership of IPR

11.1. Any New IPR created under this Contract is owned by the Buyer.

11.2. ~~4.6. Third~~ Each Party keeps ownership of its own Existing IPR.

~~1.6.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 1.6.3. If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph 1.6.3 in respect of any Third Party IPR the Supplier shall:~~

11.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 11.1 and 11.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).

11.4. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.

11.5. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

11.6. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.

11.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 12 and 16, the Supplier must, within 10 Working Days notify the Buyer:

11.7.1. ~~4.6.1.1. notify~~ the specific Intellectual Property Rights the Buyer ~~in writing~~ has not received licences to; and

~~1.6.1.2. use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.~~

11.7.2. the Deliverables affected.

11.8. For the avoidance of doubt:

11.8.1. except as provided for in Paragraphs 12.3.2.2(c)(1) or 16.1.2.2 and 16.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 12 and 16;

11.8.2. ~~1.6.2. In spite of any other provisions of the Contract and for the avoidance of doubt,~~ the award of this Contract ~~by the Buyer and/or~~ the ordering of any ~~Deliverable under it~~ Deliverables does not constitute an authorisation by the Crown under:

11.8.2.1. Sections 55 and 56 of the Patents Act 1977 ~~Section 12 of the Registered Designs Act 1949 or Sections:~~

11.8.2.2. section 12 of the Registered Designs Act 1949; or

11.8.2.3. sections 240 ~~to~~ 243 of the Copyright, Designs and Patents Act 1988.

12. Licences in respect of Supplier Existing IPR

12.1. The Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 12.3 in respect of each Deliverable where:

12.1.1. the Supplier Existing IPR is embedded in the Deliverable;

12.1.2. the Supplier Existing IPR is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 12.4; or

12.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR.

12.2. The categories of Supplier Existing IPR described in Paragraph 12.1 are mutually exclusive.

12.3. ~~1.6.3.~~ The ~~Third Party~~ Supplier Existing IPR Licence granted ~~by the Supplier~~ to the Buyer ~~shall be~~ is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence ~~to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.~~ that:

4.7. Termination of licences

12.3.1. in the case of Supplier Existing IPR embedded in a Deliverable:

12.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

12.3.1.2. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR for any of the purposes set out in Paragraph 12.4; and

12.3.1.3. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

12.3.2. in the case of Supplier Existing IPR that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

12.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs for any of the purposes set out in Paragraph 12.4;

12.3.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

12.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

12.3.2.4.is subject to the restriction that no sub-licence granted to the Supplier Existing IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph.

12.4. For the purposes of Paragraph 12.3, the relevant purposes are:

12.4.1. to allow the Buyer or any End User to receive and use the Deliverables;

12.4.2. to allow the Buyer to commercially exploit the New IPR and New IPR Items; and

12.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

13. Licences granted by the Buyer

13.1. ~~1.7.1.~~ The Buyer grants the Supplier a licence to the New IPR and Buyer Existing IPR ~~Licence granted pursuant to Paragraph 1.3 and the Third Party IPR Licence granted pursuant to Paragraph 1.6 shall survive the Expiry Date and termination of this Contract.~~ that either:

~~1.7.2. The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.~~

13.1.1. where terms are agreed by the Buyer and Supplier under Paragraph 14, is on those terms; or

13.1.2. where terms are not agreed by the Buyer and Supplier under Paragraph 14:

13.1.2.1. is non-exclusive, royalty-free and non-transferable;

13.1.2.2. is sub-licensable to any Sub-contractor where:

- (a) the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and
- (b) the sub-licence does not purport to provide the sub- licensee with any wider rights than those granted to the Supplier under this Paragraph; and

13.1.2.3. allows the Supplier and any sub- licensee to use, copy and adapt any Buyer Existing IPR for the purpose of fulfilling its obligations under this Contract; and

13.1.2.4. terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.

13.2. ~~1.7.3. Any~~ When the licence granted to under Paragraph 13.1 terminates, the Supplier pursuant to must, and must ensure that each Sub-contractor granted a sub- licence under Paragraph 1.4 (Licence granted by the Buyer) shall terminate automatically on the Expiry Date and the Supplier shall 13.1.2:

13.2.1. ~~1.7.3.1.~~ immediately cease all use of the Buyer Existing IPR and New IPR (including the Buyer Government Data within which the Buyer Existing IPR or New IPR may subsist);

13.2.2. either:

13.2.2.1. ~~1.7.3.2.~~ at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR and the Buyer Government Data, provided that; or

13.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR and the Buyer Government Data (as the case may be); and

13.2.3. ~~1.7.3.3.~~ ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR and Buyer Government Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Existing IPR or Buyer Data.

14. Buyer approval for Supplier to exploit New IPR and Buyer Existing IPR

14.1. Before using, copying or adapting any New IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

14.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in that licence.

[Guidance note: where Option 5 is used, replace Paragraphs 14.3, 14.4 and 14.5 with the Paragraphs in Option 5.]

14.3. The Supplier must provide a proposal setting out:

14.3.1. the purpose for which it proposes to use the New IPR;

14.3.2. the activities the Supplier proposes to undertake with or in respect of the New IPR;

14.3.3. any licence the Supplier requests in respect of Buyer Existing IPR; and

14.3.4. such further information as the Buyer may reasonably require to properly consider the proposal.

14.4. The Buyer may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:

14.4.1. the Buyer's reputation; or

14.4.2. the Buyer's interests.

14.5. Where the Buyer has not:

14.5.1. approved or declined proposal; or

14.5.2. required further information,

within 20 Working Days of the later of:

14.5.3. the date the proposal was first provided to the Buyer; or

14.5.4. the date on which further information was provided to the Buyer,

then the proposal is, for the purposes of this Contract, approved.

15. Provision of information on New IPR

15.1. The Buyer may, at any time, require the Supplier to provide information on:

15.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR; and

15.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR.

15.2. The Supplier must provide the information **required by the Buyer**:

15.2.1. within twenty (20) Working Days **of the date of the requirement**; and

15.2.2. in the form and with the content specified by the Buyer.

16. Licences in respect of Third-party IPR

16.1. **The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:**

16.1.1. Approval is granted by the Buyer; and

16.1.2. one of the following conditions is met:

16.1.2.1. **the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 16.2;**

16.1.2.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 16.1.2.1, all the following conditions are met:

(a) the Supplier has notified **the Buyer in writing giving details of:**

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer has agreed to accept the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

16.1.2.3. the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

16.2. The Third Party IPR licence referred to in Paragraph 16.1 is the licence set out in Paragraph 12.3 as if:

16.2.1. the term Third Party IPR were substituted for the term Supplier Existing IPR; and

16.2.2. the term third party were substituted for the term Supplier, in each place they occur.

17. Patents

17.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

Option 3

[Guidance note: for Option 23: ~~Buyer owns~~ Supplier ownership of all New IPR with non-exclusive Supplier Buyer rights for the current contract only, please include the following drafting:]

21.4. Intellectual Property Rights General Provisions and Ownership of IPR

21.1. Any New IPR created under this Contract is owned by the Supplier.

21.2. ~~4.1.~~ Each Party keeps ownership of its own Existing IPR.

21.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 21.1 and 21.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).

21.4. —Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under ~~the~~this Contract or otherwise agreed in writing.

21.5. ~~4.2.~~ Except as expressly granted elsewhere under ~~the~~this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

~~1.3. Licences granted by the Supplier: Supplier Existing IPR~~

~~1.3.1. Where the Buyer orders Deliverables which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 1.3.2.~~

~~1.3.2. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable it:~~

~~1.3.2.1. or any End User to use and receive the Deliverables; or~~

~~1.3.2.2. to use, sub-license or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,~~

~~for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.~~

~~1.4. Licences granted by the Buyer and New IPR~~

~~1.4.1. "Any New IPR created under the Contract is owned by the Buyer. The Buyer gives the Supplier a [insert duration or delete if no duration required] licence to use the Buyer Existing IPR and the New IPR which the Supplier reasonably requires for the purpose of fulfilling its obligations during the Contract Period or using or exploiting the New IPR developed under the Contract, including (but not limited to) the right to grant sub-licences to Subcontractors provided that:~~

~~1.4.1.1. any relevant Subcontractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (Confidentiality) of the Core Terms; and~~

~~1.4.1.2. [Optional] [the Supplier shall not without Approval use the materials licensed under this clause for any other purpose or for the benefit of any person other than the Buyer.]" Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.~~

21.6. ~~1.4.2.~~ Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule ~~36~~ and keep this updated throughout the Contract Period.

21.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 22 and 26, the Supplier must, within 10 Working Days notify the Buyer:

21.7.1. the specific Intellectual Property Rights the Buyer has not received licences to; and

21.7.2. the Deliverables affected.

21.8. For the avoidance of doubt:

21.8.1. except as provided for in Paragraphs 22.2.2.2(c)(1) or 26.1.2.2 and 26.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 22 and 26;

21.8.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

21.8.2.1. Sections 55 and 56 of the Patents Act 1977;

21.8.2.2. section 12 of the Registered Designs Act 1949; or

21.8.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

22. Licences in respect of New IPR and Supplier Existing IPR

22.1. The Supplier grants the Buyer a Supplier New and Existing IPR Licence on the terms set out in Paragraph 22.2.

22.2. The Supplier New and Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

22.2.1. in the case of New IPR and Supplier Existing IPR embedded in a Deliverable:

22.2.1.1. allows the Buyer, any transferee or any sublicensee to use, copy and adapt, the New IPR and Supplier Existing IPR;

22.2.1.2. has no restriction on the identity of any transferee or sublicensee;

22.2.2. in the case of New IPR and Supplier Existing IPR is necessary for the Buyer or any End User to use the Deliverable and:

22.2.2.1. allows the Buyer, any transferee or any sublicensee to use and copy but not disassemble or reverse engineer adapt the relevant New IPR and Supplier Existing IPR;

22.2.2.2. is transferrable to only:

- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
 - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
 - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

22.2.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier), where the Replacement Supplier:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

22.2.3. in the case of New IPR that is used to provide the Deliverable:

22.2.3.1. allows the Buyer, any transferee and any sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant New IPR and Supplier Existing IPRs to the extent necessary for the Buyer, transferee or sublicensee to receive or use the Deliverable;

22.2.3.2. has no restriction on the identity of any transferee or sublicensee.

22.2.4. in the case of Supplier Existing IPR where the Deliverable is a is a customisation or adaptation of Supplier Existing IPR:

22.2.4.1. allows the Buyer, any transferee and any sublicensee to use, copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs to the extent necessary for the Buyer, transferee or sublicensee to receive or use the Deliverable;

22.2.4.2. is transferrable to only:

- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out;
or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
 - (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
 - (2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

22.2.4.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier), where the Replacement Supplier:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential).

22.3. The Supplier New and Existing IPR Licence provided for under Paragraph 22.2 is subject to the restriction that no transfer or sublicense of the Supplier New IPR and Supplier Existing IPR shall purport to grant to the transferee or sub-licensee (as applicable) any wider rights than those granted to the Buyer under this Paragraph.

22.4. Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

22.4.1. the Supplier New and Existing IPR Licence is unaffected; and

22.4.2. any successor body of the Buyer that is a Crown Body shall have the benefit of the Supplier New and Existing IPR Licence.

22.5. The termination or expiry of this Contract does not terminate the Supplier New and Existing IPR Licence.

23. Buyer approval for Supplier to exploit Buyer Existing IPR

23.1. Before using, copying or adapting any Buyer Existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

23.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in the licence.

[Guidance note: where Option 5 is used, replace Paragraphs 23.3, 23.4, 23.5 with the Paragraphs in Option 5.]

23.3. The Supplier must provide a proposal setting out:

23.3.1. the purpose for which it proposes to use the Buyer Existing IPR;

23.3.2. the activities the Supplier proposes to undertake with or in respect of the Buyer Existing IPR;

23.3.3. any licence the Supplier requests in respect of Buyer Existing IPR; and

23.3.4. such further information as the Buyer may reasonably require to properly consider the proposal.

23.4. The Buyer may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:

23.4.1. the Buyer's reputation; or

23.4.2. the Buyer's interests.

23.5. Where the Buyer has not:

23.5.1. approved or declined the proposal; or

23.5.2. required further information,

within 20 Working Days of the later of:

23.5.3. the date the proposal was first provided to the Buyer; or

23.5.4. the date on which further information was provided to the Buyer,

then the proposal is, for the purposes of this Contract, approved.

24. Licences granted by the Buyer

24.1. Subject to Paragraph 23, the Buyer grants the Supplier a licence to the Buyer Existing IPR that is perpetual, non-exclusive, royalty-free and non-transferable;

24.1.1. is sub-licensable to any Sub-contractor where:

24.1.1.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

24.1.1.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;

24.1.2. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

24.1.2.1. fulfilling its obligations under this Contract; and

24.1.2.2. commercially exploit the New IPR.

25. ~~1.5.~~ Third Party Provision of information on New IPR

25.1. The Buyer may, at any time, require the Supplier to provide information on:

25.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR; and

25.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR.

25.2. The Supplier must provide the information required by the Buyer:

25.2.1. within twenty (20) Working Days of the date of the requirement; and

25.2.2. in the form and with the content specified by the Buyer.

26. Licences in respect of Third-party IPR

26.1. ~~1.5.1.~~ The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

26.1.1. -Approval is granted by the Buyer; and ~~it has procured that~~

26.1.2. one of the following conditions is met:

26.1.2.1. ~~the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 1.5.2. ~~If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph 1.5.2 in respect of any Third Party IPR the Supplier shall:~~22.2;~~

26.1.2.2. ~~if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR Licence as set out in Paragraph 26.1.2.1, all the following conditions are met:~~

(a) ~~1.5.1.1. notify~~ the Supplier has notified the Buyer in writing; ~~and~~ giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer has agreed to accept the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

26.1.2.3. ~~1.5.1.2. use the relevant Third Party IPR only if~~ the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

26.2. The Third Party IPR licence referred to in Paragraph 26.1 is the licence set out in Paragraph 22.2 as if:

26.2.1. the term Third Party IPR were substituted for the term New IPR or Supplier Existing IPR; and

26.2.2. the term third party were substituted for the term Supplier, in each place they occur.

27. Patents

27.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable,

royalty-free, worldwide patent licence to use the infringing methods, materials or software.

[Guidance note: for Option 4: Supplier ownership of all IPR with Buyer rights for the current contract and broader public sector functions, please include the following drafting:]

Option 4

31. General Provisions and Ownership of IPR

- 31.1. Any New IPR created under this Contract is owned by the Supplier.
- 31.2. Each Party keeps ownership of its own Existing IPR.
- 31.3. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with Paragraphs 31.1 and 31.2, it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 31.4. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 31.5. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 31.6. Unless otherwise agreed in writing, the Supplier and the Buyer will record any New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.
- 31.7. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 32 and 37, the Supplier must, within 10 Working Days notify the Buyer:
- 31.7.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
- 31.7.2. the Deliverables affected.
- 31.8. For the avoidance of doubt:
- 31.8.1. except as provided for in Paragraphs 32.2.2.2(c)(1) or 37.1.2.2 and 37.1.2.3, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 32 and 37;
- 31.8.2. ~~1.5.2. In spite of any other provisions of the Contract and for the avoidance of doubt,~~ the award of this Contract ~~by the Buyer and/or~~

the ordering of any ~~Deliverable under it~~Deliverables does not constitute an authorisation by the Crown under:

31.8.2.1. ~~Sections 55 and 56 of the Patents Act 1977~~ ~~Section 12 of the Registered Designs Act 1949~~ ~~or Sections~~;

31.8.2.2. section 12 of the Registered Designs Act 1949; or

31.8.2.3. sections 240 ~~to~~ 243 of the Copyright, Designs and Patents Act 1988.

~~1.5.3. The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.~~

~~1.6. Termination of licences~~

~~1.6.1. The Supplier Existing IPR Licence granted pursuant to Paragraph 1.3 and the Third Party IPR Licence granted pursuant to Paragraph 1.5 shall survive the Expiry Date and termination of this Contract.~~

~~1.6.2. The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.~~

~~1.6.3. On expiry of the licence granted to the Supplier pursuant to Paragraph 1.4 (Licence granted by the Buyer) the Supplier shall:~~

~~1.6.3.1. immediately cease all use of the New IPR and Buyer Existing IPR (including the Buyer Data within which the Buyer Existing IPR may subsist);~~

~~1.6.3.2. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the New IPR, Buyer Existing IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the New IPR, the Buyer Existing IPR and the Buyer Data (as the case may be); and~~

~~1.6.3.3. ensure, so far as reasonably practicable, that any new IPR, Buyer Existing IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such New IPR, Buyer Existing IPR or Buyer Data.”~~

~~1.7. Supplier's Exploitation of New IPR~~

~~1.7.1. Notwithstanding the Supplier's ownership of the New IPR or licence which allows it to exploit and commercialise the New IPR:~~

~~1.7.1.1. the Supplier must always offer a price and solution to the Buyer which is in accordance with the Charges and must licence the New IPR and Supplier Existing IPR to the Buyer on equivalent terms as apply under this Contract;~~

32. Licences in respect of New IPR and Supplier Existing IPR

32.1. The Supplier grants the Buyer a Supplier New and Existing IPR Licence on the terms set out in Paragraph 32.2.

32.2. The Supplier New and Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

32.2.1. in the case of New IPR and Supplier Existing IPR embedded in a Deliverable:

32.2.1.1. allows the Buyer, any transferee or any sublicensee to use, copy and adapt the New IPR and Supplier Existing IPR;

32.2.1.2. has no restriction on the identity of any transferee or sublicensee;

32.2.2. in the case of New IPR and Supplier Existing IPR is necessary for the Buyer or any End User to use the Deliverable and:

32.2.2.1. allows the Buyer, any transferee or any sublicensee to use, copy but not adapt, disassemble or reverse engineer the New IPR and Supplier Existing IPR;

32.2.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

32.2.2.3.is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier), where the Replacement Supplier:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

32.2.3.in the case of New IPR that is used to provide the Deliverable:

32.2.3.1.allows the Buyer, any transferee and any sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant New IPR and Supplier Existing IPRs to the extent necessary for the Buyer, transferee or sublicensee to receive or use the Deliverable;

32.2.3.2.has no restriction on the identity of any transferee or sublicensee.

32.2.4.in the case of Supplier Existing IPR where the Deliverable is a is a customisation or adaptation of Supplier Existing IPR:

32.2.4.1.allows the Buyer, any transferee and any sublicensee to use, copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs to the extent necessary for the Buyer, transferee or sublicensee to receive or use the Deliverable;

32.2.4.2.is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

32.2.4.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier), where the Replacement Supplier:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential).

32.3. The Supplier New and Existing IPR Licence provided for under Paragraph 32.2 is subject to the restriction that no transfer or sublicense of the Supplier New and Existing IPR shall purport to grant to the transferee or sub-licensee (as applicable) any wider rights than those granted to the Buyer under this Paragraph.

32.4. Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

32.4.1. the Supplier New and Existing IPR Licence is unaffected; and

32.4.2. any successor body of the Buyer that is a Crown Body shall have the benefit of the Supplier New and Existing IPR Licence.

32.5. The expiry or earlier termination of this Contract does not terminate any Supplier New and Existing IPR Licence.

33. Buyer approval for Supplier to exploit Buyer Existing IPR

33.1. Before using, copying or adapting any Buyer Existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

33.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in the licence.

[Guidance note: where Option 5 is used, replace Paragraphs 33.3, 33.4 and 33.5 with the Paragraphs in Option 5.]

33.3. The Supplier must provide a proposal setting out:

33.3.1. the purpose for which it proposes to use the Buyer Existing IPR;

33.3.2. the activities the Supplier proposes to undertake with or in respect of the Buyer Existing IPR;

33.3.3. any licence the Supplier requests in respect of Buyer Existing IPR; and

33.3.4. such further information as the Buyer may reasonably require to properly consider the proposal.

33.4. The Buyer may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:

33.4.1. the Buyer's reputation; or

33.4.2. the Buyer's interests.

33.5. Where the Buyer has not:

33.5.1. approved or declined the proposal; or

33.5.2. required further information,

within twenty (20) Working Days of the later of:

33.5.3. the date the proposal was first provided to the Buyer; or

33.5.4. the date on which further information was provided to the Buyer,

then the proposal is, for the purposes of this Contract, approved.

34. Licences granted by the Buyer

34.1. Subject to Paragraph 33, the Buyer grants the Supplier a licence to the Buyer Existing IPR that:

34.1.1. is perpetual, non-exclusive, royalty-free and non-transferable;

34.1.2. is sub-licensable to any Sub-contractor where:

34.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

34.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;

34.1.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

34.1.3.1.fulfilling its obligations under this Contract;

34.1.3.2.commercially exploiting the New IPR.

35.Provision of information on New IPR

35.1. The Buyer may, at any time, require the Supplier to provide information on:

35.1.1.the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR; and

35.1.2.the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR.

35.2. The Supplier must provide the information required by the Buyer:

35.2.1.Within twenty (20) Working Days of the date of the requirement; and

35.2.2.in the form and with the content specified by the Buyer.

36.Licences in respect of Third-party IPR

36.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless:

36.1.1.Approval is granted by the Buyer; and

36.1.2.one of the following conditions is met:

36.1.2.1.the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 32.2;

36.1.2.2.if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR Licence as set out in Paragraph 37.1.2.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

- (b) the Buyer has agreed to accept the licence terms of one of those third parties; and
- (c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms; or

36.1.2.3. the Buyer has provided authorisation to the use of the Third Party IPR in writing, with reference to the acts authorised and the specific IPR involved.

36.2. The Third Party IPR licence referred to in Paragraph 37.1 is the licence set out in Paragraph 32.2 as if:

36.2.1. the term Third Party IPR were substituted for the term New IPR or Supplier Existing IPR; and

36.2.2. the term third party were substituted for the term Supplier, in each place they occur.

37. Patents

37.1. Where a patent owned by the Supplier is infringed by the use of the New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

[Guidance note: for Option 5: Options 2, 3, or 4, plus Buyer rights to royalties, please use the appropriate drafting taken from either Options 2, 3 or 4, tailored as appropriate for your agreement, and include the following additional drafting:]

Option 5

41. Royalties

41.1. The Supplier must provide a detailed proposal setting out:

41.1.1. the purpose for which it proposes to use the New IPR and the Buyer Existing IPR;

41.1.2. the activities the Supplier proposes to undertake with or in respect of the New IPR and the Buyer Existing IPR;

41.1.3. its proposed business plan, including:

41.1.3.1. ~~1.7.1.2. where the Supplier proposes to exploit the New IPR, that it provides a detailed proposal of its plans for exploitation of the New IPR and the forecast returns, including (but not limited to) details of the goods and the~~ goods, services or software to be offered by the Supplier ~~which that~~ use or incorporate the New IPR, ~~and the target markets and territory, the estimated level of orders, the marketing strategy~~ Buyer Existing IPR; full

41.1.3.2. the relationship between the New IPR and the Buyer Existing IPR, and any Supplier Existing IPR or Third Party IPR to be incorporated into, or used to provide, those goods, services or software;

41.1.3.3. the target markets for those goods, services or software;

41.1.3.4. the estimated level of orders;

41.1.3.5. its marketing strategy;

41.1.3.6. details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Buyer to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Buyer may reasonably request; and

~~1.7.1.3. where the Supplier proposes to discount the prices offered to the Buyer in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 1.7.1.2 above have been applied to the price for the Deliverables offered to the Buyer and other potential End Users;~~

~~1.7.1.4. The Buyer shall be under no obligation to:~~

~~(a) offer the New IPR (where this is owned by the Buyer) or the Buyer Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or~~

~~1.7.1.5. accept any alternative arrangement proposed by the Supplier under this Clause and the Buyer shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Buyer) or Buyer Existing IPR applies as applies under this Contract. Such agreement does not confer any exclusive right on the Supplier to negotiate with the Buyer in relation to the New IPR (where this is owned by the Buyer), Buyer Existing IPR or any Crown IPR and the Buyer shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other person (except to the extent that the Buyer has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).~~

~~1.7.1.6. The Supplier acknowledges and agrees that the Buyer is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Buyer will need to consider its position and approach on a case by case basis.~~

- 41.1.3.7. the proposed financial benefit to the Buyer;
- 41.1.4. the impact of the proposal on the Services the Supplier provides under this Contract;
- 41.1.5. an analysis of the likely terms, including financial terms, on which the Supplier would be able to obtain access to intellectual property equivalent to the New IPR were it to enter into an arm's length commercial relationship with a third-party;
- 41.1.6. the terms on which the Supplier proposes to licence the Buyer Existing IPR from the Buyer;
- 41.1.7. any proposed Variations to this Contract; and
- 41.1.8. any additional agreement the Supplier proposes that it and the Buyer enter into;
- 41.1.9. any other information the Buyer requires to properly assess the Supplier's proposed; and
- 41.1.10. any other information required by the Buyer.
- 41.2. Where the proposed financial benefit to the Buyer under Paragraph 41.1.3.7 is, in whole or part, a reduction in the Charges under this Contract, the Supplier must set out how it proposes to apply the revenues and profits received to the Charges payable by the Buyer and other End Users.
- 41.3. Where the Supplier's proposal provides for the development of new goods, services or software and those goods, services or software are subsequently purchased by the Buyer (by whatever means), the terms of that purchase must:
- 41.3.1. provide for the licencing of the New IPR to the Buyer on the same terms as in this Contract; and
- 41.3.2. include a price that reflects the Charges.
- 41.4. The Supplier acknowledges that:
- 41.4.1. the Buyer may refuse, or require changes to, the Supplier's proposal in its sole discretion and for any reason; and
- 41.4.2. in considering the Supplier's proposal, the Buyer must comply with Law relating to:
- 41.4.2.1. public procurement; and

41.4.2.2.subsidy control.

41.5. Where the Buyer agrees to the Supplier's proposal, with or without changes, that proposal will not have effect until both Parties have executed:

41.5.1.any additional agreement to give effect to the proposal; and

41.5.2.any consequential Variation to this Contract.

41.6. Any agreement between the Buyer and the Supplier entered into under Paragraph 41.5 must include provisions to the following effect:

41.6.1.the calculation of royalties is based on the following formula:

$$R = NSV \times RR \times P$$

where:

R is the royalty payable on an individual item subject to the agreement;

NSV is the net sales value of the item, that is the price for which the Supplier sold the item to a third party after the deduction of normal trade discounts and excluding VAT or any other tax or duty based directly on the price of the item and payable by the purchaser;

RR is **[insert the royalty payable on the item, expressed as a percentage]**; and

P is the proportion that the New IPR bears to the whole of the item, expressed as a percentage, subject to the following:

41.6.1.1.the proportion that the New IPR bears to the item as a whole is an estimation of the effort required to develop the New IPR compared to the item as a whole;

41.6.1.2.P is 100% where, either:

(a) where the proportion of the New IPR to the item as a whole is 80% or greater; or

(b) it would not be practicable to create or produce the item without the New IPR.

41.6.2.all royalties are paid quarterly on the basis of the total sales of the item in that quarter;

41.6.3.each payment of royalties must be accompanied by a detailed statement showing:

41.6.3.1. the number of items sold in that quarter;

41.6.3.2. their net sales value; and

41.6.3.3. the royalties due to the Buyer;

41.6.4. the Supplier must keep true and accurate records and books of account containing all information and data necessary for the calculation of royalties, including, for the avoidance of doubt, the calculation of the net sales value and the estimation of P in the formula in Paragraph 41.6.1;

41.6.5. the Supplier must make such books and records available for inspection by the Buyer, or the Buyer's representative, whether physically or virtually, at any reasonable time specified by the Buyer.

[Guidance note: if using Option 2, please delete the following drafting, as the Supplier does not own the New IPR under that option]:

42. Clawback

42.1. If, within three (3) years of its creation, the Supplier:

42.1.1. is not commercially exploiting any New IPR;

42.1.2. where the Supplier is not commercially exploiting any New IPR, is not, to the satisfaction of the Buyer, using its best endeavours to do so,

then, on written request from the Buyer:

42.1.2.1. the Supplier must promptly assign to the Buyer the New IPR or any specified New IPR Items; and

42.1.2.2. the licence to Buyer Existing IPR granted under Paragraph 34.1.3.2 terminates either:

(a) on the date specified in the notice; or

(b) where no date is specified in the notice, on the date the notice is received by the Supplier.

42.2. Each Party shall bear its own costs of preparing and executing any such assignment.

Part B: Intellectual Property Rights (ICT Services)

[Part B: Intellectual Property Rights – ICT Services]

[Guidance note: this Part B of the Schedule on Intellectual Property Rights (IPRs) should be amended depending on how you need to arrange ownership and licensing of all New IPR and Specially Written Software ('foreground IPR') created for or pursuant to the contract. There are 5 suggested options available.]

- Option 1: Buyer owns all foreground IPR with limited Supplier rights to all foreground IPR in order to deliver this Contract;
- Option 2: Buyer ownership of all foreground IPR with non-exclusive Supplier rights;
- Option 3: Supplier ownership of all foreground IPR with Buyer rights for the current contract only;
- Option 4: Supplier ownership of foreground IPR with Buyer rights for the current contract and broader public sector functions; and
- Option 5: Options 2, 3, or 4, plus Buyer rights to royalties

Once you have chosen an Option (or Options, if you are using Option 5 as a 'bolt on' to Options 2, 3, or 4), you should delete the unused options.

Option 1 should be considered for use in situations where the Buyer should retain ownership of any foreground IPR. In this situation, the Buyer will not look to publish the foreground IPR under Open Licence.

Option 2 should be considered for use in situations where the Buyer should retain ownership of any foreground IPR but where the Supplier should be able to use any foreground IPR developed, subject to Buyer approval. In this situation, the Buyer will not look to publish the foreground IPR under Open Licence.

Option 3 should be considered for use where (a) there is no clear benefit in the Buyer owning the foreground IPR, or (b) where any foreground IPR created cannot easily be separated from the Supplier Existing IPR (e.g. Software As A Service (SAAS)), but where a licence is only needed for the current contracted Deliverable and the IPR in question will not be needed for other services.

Option 4 is similar to Option 3, except it should be used where the licence to the Buyer for the IPR in question should extend to cover other contracts and services, which may include contracts and services not yet awarded, and broader public sector functions.

Option 5 should be considered if a Buyer has invested significant resource or funding in the development of the project and intends to seek a return on that

investment. Includes a right for the Buyer to request ownership of unexploited IPR after 3 years (except when used with Option 2).

Please refer to the Mid-Tier Guidance document for further detail on how these options are intended to operate.

When publishing as open licence, Buyers should be mindful that the terms of any input licence (that is the open source licence for any open source IP which has been used to create the foreground IPR) aligns with the 'output licence' (that is, the licence under which the Buyer will publish the foreground IPR as open licence).

Carefully check cross-references as these may need to be updated when unused clauses are deleted]

[Guidance note: for Option 3: ~~Supplier ownership of all New IPR with Buyer rights for the current contract only~~1: Buyer owns all New IPR and Specially Written Software, with limited Supplier rights to all New IPR and Specially Written Software in order to deliver this Contract, please include the following drafting:]

Option 1

1. Intellectual Property Rights – General Provisions

- 1.1. Each Party keeps ownership of its own Existing IPR.
- 1.2. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 1.3. —Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under ~~the~~this Contract or otherwise agreed in writing.
- 1.4. ~~1.2~~—Except as expressly granted elsewhere under ~~the~~this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 1.5. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 3 and 4, the Supplier must, within 10 Working Days notify the Buyer:
 - 1.5.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
 - 1.5.2. the Deliverables affected.
- 1.6. For the avoidance of doubt:
 - 1.6.1. except as provided for in Paragraphs 4.3.4.2(a) or 3.1.6.2 and 3.1.4, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 3 and 4;
 - 1.6.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
 - 1.6.2.1. Sections 55 and 56 of the Patents Act 1977;
 - 1.6.2.2. section 12 of the Registered Designs Act 1949; or

1.6.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

2. Ownership and delivery of IPR created under this Contract

2.1. Any New IPR and Specially Written Software is owned by the Buyer, including:

2.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and

2.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR,

(together, the Software Supporting Materials).

2.2. The Supplier must deliver to the Buyer:

2.2.1. the Specially Written Software;

2.2.2. any software elements of the New IPR;

2.2.3. relevant Documentation; and

2.2.4. all related Software Supporting Materials,

within seven (7) days of:

2.2.5. either:

2.2.5.1. initial release or deployment; or

2.2.5.2. if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone; and

2.2.6. each subsequent release or deployment of the Specially Written Software and any software elements of the New IPR.

2.3. Where the Supplier delivers materials to the Buyer under Paragraph 2.2, it must do so in a format specified by the Buyer. Where the Buyer specifies the material is to be delivered on media, the Buyer becomes the owner of the media containing the material on delivery.

2.4. Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software and New IPR in the table at Annex 1 to this Schedule and keep this updated throughout the Contract Period.

3. Use of Supplier Existing IPRs and Third Party IPRs

3.1. The Supplier must not:

3.1.1. embed Supplier Existing IPRs or Third Party IPRs in a Deliverable;

3.1.2. provide any Deliverable that requires Supplier Existing IPRs or Third Party IPRs to use that Deliverable for any of the purposes set out in Paragraph 4.4; or

3.1.3. provide any Deliverable that is a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,

unless one or more of the following conditions apply:

3.1.4. for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Deliverables;

3.1.5. in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:

3.1.5.1. the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and

3.1.5.2. the Buyer has not (in its absolute discretion) rejected those licence terms within ten (10) Working Days of the date on which they were provided to the Buyer;

3.1.6. in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 3.1.4 and one of the following conditions is met:

3.1.6.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 4.3, as if:

(a) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and

(b) the term "third party" were substituted for the term Supplier,

in each place they occur; or

3.1.6.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 3.1.6.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer Approves the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms.

3.2. Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within five (5) Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:

3.2.1. maintained or supported by the developer; or

3.2.2. made commercially available.

4. ~~1.3.~~ Licences **granted by the Supplier** in respect of Supplier Existing IPR that is not COTS Software

4.1. ~~1.3.1. Where~~ Subject to the Buyer ~~orders Deliverables which contain or rely upon~~ approving the use of Supplier Existing IPR under Paragraph 3, the Supplier ~~hereby~~ grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph ~~1.3.2.4.3~~ in respect of each Deliverable where:

4.1.1. the Supplier Existing IPR that is not COTS Software is embedded in the Deliverable;

4.1.2. the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 4.4; or

- 4.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR that is not COTS Software.
- 4.2. The categories of Supplier Existing IPR that is not COTS Software set out in Paragraph 4.1 are mutually exclusive.
- 4.3. ~~1.3.2.~~ The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable that:
- 4.3.1. in the case of Supplier Existing IPR that is not COTS Software embedded in a Deliverable:
- 4.3.1.1. has no restriction on the identity of any transferee or sub-licensee;
- 4.3.1.2. is sub-licensable for any of the purposes set out in Paragraph 4.4;
- 4.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes set out in Paragraph 4.4; and
- 4.3.2. in the case of Supplier Existing IPR that is not COTS Software that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:
- 4.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs that is not COTS Software for any of the purposes set out in Paragraph 4.4;
- 4.3.2.2. is transferrable to only:
- (a) a Crown Body;
- (b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or
- (c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:
- (1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

4.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

4.3.3. includes a perpetual, royalty-free, non-exclusive licence to use, copy and adapt any Know-How, trade secrets or Confidential Information of the Supplier contained within any Deliverables; and

4.3.4. is subject to the restrictions that:

4.3.4.1. no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph;

4.3.4.2. any transferee or sublicensee of the Supplier Existing IPR Licence must either:

(a) enter into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enter into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential).

4.4. For the purposes of Paragraphs 4.1 and 4.3, the relevant purposes are:

4.4.1. ~~1.3.2.1. to allow the Buyer~~ or any End User to ~~use and~~ receive and use the Deliverables; ~~or~~

4.4.2. ~~1.3.2.2. to use, sub-licence or to~~ commercially exploit (including by publication under Open Licence) the New IPR, Specially Written Software and New IPR Items; and

4.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

5. ~~1.4.~~ **Licences granted by the Buyer and New IPR**

~~1.4.1. Any New IPR created under the Contract is owned by the Supplier. The Buyer gives the Supplier a licence to use any Buyer Existing IPR for the purpose of fulfilling its obligations during the Contract Period.~~

5.1. The Buyer grants the Supplier a licence to the New IPR, Specially Written Software and Buyer Existing IPR that:

5.1.1. is non-exclusive, royalty-free and non-transferable;

5.1.2. is sub-licensable to any Sub-contractor where

5.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

5.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph;

5.1.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR, New IPR and Specially Written Software for the purpose of fulfilling its obligations under this Contract; and

5.1.4. terminates at the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later.

5.2. When the licence granted under Paragraph 5.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 5.1.2:

5.2.1. immediately cease all use of the Buyer Existing IPR, New IPR and Specially Written Software (including the Government Data within which the Buyer Existing IPR or New IPR may subsist);

5.2.2. either:

5.2.2.1. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR, New IPR, Specially Written Software and the Government Data; or

5.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, destroy the documents and other tangible materials that contain any of the Buyer Existing IPR, the New IPR, Specially Written Software and the Government Data (as the case may be); and

- 5.2.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR, New IPR, Specially Written Software and Government Data held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier.

6. Open Licence Publication

- 6.1. Subject to Paragraph 6.6, the Supplier agrees that the Buyer may at its sole discretion publish under Open Licence all or part of the New IPR Items, including the:

6.1.1. Specially Written Software;

6.1.2. the software parts of the New IPR Items; and

6.1.3. the Software Supporting Materials.

- 6.2. The Supplier must create all Specially Written Software, software elements of New IPR and Software Supporting Materials in a format (whether it is provided in any other format or not):

6.2.1. suitable for publication by the Buyer as Open Licence; and

6.2.2. based on open standards (where applicable).

- 6.3. The Supplier warrants that in developing the Specially Written Software, the software elements of the New IPR Items and the Software Supporting Materials it has used reasonable endeavours to ensure that:

6.3.1. publication by the Buyer will not:

6.3.1.1. allow a third party to use them in any way that could reasonably be foreseen to compromise the operation or security of the Specially Written Software, New IPRs, the Buyer System or the Supplier System;

6.3.1.2. cause any harm or damage to any party using them; or

6.3.1.3. breach the rights of any third party; and

6.3.2. they do not contain:

6.3.2.1. any Malicious Software; or

6.3.2.2. any material which would bring the Buyer into disrepute if published.

- 6.4. The Supplier must not include in the Specially Written Software, the software parts of the New IPR Items and the Software Supporting Materials

provided for publication by Open Licence any Supplier Existing IPRs unless the Supplier consents to:

6.4.1. their publication by the Buyer under Open Licence; and

6.4.2. their subsequent licence and treatment as Open Licence under the terms of the licence chosen by the Buyer.

6.5. The Supplier must supply any or all the Specially Written Software, the software elements of the New IPR Items and the Software Supporting Materials in a format suitable for publication under an Open Licence (the **Open Licence Publication Material**) within 30 Working Days of written request from the Buyer (**Buyer Open Licence Request**).

6.6. The Supplier may within ten (10) Working Days of a Buyer Open Licence Request under Paragraph 6.5 request in writing that the Buyer excludes all or part of:

6.6.1. the Specially Written Software, the software elements of the New IPR Items and the Software Supporting Materials; or

6.6.2. Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Licence Publication Material supplied to the Buyer pursuant to Paragraph 6.4,

from Open Licence publication.

6.7. The Supplier's request under Paragraph 6.6 must include the Supplier's assessment of the impact the Buyer's agreeing to the request would have on its ability to publish other the Specially Written Software, the software elements of the New IPR Items and the Software Supporting Materials Items under an Open Licence.

6.8. Any decision to Approve any such request from the Supplier under Paragraph 6.6 shall be at the Buyer's sole discretion, not to be unreasonably withheld or delayed, or made subject to unreasonable conditions.

7. Patents

7.1. Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

[Guidance note: for Option 2: Buyer owns all New IPR and Specially Written Software with non-exclusive Supplier rights, please include the following drafting:]

Option 2

10. Intellectual Property Rights – General Provisions

10.1. Each Party keeps ownership of its own Existing IPR.

10.2. ~~1.4.2.~~ Where ~~a~~ either Party acquires, by operation of law, ownership of IPR ~~incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing~~ Intellectual Property Rights that is inconsistent with the requirements of this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request and at its own cost (whenever made).

10.3. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.

10.4. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

10.5. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 12 and 13, the Supplier must, within ten (10) Working Days notify the Buyer:

10.5.1. the specific Intellectual Property Rights the Buyer has not received licences to; and

10.5.2. the Deliverables affected.

10.6. For the avoidance of doubt:

10.6.1. except as provided for in Paragraphs 13.3.3.2(a) or 12.1.6.2 and 12.1.4, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 12 and 13;

10.6.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

10.6.2.1. Sections 55 and 56 of the Patents Act 1977;

10.6.2.2. section 12 of the Registered Designs Act 1949; or

10.6.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

11. Ownership and delivery of IPR created under this Contract

11.1. Any New IPR and Specially Written Software is owned by the Buyer, including:

11.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and

11.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR,

(together, the **Software Supporting Materials**).

11.2. The Supplier must deliver to the Buyer:

11.2.1. the Specially Written Software;

11.2.2. any software elements of the New IPR;

11.2.3. relevant Documentation; and

11.2.4. all related Software Supporting Materials,

within seven days of:

11.2.5. either:

11.2.5.1. initial release or deployment; or

11.2.5.2. if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone; and

11.2.6. each subsequent release or deployment of the Specially Written Software and any software elements of the New IPR.

11.3. Where the Supplier delivers materials to the Buyer under Paragraph 11.2, it must do so in a format specified by the Buyer. Where the Buyer specifies the material is to be delivered on media, the Buyer becomes the owner of the media containing the material on delivery.

11.4. ~~1.4.3.~~ Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software and New IPR in the table at Annex 1 to this Schedule 36 and keep this updated throughout the Contract Period.

12. Use of Supplier Existing IPRs and Third Party IPRs

12.1. The Supplier must not:

12.1.1. embed Supplier Existing IPRs or Third Party IPRs in a Deliverable;

12.1.2. provide any Deliverable that requires Supplier Existing IPRs or Third Party IPRs to use that Deliverable for any of the purposes set out in Paragraph 13.4; or

12.1.3. provide any Deliverable that is a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,

unless one or more of the following conditions apply:

12.1.4. for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Deliverables;

12.1.5. in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:

12.1.5.1. the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and

12.1.5.2. the Buyer has not (in its absolute discretion) rejected those licence terms within ten (10) Working Days of the date on which they were provided to the Buyer;

12.1.6. in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 12.1.4 and one of the following conditions is met:

12.1.6.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 13.3, as if:

(a) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and

(b) the term "third party" were substituted for the term Supplier,

in each place they occur; or

12.1.6.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 12.1.6.1, all the following conditions are met:

- (a) the Supplier has notified the Buyer in writing giving details of:
 - (1) what licence terms can be obtained from the relevant third party; and
 - (2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
- (b) the Buyer Approves the licence terms of one of those third parties; and
- (c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms.

12.2. Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within 5 Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:

12.2.1. maintained or supported by the developer; or

12.2.2. made commercially available.

13. Licences in respect of Supplier Existing IPR that is not COTS Software

13.1. Subject to the Buyer approving the use of Supplier Existing IPR under Paragraph 12, the Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 13.3 in respect of each Deliverable where:

13.1.1. the Supplier Existing IPR that is not COTS Software is embedded in the Deliverable;

13.1.2. the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 13.4; or

13.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR that is not COTS Software.

13.2. ~~1.4.4.~~ The categories of Supplier ~~hereby grants the Buyer a licence to the~~ New IPR on the terms Existing IPR that is not COTS Software set out in Paragraph ~~1.4.5~~ 13.1 are mutually exclusive.

13.3. ~~1.4.5.~~ The ~~licence~~ Supplier Existing IPR Licence granted by the Supplier to the Buyer ~~pursuant to clause 1.4.4~~ is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence ~~to use, change and sub-license any New IPR which is reasonably required by the Buyer to enable it or any End User to use and receive the~~ Deliverables that:

4.5. Third Party IPR

~~1.5.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 1.5.2. If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph 1.5.2 in respect of any Third Party IPR the Supplier shall:~~

~~1.5.1.1. notify the Buyer in writing; and~~

~~1.5.1.2. use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.~~

~~1.5.2. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.~~

~~1.5.3. The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.~~

4.6. Termination of licences

~~1.6.1. The Supplier Existing IPR Licence granted pursuant to Paragraph 1.3 and the Third Party IPR Licence granted pursuant to Paragraph 1.5 shall survive the Expiry Date and termination of this Contract.~~

~~1.6.2. The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.~~

13.3.1. in the case of Supplier Existing IPR that is not COTS Software embedded in a Deliverable:

13.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

13.3.1.2. is sub-licensable solely for any of purposes in Paragraph 13.4;

13.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes in Paragraph 13.4; and

13.3.2. in the case of Supplier Exiting IPR that is not COTS Software that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

13.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs that is not COTS Software for the purposes set out in Paragraphs 13.4;

13.3.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(d) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

13.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier);

13.3.2.4. where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

13.3.2.5. includes a perpetual, royalty-free, non-exclusive licence to use, copy and adapt any Know-How, trade secrets or Confidential Information of the Supplier contained within any Deliverables; and

13.3.3. is subject to the restrictions that:

13.3.3.1. ~~1.6.3. Any licence~~ no sub-licence granted to the Supplier pursuant to Paragraph ~~1.4 (Licence~~ Existing IPR that is not COTS Software shall purport to provide the sub-licensee with any wider rights than those granted ~~by to~~ the Buyer) shall terminate automatically on the Expiry Date and the Supplier shall: under this Paragraph; and

13.3.3.2. any transferee or sublicensee of the Supplier Existing IPR Licence must either:

(a) enter into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enter into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential).

13.4. For the purposes of Paragraphs 13.1 and 13.3, the relevant purposes are:

13.4.1. to allow the Buyer or any End User to receive and use the Deliverables;

13.4.2. to allow the Buyer to commercially exploit (including by publication under Open Licence) the Specially Written Software, the New IPR and New IPR Items; and

13.4.3. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

14. Licences granted by the Buyer

14.1. Subject to Paragraph 15 (in the case of New IPR and Specially Written Software), the Buyer grants the Supplier a licence to the New IPR, Specially Written Software and Buyer Existing IPR that:

14.1.1. is non-exclusive, royalty-free and non-transferable;

14.1.2. is sub-licensable to any Sub-contractor where

14.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

14.1.2.2. the sub-licence does not purport to provide the sub- licensee with any wider rights than those granted to the Supplier under this Paragraph

14.1.3. in the case of Buyer Existing IPR:

14.1.3.1. allows the Supplier and any sub- licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

- (a) fulfilling its obligations under this Contract; and
- (b) where terms are agreed by the Buyer and Supplier under Paragraph 15, commercially exploiting the New IPR and Specially Written Software; and

14.1.3.2. terminates at the later of:

- (a) the end of the Contract Period or the end of any Termination Assistance Period, whichever is the later; or
- (b) the occurrence of any condition, or on the date, specified by the Buyer; and

14.1.4. in the case of New IPR and Specially Written Software is:

14.1.4.1. where terms are agreed by the Buyer and Supplier under Paragraph 15, on those terms; or

14.1.4.2. where terms are not agreed by the Buyer and Supplier under Paragraph 15, on the same terms as Buyer Existing IPR under Paragraph 14.1.3.

14.2. When the licence granted under Paragraph 14.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub- licence under Paragraph 14.1.2:

14.2.1. ~~1.6.3.1.~~ immediately cease all use of the Buyer Existing IPR, New IPR or Specially Written Software (including the ~~Buyer~~ Government Data within which the Buyer Existing IPR, New IPR or Specially Written Software may subsist);

14.2.2. either:

14.2.2.1. ~~1.6.3.2.~~ at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of

the Buyer Existing IPR, New IPR, Specially Written Software and the Buyer Government Data, ~~provided that;~~ or

14.2.2.2. if the Buyer has not made an election within six months of the termination of the licence, ~~the Supplier may~~ destroy the documents and other tangible materials that contain any of the Buyer Existing IPR ~~and the Buyer,~~ the New IPR, the Specially Written Software and the Government Data (as the case may be); and

14.2.3. ~~1.6.3.3.~~ ensure, so far as reasonably practicable, that any Buyer Existing IPR ~~and Buyer,~~ New IPR, the Specially Written Software and Government Data ~~that are~~ held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier ~~containing such Buyer Existing IPR or Buyer Data.~~

~~1.7. Supplier's Exploitation of New IPR~~

~~1.7.1. Notwithstanding the Supplier's ownership of the New IPR or licence which allows it to exploit and commercialise the New IPR:~~

~~1.7.1.1. the Supplier must always offer a price and solution to the Buyer which is in accordance with the Charges and must licence the New IPR and Supplier Existing IPR to the Buyer on equivalent terms as apply under this Contract;~~

15. Buyer approval for Supplier to exploit New IPR and Specially Written Software

15.1. Before using, copying or adapting any Buyer Existing IPR, New IPR or Specially Written Software for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

15.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in that licence.

[Guidance note: where Option 5 is used, replace Paragraphs 15.3, 15.4 and 15.5 with the Paragraphs in Option 5.]

15.3. The Supplier must provide a detailed proposal setting out:

15.3.1. the purpose for which it proposes to use the Buyer Existing IPR, New IPR or Specially Written Software;

15.3.2. the activities the Supplier proposes to undertake with or in respect of the Buyer Existing IPR, New IPR or Specially Written Software;

15.3.3. its proposed business plan, including:

15.3.3.1. ~~1.7.1.2. where the Supplier proposes to exploit the New IPR, that it provides a detailed proposal of its plans for exploitation of the New IPR and the forecast returns, including (but not limited to) details of the goods and the goods or services to be offered by the Supplier which use the New IPR, the target markets and territory, that use or incorporate the Buyer Existing IPR, New IPR or Specially Written Software;~~

15.3.3.2. ~~the relationship between the Buyer Existing IPR, New IPR or Specially Written Software and any Supplier Existing IPR or Third Party IPR to be incorporated into, or used to provide, those goods or services;~~

15.3.3.3. ~~the target markets for those goods or services;~~

15.3.3.4. ~~the estimated level of orders, the marketing strategy; full~~

15.3.3.5. ~~its marketing strategy;~~

15.3.3.6. ~~details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Buyer to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Buyer may reasonably request; and~~

~~1.7.1.3. where the Supplier proposes to discount the prices offered to the Buyer in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 1.7.1.2 above have been applied to the price for the Deliverables offered to the Buyer and other potential End Users;~~

~~1.7.1.4. The Buyer shall be under no obligation to:~~

~~(b) offer the New IPR (where this is owned by the Buyer) or the Buyer Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or~~

15.3.3.7. ~~the proposed financial benefit to the Buyer;~~

15.3.4. ~~the impact of the proposal on the Services the Supplier provides under this Contract;~~

- 15.3.5. an analysis of the likely terms, including financial terms, on which the Supplier would be able to obtain access to intellectual property equivalent to the Buyer Existing IPR, New IPR or Specially Written Software were it to enter into an arm's length commercial relationship with a third-party;
- 15.3.6. any proposed changes to this Contract; and
- 15.3.7. any additional agreement the Supplier proposes that it and the Buyer enter into;
- 15.3.8. any other information the Buyer requires to properly assess the Supplier's proposed; and
- 15.3.9. any other information required by the Buyer.
- 15.4. Where the proposed financial benefit to the Buyer under Paragraph 15.3.3.7 is, in whole or part, a reduction in the Charges under this Contract, the Supplier must set out how it proposes to apply the revenues and profits received to the Charges payable by the Buyer and other End Users.
- 15.5. Where the Supplier's proposal provides for the development of new goods, services or software and those goods, services or software are subsequently purchased by the Buyer (by whatever means), the terms of that purchase must:
- 15.5.1. provide for the licencing of the New IPR and Specially Written Software to the Buyer on the same terms as in this Contract; and
- 15.5.2. include a price that reflects the Charges.
- 15.6. The Supplier acknowledges that:
- 15.6.1. the Buyer may refuse or require changes to the Supplier's proposal in its sole discretion and for any reason; and
- 15.6.2. in considering the Supplier's proposal, the Buyer must comply with Law relating to:
- 15.6.2.1. public procurement; and
- 15.6.2.2. subsidy control.
- 15.7. ~~(c) accept any alternative arrangement proposed by the Supplier under this Clause and the Buyer shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Buyer) or~~ Where the Buyer agrees to the Supplier's proposal, with or without changes, the Supplier may not use,

copy or adapt any Buyer Existing IPR ~~applies as applies~~ other than for the purpose of fulfilling its obligations under this Contract.;

15.7.1. any additional agreement to give effect to the proposal;

15.7.2. any consequential Variation to this Contract.

16. Provision of information on New IPR and Specially Written Software

16.1. The Buyer may, at any time, require the Supplier to provide information on:

16.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR and Specially Written Software; and

16.1.2. ~~1.7.1.5. Such agreement does not confer any exclusive right on the Supplier to negotiate with the Buyer in relation to the New IPR (where this is owned by the Buyer), Buyer Existing IPR or any Crown IPR and the Buyer shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other person (except to the extent that the Buyer has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).~~ the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR and Specially Written Software.

~~1.7.1.6. The Supplier acknowledges and agrees that the Buyer is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Buyer will need to consider its position and approach on a case by case basis.~~

~~1.7.2. If within three years of its creation, any Intellectual Property in the New IPR has not been commercially exploited by the Supplier, and the Supplier is not using its best endeavours to do so, the Supplier shall on written request by the Buyer promptly assign the Intellectual Property Rights in the New IPR to the Buyer. Each party shall bear its own costs in such assignment.~~

16.2. The Supplier must provide the information required by the Buyer:

16.2.1. Within twenty (20) Working Days of the date of the requirement; and

16.2.2. in the form and with the content specified by the Buyer.

17. Patents

17.1. Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

[Guidance note: for Option 43: Supplier ownership of all New IPR and Specially Written Software with Buyer rights for the current contract ~~and broader public sector functions~~ only, please include the following drafting:]

4. Intellectual Property Rights

Option 3

20. Intellectual Property Rights – General Provisions

20.1. ~~4.1.~~ Each Party keeps ownership of its own Existing IPR.

20.2. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).

20.3. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under ~~the~~this Contract or otherwise agreed in writing.

20.4. ~~4.2.~~ Except as expressly granted elsewhere under ~~the~~this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.

1.3. Licences granted by the Supplier: Supplier Existing IPR

~~1.3.1. Where the Buyer orders Deliverables which contain or rely upon Supplier Existing IPR, the Supplier hereby grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 1.3.2.~~

~~1.3.2. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-license any Supplier Existing IPR which is reasonably required by the Buyer to enable it:~~

~~1.3.2.1. or any End User to use and receive the Deliverables; or~~

~~1.3.2.2. to use, sub-license or commercially exploit (including by publication under Open Licence) the New IPR and New IPR Items,~~

~~for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.~~

1.4. Licences granted by the Buyer and New IPR

~~1.4.1. Any New IPR created under the Contract is owned by the Supplier. The Buyer gives the Supplier a licence to use any Buyer Existing IPR for the purpose of fulfilling its obligations during the Contract Period.~~

~~1.4.2. Where a Party acquires ownership of IPR incorrectly under this Contract it must do everything reasonably necessary to complete a transfer assigning them in writing to the other Party on request and at its own cost.~~

20.5. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 23 and 24, the Supplier must, within 10 Working Days notify the Buyer:

20.5.1. the specific Intellectual Property Rights the Buyer has not received licences to; and

20.5.2. the Deliverables affected.

20.6. For the avoidance of doubt:

20.6.1. except as provided for in Paragraphs 24.3.2.2(c)(1) or 23.1.6.2 and 23.1.4, the expiry or termination of this Contract does not of itself

terminate the licences granted to the Buyer under Paragraphs 23 and 24;

20.6.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

20.6.2.1. Sections 55 and 56 of the Patents Act 1977;

20.6.2.2. section 12 of the Registered Designs Act 1949; or

20.6.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

21. Ownership and delivery of IPR created under this Contract

21.1. Any New IPR and Specially Written Software is owned by the Supplier, including:

21.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and

21.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR,

(together, the **Software Supporting Materials**).

21.2. Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software and New IPR in the table at Annex 1 to this Schedule and keep this updated throughout this Contract Period.

22. Licence of New IPR and Specially Written Software

22.1. The Supplier grants the Buyer a New IPR and Specially Written Software Licence on the terms set out in Paragraph 22.3 in respect of each Deliverable where:

22.1.1. the New IPR or Specially Written Software is embedded in the Deliverable;

22.1.2. the New IPR or Specially Written Software is necessary for the Buyer to use the Deliverable; or

22.1.3. the New IPR or Specially Written Software is used to provide the Deliverable.

22.2. The categories of New IPR or Specially Written Software set out in Paragraph 22.1 are mutually exclusive.

22.3. The New IPR and Specially Written Software Licence granted by the Supplier to the Buyer is a non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

22.3.1. in the case of New IPR or Specially Written Software embedded in a Deliverable or is used to provide the Deliverable:

22.3.1.1. is sub-licensable;

22.3.1.2. has no restriction on the identity of any transferee or sub-licensee;

22.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the New IPR or Specially Written Software for any of the purposes set out in Paragraph 22.4;

22.3.2. in the case of New IPR or Specially Written Software that is necessary for the Buyer to receive or use the Deliverable:

22.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant New IPR or Specially Written Software for any of the purposes set out in Paragraph 22.4;

22.3.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out;
or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

22.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

22.3.2.4. enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

22.3.3. continues in effect following the expiry or earlier termination of this Contract; and

22.3.4. is subject to the restrictions that:

22.3.4.1. each transferee or sub-licensee either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

22.3.4.2. no sub-licence granted to the New IPR or Specially Written Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph.

22.4. For the purposes of Paragraphs 22.1 and 22.3, the relevant purpose is:

22.4.1. to allow the Buyer or any End User to receive and use the Deliverables.

22.5. Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

22.5.1. the New IPR and Specially Written Software Licence is unaffected; and

22.5.2. any successor body of the Buyer that is a Crown Body shall have the benefit of the New IPR and Specially Written Software Licence.

23. Use of Supplier Existing IPRs and Third Party IPRs

23.1. The Supplier must not:

23.1.1. embed Supplier Existing IPRs or Third Party IPRs in a Deliverable;

23.1.2. provide any Deliverable that requires Supplier Existing IPRs or Third Party IPRs to use that Deliverable its intended purpose; or

23.1.3. provide any Deliverable that is a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,

unless one or more of the following conditions apply:

23.1.4. for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Deliverables;

23.1.5. in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:

23.1.5.1. the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and

23.1.5.2. the Buyer has not (in its absolute discretion) rejected those licence terms within ten (10) Working Days of the date on which they were provided to the Buyer;

23.1.6. in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 23.1.4 and one of the following conditions is met:

23.1.6.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 22.3, as if:

(a) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and

(b) the term “third party” were substituted for the term Supplier,

in each place they occur; or

23.1.6.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 23.1.6.1, all the following conditions are met:

(a) the Supplier has notified the Buyer in writing giving details of:

(1) what licence terms can be obtained from the relevant third party; and

(2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;

(b) the Buyer Approves the licence terms of one of those third parties; and

(c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms.

23.2. Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within five (5) Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:

23.2.1. maintained or supported by the developer; or

23.2.2. made commercially available.

24. Licences in respect of Supplier Existing IPR that is not COTS Software

24.1. Subject to the Buyer approving the use of Supplier Existing IPR under Paragraph 23, the Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 24.3 in respect of each Deliverable where:

24.1.1. the Supplier Existing IPR that is not COTS Software is embedded in the Deliverable;

24.1.2. the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 24.4; or

24.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR that is not COTS Software.

24.2. The categories of Supplier Existing IPR that is not COTS Software set out in Paragraph 24.1 are mutually exclusive.

24.3. **The Supplier Existing IPR Licence granted** by the Supplier to the Buyer is a non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

24.3.1. in the case of Supplier Existing IPR that is not COTS Software embedded in a Deliverable:

24.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

24.3.1.2. is sub-licensable for any of the purposes set out in Paragraph 24.4;

24.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes set out in Paragraph 24.4; and

24.3.1.4. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

24.3.2. in the case of Supplier Existing IPR that is not COTS Software that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

24.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs that is not COTS Software for any of the purposes set out in Paragraph 24.4;

24.3.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

24.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

24.3.2.4.is subject to the restrictions that:

(a) no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph; and

(b) any sublicensee or transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

24.3.2.5.expires at the later of:

(a) the end of this Contract Period; or

(b) the end of any Termination Assistance Period.

24.4. For the purposes of Paragraphs 24.1 and 24.3, the relevant purposes are to allow the Buyer or any End User to receive and use the Deliverables.

25. Licences to COTS software

25.1. The Supplier must provide the Authority with licences to Supplier Existing IPR and Third Party IPR that is, in each case, COTS software at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

26. Licences granted by the Buyer

26.1. Subject to Paragraph 27, the Buyer grants the Supplier a licence to the Buyer Existing IPR that:

26.1.1. is non-exclusive, royalty-free and non-transferable;

26.1.2. is sub-licensable to any Sub-contractor where

26.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

26.1.2.2. the sub-licence does not purport to provide the sub- licensee with any wider rights than those granted to the Supplier under this Paragraph

26.1.3. allows the Supplier and any sub- licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

26.1.3.1. fulfilling its obligations under this Contract; and

26.1.3.2. commercially exploiting the New IPR and Specially Written Software; and

26.1.4. unless otherwise agreed in accordance with Paragraph 27, terminates at the earlier of the End Date or date of **termination of this Contract.**

27. Buyer approval for Supplier to exploit Buyer Existing IPR

27.1. Before using Buyer existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

27.2. The Buyer may terminate any licence it grants under this Paragraph by notice in writing with immediate effect where the Supplier breaches any condition in the licence.

[Guidance note: where Option 5 is used, replace Paragraphs 27.3, 27.4 and 27.5 with the Paragraphs in Option 5.]

27.3. The Supplier must provide a proposal setting out:

27.3.1. the purpose for which it proposes to use the New IPR or Specially Written Software;

27.3.2. the activities the Supplier proposes to undertake with or in respect of the New IPR or Specially Written Software;

27.3.3. such further information as the Buyer may reasonably require to properly consider the proposal.

27.4. **The Buyer** may only refuse the Buyer's proposal where it considers that if the Supplier were to implement the proposal it would harm:

27.4.1. the Buyer's reputation; or

27.4.2. the Buyer's interests.

27.5. Where the Buyer has not:

27.5.1. approved or declined the proposal; or

27.5.2. required further information,

within 20 Working Days of the later of:

27.5.3. the date the proposal was first provided to the Buyer; or

27.5.4. the date on which further information was provided to the Buyer,

then the proposal is, for the purposes of this Contract, approved.

28. Provision of information on New IPR and Specially Written Software

28.1. The Buyer may, at any time, require the Supplier to provide information on:

28.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR and Specially Written Software; and

28.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR and Specially Written Software.

28.2. The Supplier must provide the information required by the Buyer:

28.2.1. within 20 Working Days of the date of the requirement; and

28.2.2. in the form and with the content specified by the Buyer.

29. Patents

29.1. Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

[Guidance note: for Option 4: Supplier ownership of all Specially Written Software and New IPR with Buyer rights for the current contract and broader public sector functions, please include the following drafting:]

Option 4

30. Intellectual Property Rights – General Provisions

- 30.1. Each Party keeps ownership of its own Existing IPR.
- 30.2. Where either Party acquires, by operation of law, ownership of Intellectual Property Rights that is inconsistent with the requirements of this Schedule 36 (Intellectual Property Rights), it must assign in writing the Intellectual Property Rights concerned to the other Party on the other Party's request (whenever made).
- 30.3. Neither Party has the right to use the other Party's IPR, including any use of the other Party's names, logos or trademarks, except as expressly granted elsewhere under this Contract or otherwise agreed in writing.
- 30.4. Except as expressly granted elsewhere under this Contract, neither Party acquires any right, title or interest in or to the IPR owned by the other Party or any third party.
- 30.5. If the Supplier becomes aware at any time, including after the earlier of the End Date or date of termination, that, in respect of any Deliverable, the Buyer has not received the licences to Supplier Existing IPRs or Third Party IPRs required by Paragraphs 34 and 35, the Supplier must, within 10 Working Days notify the Buyer:
- 30.5.1. the specific Intellectual Property Rights the Buyer has not received licences to; and
- 30.5.2. the Deliverables affected.
- 30.6. For the avoidance of doubt:
- 30.6.1. except as provided for in Paragraphs 35.3.2.2(c)(1) or 34.1.6.2 and 34.1.4, the expiry or termination of this Contract does not of itself terminate the licences granted to the Buyer under Paragraphs 34 and 35;
- 30.6.2. the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:
- 30.6.2.1. Sections 55 and 56 of the Patents Act 1977;
- 30.6.2.2. section 12 of the Registered Designs Act 1949; or

30.6.2.3. sections 240 to 243 of the Copyright, Designs and Patents Act 1988.

31. Ownership and delivery of IPR created under this Contract

31.1. Any New IPR and Specially Written Software is owned by the Supplier, including:

31.1.1. the Documentation, Source Code and the Object Code of the Specially Written Software and any software elements of the New IPR; and

31.1.2. all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software and the New IPR,

(together, the **Software Supporting Materials**).

31.2. ~~1.4.3.~~ Unless otherwise agreed in writing, the Supplier and the Buyer will record any Specially Written Software and New IPR in the table at Annex 1 to this Schedule ~~36~~ and keep this updated throughout the Contract Period.

~~1.4.4. The Supplier hereby grants the Buyer a licence to the New IPR on the terms set out in Paragraph 1.4.5.~~

32. Licence of New IPR and Specially Written Software

32.1. the Supplier grants the Buyer a New IPR and Specially Written Software Licence on the terms set out in Paragraph 33.3 in respect of each Deliverable where:

32.1.1. the New IPR or Specially Written Software is embedded in the Deliverable;

32.1.2. the New IPR or Specially Written Software is necessary for the Buyer to use the Deliverable; or

32.1.3. the New IPR or Specially Written Software is used to provide the Deliverable.

32.2. The categories of New IPR or Specially Written Software set out in Paragraph 33.1 are mutually exclusive.

32.3. ~~1.4.5.~~ The ~~licence~~ New IPR and Specially Written Software Licence granted by the Supplier to the Buyer ~~pursuant to Paragraph 1.4.4 is~~ is a, non-exclusive, ~~perpetual~~, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence ~~to use, change and sub-license any~~ New

~~IPR which is reasonably required by the Buyer to enable it or any End User to use and receive the Deliverables or that:~~

32.3.1. in the case of New IPR or Specially Written Software embedded in a Deliverable or is used to provide the Deliverable:

32.3.1.1. is sub-licensable;

32.3.1.2. has no restriction on the identity of any transferee or sub-licensee;

32.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the New IPR or Specially Written Software for any of the purposes set out in Paragraph 33.4;

32.3.2. in the case of New IPR or Specially Written Software that is necessary for the Buyer to receive or use the Deliverable:

32.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant New IPR or Specially Written Software for any of the purposes set out in Paragraph 33.4;

32.3.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier; and

32.3.2.3. is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

32.3.3. continues in effect following the expiry or earlier termination of this Contract; and

32.3.4. is subject to the restrictions that:

32.3.4.1. each transferee or sub-licensee either:

- (a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or
- (b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

32.3.4.2. no sub-licence granted to the New IPR or Specially Written Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph.

32.4. For the purposes of Paragraphs 33.1 and 33.3, the relevant purposes are:

32.4.1. to allow the Buyer or any End User to receive and use the Deliverables; and

32.4.2. -for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

4.5. Third Party IPR

~~1.5.1. The Supplier shall not use in the delivery of the Deliverables any Third Party IPR unless Approval is granted by the Buyer and it has procured that the owner or an authorised licensor of the relevant Third Party IPR has granted a Third Party IPR Licence on the terms set out in Paragraph 1.5.2. If the Supplier cannot obtain for the Buyer a licence on the terms set out in Paragraph 1.5.2 in respect of any Third Party IPR the Supplier shall:~~

~~1.5.1.1. notify the Buyer in writing; and~~

~~1.5.1.2. use the relevant Third Party IPR only if the Buyer has provided authorisation in writing, with reference to the acts authorised and the specific IPR involved.~~

~~1.5.2. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Buyer and the ordering of any Deliverable under it does not constitute an authorisation by the Crown under Sections 55 and 56 of the Patents Act 1977 Section 12 of the Registered Designs Act 1949 or Sections 240 – 243 of the Copyright, Designs and Patents Act 1988.~~

~~1.5.3. The Third Party IPR Licence granted to the Buyer shall be a non-exclusive, perpetual, royalty-free, irrevocable, transferable, worldwide licence to use, change and sub-licence any Third Party IPR which is reasonably required by the Buyer to enable it or any End User to receive and use the Deliverables and make use of the deliverables provided by a Replacement Supplier.~~

4.6. Termination of licences

~~1.6.1. The Supplier Existing IPR Licence granted pursuant to Paragraph 1.3 and the Third Party IPR Licence granted pursuant to Paragraph 1.5 shall survive the Expiry Date and termination of this Contract.~~

~~1.6.2. The Supplier shall, if requested by the Buyer in accordance with Schedule 30 (Exit Management) and to the extent reasonably necessary to ensure continuity of service during exit and transition to any Replacement Supplier, grant (or procure the grant) to the Replacement Supplier a licence to use any Supplier Existing IPR or Third Party IPR on terms equivalent to the Supplier Existing IPR Licence or Third Party IPR Licence (as applicable) subject to the Replacement Supplier entering into reasonable confidentiality undertakings with the Supplier.~~

~~1.6.3. Any licence granted to the Supplier pursuant to Paragraph 1.4 (Licence granted by the Buyer) shall terminate automatically on the Expiry Date and the Supplier shall:~~

- ~~1.6.3.1. immediately cease all use of the Buyer Existing IPR (including the Buyer Data within which the Buyer Existing IPR may subsist);~~
- ~~1.6.3.2. at the discretion of the Buyer, return or destroy documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data, provided that if the Buyer has not made an election within six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Buyer Existing IPR and the Buyer Data (as the case may be); and~~
- ~~1.6.3.3. ensure, so far as reasonably practicable, that any Buyer Existing IPR and Buyer Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any computer, word processor, voicemail system or any other device of the Supplier containing such Buyer Existing IPR or Buyer Data.~~

1.7. Supplier's Exploitation of New IPR

- ~~1.7.1. Notwithstanding the Supplier's ownership of the New IPR or licence which allows it to exploit and commercialise the New IPR:
 - ~~1.7.1.1. the Supplier must always offer a price and solution to the Buyer which is in accordance with the Charges and must licence the New IPR and Supplier Existing IPR to the Buyer on equivalent terms as apply under this Contract;~~
 - ~~1.7.1.2. where the Supplier proposes to exploit the New IPR, that it provides a detailed proposal of its plans for exploitation of the New IPR and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the New IPR, the target markets and territory, the estimated level of orders, the marketing strategy; full details of the estimated costs, prices, revenues and profits; impact assessment on services delivered under the Contract; and any other information that would reasonably be required by the Buyer to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Buyer may reasonably request; and~~~~

~~1.7.1.3. where the Supplier proposes to discount the prices offered to the Buyer in return for the right to exploit the New IPR, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 1.7.1.2 above have been applied to the price for the Deliverables offered to the Buyer and other potential End Users;~~

~~1.7.1.4. The Buyer shall be under no obligation to:~~

~~(d) offer the New IPR (where this is owned by the Buyer) or the Buyer Existing IPR on an exclusive licence basis or on any other alternative terms of licensing and ownership; or~~

~~(e) accept any alternative arrangement proposed by the Supplier under this Clause and the Buyer shall be entitled to require the Supplier to deliver the solution on the basis of the same position on ownership and licensing of the New IPR (where this is owned by the Buyer) or Buyer Existing IPR applies as applies under this Contract.~~

~~1.7.1.5. Such agreement does not confer any exclusive right on the Supplier to negotiate with the Buyer in relation to the New IPR (where this is owned by the Buyer), Buyer Existing IPR or any Crown IPR and the Buyer shall be entitled to licence, assign and otherwise deal with such IPR (where it owns such IPR) with any other person (except to the extent that the Buyer has entered into an exclusive licence with the Supplier in respect of such IPR pursuant to this Contract).~~

~~1.7.1.6. The Supplier acknowledges and agrees that the Buyer is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Buyer will need to consider its position and approach on a case by case basis.~~

~~1.7.2. If within three years of its creation, any Intellectual Property in the New IPR has not been commercially exploited by the Supplier, and the Supplier is not using its best endeavours to do so, the Supplier shall on written request by the Buyer promptly assign the Intellectual Property Rights in the New IPR to the Buyer. Each party shall bear its own costs in such assignment.~~

32.5. Where the legal status of the Buyer changes, such that it ceases to be a Crown Body:

32.5.1. the New IPR and Specially Written Software Licence is unaffected;
and

any successor body of the Buyer that is a Crown Body shall have the benefit of the New IPR and Specially Written Software Licence.

33. Use of Supplier Existing IPRs and Third Party IPRs

33.1. The Supplier must not:

33.1.1. embed Supplier Existing IPRs or Third Party IPRs in a Deliverable;

33.1.2. provide any Deliverable that requires Supplier Existing IPRs or Third Party IPRs to use that Deliverable its intended purpose; or

33.1.3. provide any Deliverable that is a customisation or adaptation of those Supplier Existing IPRs or Third Party IPRs,

unless one or more of the following conditions apply:

33.1.4. for any Supplier Existing IPRs or Third Party IPRs that are not COTS Software, the Buyer provides Approval after receiving full details of the Supplier Existing IPRs or Third Party IPRs and their relationship to the Deliverables;

33.1.5. in the case of Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software all the following conditions are met:

33.1.5.1. the Supplier has provided the Buyer with the applicable terms for the Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software (which must be at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available); and

33.1.5.2. the Buyer has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the Buyer;

33.1.6. in the case of Third Party IPRs that are not COTS Software, the Buyer provides approval under Paragraph 34.1.4 and one of the following conditions is met:

33.1.6.1. the owner or an authorised licensor of the relevant Third Party IPR has granted a direct Third Party IPR Licence on the terms set out in Paragraph 33.3, as if:

- (a) the term Third Party IPRs were substituted for the term Supplier Existing IPR; and
- (b) the term “third party” were substituted for the term Supplier,

in each place they occur; or

33.1.6.2. if the Supplier cannot, after commercially reasonable endeavours, obtain for the Buyer a Third Party IPR licence as set out in Paragraph 34.1.6.1, all the following conditions are met:

- (a) the Supplier has notified the Buyer in writing giving details of:
 - (1) what licence terms can be obtained from the relevant third party; and
 - (2) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;
- (b) the Buyer Approves the licence terms of one of those third parties; and
- (c) the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Buyer on those terms.

33.2. Where the Buyer has not rejected Supplier Existing IPRs or Third Party IPRs that are, in each case, COTS Software, the Supplier must notify the Buyer within five (5) Working Days of becoming aware that any of that COTS Software will in the next thirty-six (36) months no longer be:

33.2.1. maintained or supported by the developer; or

33.2.2. made commercially available.

34. Licences in respect of Supplier Existing IPR that is not COTS Software

34.1. Subject to the Buyer approving the use of Supplier Existing IPR under Paragraph 34, the Supplier grants the Buyer a Supplier Existing IPR Licence on the terms set out in Paragraph 33.3 in respect of each Deliverable where:

34.1.1. the Supplier Existing IPR that is not COTS Software is embedded in the Deliverable;

34.1.2. the Supplier Existing IPR that is not COTS Software is necessary for the Buyer to use the Deliverable for any of the purposes set out in Paragraph 35.4; or

34.1.3. the Deliverable is a customisation or adaptation of Supplier Existing IPR that is not COTS Software.

34.2. The categories of Supplier Existing IPR that is not COTS Software set out in Paragraph 35.1 are mutually exclusive.

34.3. The Supplier Existing IPR Licence granted by the Supplier to the Buyer is a non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

34.3.1. in the case of Supplier Existing IPR that is not COTS Software embedded in a Deliverable:

34.3.1.1. has no restriction on the identity of any transferee or sub-licensee;

34.3.1.2. is sub-licensable for any of the purposes set out in Paragraph 35.4;

34.3.1.3. allows the Buyer and any transferee or sub-licensee to use, copy and adapt the Supplier Existing IPR that is not COTS Software for any of the purposes set out in Paragraph 35.4; and

34.3.1.4. is subject to the restriction that no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub-licensee with any wider rights than those granted to the Buyer under this Paragraph;

34.3.2. in the case of Supplier Existing IPR that is not COTS Software that is necessary for the Buyer to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

34.3.2.1. allows the Buyer and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Existing IPRs that is not COTS Software for any of the purposes set out in Paragraph 35.4;

34.3.2.2. is transferrable to only:

(a) a Crown Body;

(b) any body (including any private sector body) that performs or carries out any of the functions or activities that the Buyer had previously performed or carried out; or

(c) a person or organisation that is not a direct competitor of the Supplier and that transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential);

34.3.2.3.is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier either:

(a) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(b) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

34.3.2.4.is subject to the restrictions that:

(a) no sub-licence granted to the Supplier Existing IPR that is not COTS Software shall purport to provide the sub- licensee with any wider rights than those granted to the Buyer under this Paragraph; and

(b) any sublicensee or transferee either:

(1) enters into a direct arrangement with the Supplier in the form set out in Annex 2; or

(2) enters into a confidentiality arrangement with the Buyer in terms equivalent to those set out in set out in Clause 19 (What you must keep confidential); and

34.3.2.5.expires at the later of:

(a) the end of the Contract Period; or

(b) the end of any Termination Assistance Period.

34.4. For the purposes of Paragraphs 35.1 and 35.3, the relevant purposes are:

34.4.1. to allow the Buyer or any End User to receive and use the Deliverables;

34.4.2. for any purpose relating to the exercise of the Buyer's (or, if the Buyer is a Public Sector Body, any other Public Sector Body's) business or function.

35. Licences to COTS software

35.1. The Supplier must provide the Authority with licences to Supplier Existing IRP and Third Party IPR that is, in each case, COTS software at a price and on terms no less favourable than those standard commercial terms on which such software is usually made commercially available.

36. Licences granted by the Buyer

36.1. Subject to Paragraph 38, the Buyer grants the Supplier a licence to the Buyer Existing IPR that:

36.1.1. is non-exclusive, royalty-free and non-transferable;

36.1.2. is sub-licensable to any Sub-contractor where

36.1.2.1. the Sub-contractor enters into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 19 (What you must keep confidential); and

36.1.2.2. the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier under this Paragraph

36.1.3. allows the Supplier and any sub-licensee to use, copy and adapt any Buyer Existing IPR for the purpose of:

36.1.3.1. fulfilling its obligations under this Contract; and

36.1.3.2. commercially exploiting the New IPR and Specially Written Software; and

36.1.4. unless otherwise agreed in accordance with Paragraph 38, terminates at the earlier of the End Date or date of termination of this Contract.

37. Buyer approval for Supplier to exploit Buyer Existing IPR

37.1. Before using Buyer Existing IPR for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Buyer in accordance with the provisions of this Paragraph.

[Guidance note: where Option 5 is used, replace Paragraphs 27.3, 27.4 and 27.5 with the Paragraphs in Option 5.]

37.2. The Supplier must provide a proposal setting out:

37.2.1. the purpose for which it proposes to use the New IPR or Specially Written Software;

37.2.2. the activities the Supplier proposes to undertake with or in respect of the New IPR or Specially Written Software;

37.2.3. such further information as the Buyer may reasonably require to properly consider the proposal.

37.3. The Buyer may only refuse the Buyer's proposal where it considers that if the Supplier were to implement the proposal it would harm:

37.3.1. the Buyer's reputation; or

37.3.2. the Buyer's interests.

37.4. Where the Buyer has not:

37.4.1. approved or declined the proposal; or

37.4.2. required further information,

within twenty (20) Working Days of the later of:

37.4.3. the date the proposal was first provided to the Buyer; or

37.4.4. the date on which further information was provided to the Buyer,

then the proposal is, for the purposes of this Contract, approved.

38. Provision of information on New IPR and Specially Written Software

38.1. The Buyer may, at any time, require the Supplier to provide information on:

38.1.1. the purposes, other than for the purposes of this Contract, for which the Supplier uses New IPR and Specially Written Software; and

38.1.2. the activities the Supplier undertakes, other than under this Contract, with or in respect of the New IPR and Specially Written Software.

38.2. The Supplier must provide the information required by the Buyer:

38.2.1. within twenty (20) Working Days of the date of the requirement; and

38.2.2. in the form and with the content specified by the Buyer.

39. Patents

39.1. Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or New IPR by the Buyer or any Replacement Supplier, the Supplier hereby grants to the Buyer and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

[Guidance note: for Option 5: ~~Options 2, 3, or 4, plus Buyer~~ Supplier rights to a ~~gain/profit share~~ all New IPR and Specially Written Software with royalties, please use the appropriate drafting taken from either Options 2, 3 or Option 4, tailored as appropriate ~~for your agreement~~, and include the following additional drafting:]

2. Gain Share

~~2.1. The Supplier is permitted to commercially exploit the New IPR or any material reproducing the New IPR provided that it pays to the Buyer an amount to be calculated using one of the following options, such option to be agreed in writing by the parties prior to any commercial exploitation:~~

~~2.1.1. a levy for the use of the New IPR including copyright to be calculated at [....] % of the Supplier's selling/licensing price; or~~

~~2.1.2. a profit sharing arrangement on the basis of a levy payable to the Buyer in respect of the Supplier's exploitation of the New IPR. This levy expressed as a percentage of the profit and shall be determined as follows:~~

~~gross sale or licence price, i.e. the price for which the Supplier invoices its customer~~

~~minus~~

~~the allowable costs as prescribed by the Buyer for this purpose.~~

~~2.1.3. The profit so determined shall be shared between the Supplier and the Buyer as below, but in no circumstances will any loss be shared:~~

~~2.1.3.1. The first [.....] per cent shall be retained by the Supplier;~~

~~2.1.3.2. The next [.....] per cent shall be shared between the Supplier and the Buyer in the ratio of [.....];~~

~~2.1.3.3. The remaining profit shall be shared between the Supplier and the Buyer in the ratio of [.....].~~

~~2.2. The Supplier shall promptly inform the Buyer if any of the New IPR is capable of exploitation outside of the Contract.~~

~~2.3. Sales involving, or licences to reproduce, adaptations, extractions, translations or enhancements of the New IPR shall attract levy in accordance with the Contract unless the Buyer agrees in writing that an allowance may be made for software that was not developed at the Crown's or Buyer's expense.~~

~~2.4. The following provisions shall apply to this Contract:~~

~~2.4.1. The Supplier shall provide as soon as possible after delivery of the sale/licensed articles a statement, in a form prescribed by the Buyer, of the calculable profitability showing the gross selling/licence price and a summary of the allowable costs together with a certificate from its statutory auditors that the statement is correct and complete and that it complies with the accounting conventions agreed by the Buyer for the purpose.~~

~~2.4.2. The Supplier shall provide such facilities as may be necessary for the Buyer, if it so desires, to verify the statements and for this purpose the Supplier shall maintain proper books of accounts and records at its premises and shall make them available for inspection whether physically or otherwise at all reasonable times by representatives of the Buyer.~~

~~2.4.3. The liability of the Supplier to the Buyer for any sum due under this Contract including interim payment of levy for exploitation of the New IPR shall accrue on the date of delivery to the third party licensee/sub-licensee excluding the Supplier's works or, where the licence so prescribes, upon shipment.~~

Option 5

40. Royalties

40.1. The Supplier must provide a detailed proposal setting out:

40.1.1. the purpose for which it proposes to use the New IPR, the Specially Written Software and the Buyer Existing IPR;

40.1.2. the activities the Supplier proposes to undertake with or in respect of the New IPR, the Specially Written Software and the Buyer Existing IPR;

40.1.3. its proposed business plan, including:

40.1.3.1. the goods, services or software to be offered by the Supplier that use or incorporate the New IPR, the Specially Written Software and the Buyer Existing IPR;

40.1.3.2. the relationship between the New IPR, the Specially Written Software and the Buyer Existing IPR, and any Supplier Existing IPR or Third Party IPR to be incorporated into, or used to provide, those goods, services or software;

40.1.3.3. the target markets for those goods, services or software;

40.1.3.4. the estimated level of orders;

40.1.3.5. its marketing strategy;

40.1.3.6. details of the estimated costs, prices, revenues and profits;

40.1.3.7. the proposed financial benefit to the Buyer;

40.1.4. the impact of the proposal on the Services the Supplier provides under this Contract;

40.1.5. an analysis of the likely terms, including financial terms, on which the Supplier would be able to obtain access to intellectual property equivalent to the New IPR or the Specially Written Software were it to enter into an arm's length commercial relationship with a third-party;

40.1.6. the terms on which the Supplier proposes to licence the Buyer Existing IPR from the Buyer;

40.1.7. any proposed Variations to this Contract; and

- 40.1.8. any additional agreement the Supplier proposes that it and the Buyer enter into;
- 40.1.9. any other information the Buyer requires to properly assess the Supplier's proposed; and
- 40.1.10. any other information required by the Buyer.
- 40.2. Where the proposed financial benefit to the Buyer under Paragraph 42.1.3.7 is, in whole or part, a reduction in the Charges under this Contract, the Supplier must set out how it proposes to apply the revenues and profits received to the Charges payable by the Buyer and other End Users.
- 40.3. Where the Supplier's proposal provides for the development of new goods, services or software and those goods, services or software are subsequently purchased by the Buyer (by whatever means), the terms of that purchase must:
- 40.3.1. provide for the licencing of the New IPR or Specially Written Software to the Buyer on the same terms as in this Contract; and
- 40.3.2. include a price that reflects the Charges.
- 40.4. The Supplier acknowledges that:
- 40.4.1. the Buyer may refuse, or require changes to, the Supplier's proposal in its sole discretion and for any reason; and
- 40.4.2. in considering the Supplier's proposal, the Buyer must comply with Law relating to:
- 40.4.2.1. public procurement; and
- 40.4.2.2. subsidy control.
- 40.5. Where the Buyer agrees to the Supplier's proposal, with or without changes, that proposal will not have effect until both Parties have executed:
- 40.5.1. any additional agreement to give effect to the proposal;
- 40.5.2. any consequential Variation to this Contract.
- 40.6. Any agreement between the Buyer and the Supplier entered into under Paragraph [] must include provisions to the following effect:
- 40.6.1. the calculation of royalties is based on the following formula:

$$R = NSV \times RR \times P$$

where:

R is the royalty payable on an individual item subject to the agreement;

NSV is the net sales value of the item, that is the price for which the Supplier sold the item to a third party after the deduction of normal trade discounts and excluding VAT or any other tax or duty based directly on the price of the item and payable by the purchaser;

RR is [insert the royalty payable on the item, expressed as a percentage]; and

P is the proportion that the New IPR or Specially Written Software bears to the whole of the item, expressed as a percentage, subject to the following:

40.6.1.1. the proportion that the New IPR or Specially Written Software bears to the item as a whole is an estimation of the effort required to develop the New IPR or Specially Written Software compared to the item as a whole;

40.6.1.2. P is 100% where, either:

(a) where the proportion of the New IPR or Specially Written Software to the item as a whole is 80% or greater; or

(b) it would not be practicable to create or produce the item without the New IPR or Specially Written Software.

40.6.2. all royalties are paid quarterly on the basis of the total sales of the item in that quarter;

40.6.3. each payment of royalties must be accompanied by a detailed statement showing:

40.6.3.1. the number of items sold in that quarter;

40.6.3.2. their net sales value; and

40.6.3.3. the royalties due to the Buyer;

40.6.4. the Supplier must keep true and accurate records and books of account containing all information and data necessary for the calculation of royalties, including, for the avoidance of doubt, the calculation of the net sales value and the estimation of P in the formula in Paragraph 42.1 42.6.1;

40.6.5. the Supplier must make such books and records available for inspection by the Buyer, or the Buyer's representative, whether physically or virtually at any reasonable time specified by the Buyer.

[Guidance note: if using Option 2, please delete the following drafting, as the Supplier does not own the New IPR or Specially Written Software under that option]:

41. Clawback

41.1. If, within three years of its creation, the Supplier:

41.1.1. is not commercially exploiting any New IPR or Specially Written Software;

41.1.2. where the Supplier is not commercially exploiting any New IPR or Specially Written Software, is not, to the satisfaction of the Buyer, using its best endeavours to do so,

then, on written request from the Buyer:

41.1.2.1. the Supplier must promptly assign to the Buyer the New IPR, Specially Written Software or any specified New IPR Items or part of the New IPR or Specially Written Software; and

41.1.2.2. the licence to Buyer Existing IPR granted under Paragraph 26.1.3.2 terminates either:

(a) on the date specified in the notice; or

(b) where no date is specified in the notice, on the date the notice is received by the Supplier.

41.2. Each Party shall bear its own costs of preparing and executing any such assignment.

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~~[Subject to Contract]~~

Schedule 36 (Intellectual Property Rights), Crown Copyright 2023, [Subject to Contract]

~~Crown Copyright 2022~~

ANNEX 1: NEW IPR AND SPECIALLY WRITTEN SOFTWARE

Name of New IPR	Details

<u>Name of Specially Written Software</u>	<u>Details</u>

[Guidance: The ~~Authority~~Buyer should make clear to Suppliers that the New IPR and Specially Written Software which must be recorded in this Annex does not include all forms of IPR which may be created by the Supplier and the Supplier Staff during the completion of their obligations under ~~the~~this Contract. This may need to be updated throughout the life of this Contract. Only New IPR and Specially Written Software which is part of the Deliverables, or is necessary for the use of the Deliverables by the Buyer, or as part of the Buyer's ownership of IPR (depending on which option in this Schedule ~~36~~ is chosen) will need to be recorded here. IPR such as email communications or documents which do not form part of the Deliverables need not be recorded in this Annex.]

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~~[Subject to Contract]~~

Schedule 36 (Intellectual Property Rights), Crown Copyright 2023, ~~[Subject to Contract]~~

~~Crown Copyright 2022~~

ANNEX 2: FORM OF CONFIDENTIALITY UNDERTAKING

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date] 20

BETWEEN:

- (1) [insert name] of [insert address] (the “**Sub-licensee**”); and
- (2) [insert name] of [insert address] (the “**Supplier**” and together with the Supplier, the “**Parties**”).

WHEREAS:

- (A) [insert name of Buyer] (the “**Buyer**”) and the **Supplier** are party to a contract dated [insert date] (the “**Contract**”) for the provision by the Supplier of [insert brief description of services] to the Buyer.
- (B) The Buyer wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Buyer pursuant to this Contract (the “**Sub-licence**”).
- (C) It is a requirement of this Contract that, before the Buyer grants such sub-licence to the Sub-licensee, the Sub-licensee execute a confidentiality agreement in favour of the **Supplier** in or substantially in the form of this Agreement to protect the Confidential Information of the **Buyer**.

IT IS AGREED as follows:

1 Interpretation

1.1 In this Agreement, unless the context otherwise requires:

<u>“Confidential Information”</u>	<u>means:</u>
	<u>(a)</u> <u>Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Buyer to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:</u>
	<u>(i)</u> <u>the Supplier; or</u>
	<u>(ii)</u> <u>the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how</u>

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~~[Subject to Contract]~~

Schedule 36 (Intellectual Property Rights), Crown Copyright 2023, [Subject to Contract]

~~Crown Copyright 2022~~

and/or personnel of the Supplier;

- (b) the source code and the object code of the software sub-licensed to the Sub-licensee pursuant to the Sub-licence together with build information, relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation supplied by the Supplier to the Buyer pursuant to or in connection with the Sub-licence;
- (c) other Information provided by the Buyer pursuant to this Agreement to the Sub-licensee that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential which comes (or has come) to the Sub-licensee's attention or into the Sub-licensee's possession in connection with the Sub-licence; and
- (d) Information derived from any of the above,

but not including any Information that:

- (a) was in the possession of the Sub-licensee without obligation of confidentiality prior to its disclosure by the Buyer;
- (b) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Agreement or breach of a duty of confidentiality; or
- (c) was independently developed without access to the Information;

"Information"

means all information of whatever nature, however conveyed and in whatever form,

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~~[Subject to Contract]~~

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	<u>including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and</u>
<u>“Sub-licence”</u>	<u>has the meaning given to that expression in recital (B) to this Agreement.</u>

1.2 In this Agreement:

1.2.1 a reference to any gender includes a reference to other genders;

1.2.2 the singular includes the plural and vice versa;

1.2.3 the words “include” and cognate expressions shall be construed as if they were immediately followed by the words “without limitation”;

1.2.4 references to any statutory provision include a reference to that provision as modified, replaced, amended and/or re-enacted from time to time (before or after the date of this Agreement) and any prior or subsequent subordinate legislation made under it;

1.2.5 headings are included for ease of reference only and shall not affect the interpretation or construction of this Agreement; and

1.2.6 references to Clauses are to clauses of this Agreement.

2 Confidentiality Obligations

2.1 In consideration of the Buyer entering into the Sub-licence, the Sub- licensee shall:

2.1.1 treat all Confidential Information as secret and confidential;

2.1.2 have in place and maintain proper security measures and procedures to protect the confidentiality of the Confidential Information (having regard to its form and nature);

2.1.3 not disclose or permit the disclosure of any of the Confidential Information to any other person without obtaining the prior written consent of the Supplier or except as expressly set out in this Agreement;

2.1.4 not transfer any of the Confidential Information outside the United Kingdom;

2.1.5 not use or exploit any of the Confidential Information for any purpose whatsoever other than as permitted under the Sub-licence;

2.1.6 immediately notify the Supplier in writing if it suspects or becomes

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~~[Subject to Contract]~~

Schedule 36 (Intellectual Property Rights), Crown Copyright 2023, [Subject to Contract]

~~Crown Copyright 2022~~

aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and

2.1.7 upon the expiry or termination of the Sub-licence:

- (a) destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;
- (b) ensure, so far as reasonably practicable, that all Confidential Information held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Sub-licensee) from any computer, word processor, voicemail system or any other device; and
- (c) make no further use of any Confidential Information.

3 Permitted Disclosures

3.1 The Sub-licensee may disclose Confidential Information to those of its directors, officers, employees, consultants and professional advisers who:

3.1.1 reasonably need to receive the Confidential Information in connection with the Sub-licence; and

3.1.2 have been informed by the Sub-licensee of the confidential nature of the Confidential Information; and

3.1.3 have agreed to terms similar to those in this Agreement.

3.2 The Sub-licensee shall be entitled to disclose Confidential Information to the extent that it is required to do so by applicable law or by order of a court or other public body that has jurisdiction over the Sub-licensee.

3.3 Before making a disclosure pursuant to Clause 3.2, the Sub-licensee shall, if the circumstances permit:

3.3.1 notify the Supplier in writing of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information); and

3.3.2 ask the court or other public body to treat the Confidential Information as confidential.

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| 101

~~Mid-Tier Contract — version 1.4~~

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~~[Subject to Contract]~~

Schedule 36 (Intellectual Property Rights), Crown Copyright 2023, [Subject to Contract]

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4 **General**

- 4.1 The Sub-licensee **acknowledges and agrees that** all property, including intellectual property rights, in Confidential Information disclosed to it by the Supplier shall remain with and be vested in the Supplier.
- 4.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:
- 4.2.1 to grant the Sub-licensee any licence or rights other than as may be expressly stated in the Sub-licence;
- 4.2.2 to require the Supplier to disclose, continue disclosing or update any Confidential Information; or
- 4.2.3 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information or materials provided pursuant to or in anticipation of the Sub-licence.
- 4.3 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers or remedies provided by law. No failure or delay by either Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 4.4 Without prejudice to any other rights or remedies that the Supplier may have, the Sub-licensee **acknowledges and agrees that** damages alone may not be an adequate remedy for any breach by the Sub-licensee of any of the provisions of this Agreement. Accordingly, the Sub-licensee acknowledges that the Supplier shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Agreement and/or breach of confidence and that no proof of special damages shall be necessary for the enforcement of such remedies.
- 4.5 The maximum liability of the Sub-licensee to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).
- 4.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999 no one other than the Parties has the right to enforce the terms of this Agreement.
- 4.7 Each Party shall be responsible for all costs incurred by it or on its behalf in connection with this Agreement.
- 4.8 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

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| 102

~~Mid-Tier Contract — version 1.1~~

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~~[Subject to Contract]~~
Schedule 36 (Intellectual Property Rights), Crown Copyright 2023, [Subject to Contract]
~~Crown Copyright 2022~~

5 **Notices**

5.1 Any notice to be given under this Agreement (each a “Notice”) shall be given in writing and shall be delivered by hand and shall be deemed to have been duly given at the time of delivery provided that such Notice is sent to the relevant physical address, and expressly marked for the attention of the relevant individual, set out in Clause 5.2.

5.2 Any Notice:

5.2.1 if to be given to the Supplier shall be sent to:

[Address]

Attention: [Contact name and/or position, e.g. “The Finance Director”]

5.2.2 if to be given to the Sub-licensee shall be sent to:

[Name of Organisation]

[Address]

Attention: []

6 **Governing law**

6.1 This Agreement shall be governed by, and construed in accordance with, English law and any matter claim or dispute arising out of or in connection with this Agreement whether contractual or non-contractual, shall be governed by and determined in accordance with English law.

6.2 Each Party hereby irrevocably submits to the exclusive jurisdiction of the English courts in respect of any claim or dispute arising out of or in connection with this Agreement.

IN WITNESS of the above this Agreement has been signed by the duly authorised representatives of the Parties on the date which appears at the head of page 1.

For and on behalf of [name of Supplier]

Signature:

Date:

Name:

Position:

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For and on behalf of [name of Sub-licensee]

Signature:

Date:

Name:

Position:

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v. 1.2]

104

~~Mid-Tier Contract — version 1.1~~

Schedule 37 (Corporate Resolution Planning)

[Guidance: this Schedule should only be used if one or more of the following applies to this Contract:

- **It is a Critical Service Contract (as defined below)**
- **It is a service contract for over £10m per annum**
- **The Supplier for this contract is a Public Sector Dependent Supplier (as defined below).**

This Schedule requires Suppliers to provide CRP information, in line with the Playbook Guidance about Resolution Planning, to ensure that all applicable Suppliers have a Corporate Resolution Plan in place.]

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Schedule 1 (Definitions):

"Accounting Reference Date"	means in each year the date to which the Supplier prepares its annual audited financial statements;
"Annual Revenue"	means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology: <ol style="list-style-type: none">figures for accounting periods of other than <u>twelve (12)</u> months should be scaled pro rata to produce a proforma figure for a <u>twelve (12)</u> month period; andwhere the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
"Assurance"	means written confirmation from a Relevant Buyer to the Supplier that the CRP Information is approved by the Relevant Buyer;
"Cabinet Office Markets"	means the UK Government's team

and Suppliers Team"

responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;

"Corporate Change Event"

means:

- (a) any change of Control of the Supplier or a Parent Undertaking of the Supplier;
- (b) any change of Control of any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;
- (c) any change to the business of the Supplier or any member of the Supplier Group which, in the reasonable opinion of the Buyer, could have a material adverse effect on the Services;
- (d) a Class 1 Transaction taking place in relation to the shares of the Supplier or any Parent Undertaking of the Supplier whose shares are listed on the main market of the London Stock Exchange plc;
- (e) an event that could reasonably be regarded as being equivalent to a Class 1 Transaction taking place in respect of the Supplier or any Parent Undertaking of the Supplier;
- (f) payment of dividends by the Supplier or the ultimate Parent Undertaking of the Supplier Group exceeding [twenty five percent \(25%\)](#) of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any [twelve \(12\)](#) month period;
- (g) an order is made or an effective resolution is passed for the winding up of any member of the Supplier Group;
- (h) any member of the Supplier Group stopping payment of its debts

generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Supplier Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Supplier Group;

- (i) the appointment of a receiver, administrative receiver or administrator in respect of or over all or a material part of the undertaking or assets of any member of the Supplier Group; and/or
- (j) any process or events with an effect analogous to those in Paragraphs (e) to (g) inclusive above occurring to a member of the Supplier Group in a jurisdiction outside England and Wales;

"Corporate Change Event Grace Period"

means a grace period agreed to by the Relevant Buyer for providing CRP Information and/or updates to Service Continuity Plan after a Corporate Change Event

"Corporate Resolvability Assessment (Structural Review)"

means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 3 and Annex 2 of this ~~Schedule 1~~ [Schedule 37](#);

"Critical National Infrastructure"

means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:

- (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or
- (b) significant impact on the national

	security, national defence, or the functioning of the UK;
"Critical Service Contract"	means the overall status of the Services provided under this Contract as determined by the Buyer and specified in Paragraph 2 of this Schedule;
"CRP Information"	means the corporate resolution planning information, together, the: <u>(a)</u> (a) Exposure Information (Contracts List); <u>(b)</u> (b) Corporate Resolvability Assessment (Structural Review); and <u>(c)</u> (c) Financial Information and Commentary
"Exposure Information (Contracts List)"	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 3 and Annex 1 of this Schedule;
"Financial Information and Commentary"	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraph 3 and Annex 3 of this Schedule;
"Public Sector Dependant Supplier"	means a supplier where that supplier, or that supplier's group has Annual Revenue of £50 million or more of which over <u>fifty percent (50%)</u> is generated from UK Public Sector Business;
"Relevant Buyer" or "Relevant Buyers"	means the Buyer and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;
"Strategic Suppliers"	means those suppliers to government listed at https://www.gov.uk/government/publications/strategic-suppliers ;
"UK Public Sector Business"	means any goods, service or works provision to UK public sector bodies, including Central Government <u>Crown</u> Bodies and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations;
"Valid"	in respect of an Assurance, has the

meaning given to it in Paragraph 3.7 of this Schedule;

CORPORATE RESOLUTION PLANNING

2. Service Status and Supplier Status

2.1 This Contract **[insert 'is' or 'is not']** a Critical Service Contract.

[Guidance: A Critical Service Contract is a service contract which the Buyer has categorised as a Gold contract using the Cabinet Office Contract Tiering Tool available on the Knowledge Hub or which the Buyer, in consultation with the Cabinet Office Markets and Suppliers Team if appropriate, otherwise considers should be classed as a Critical Service Contract.]

2.2 The Supplier shall notify the Buyer and the Cabinet Office Markets and Suppliers Team, in writing within five (5) Working Days of the Effective Date and throughout the Term within one hundred and twenty (120) days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier. The contact email address for the Markets and Suppliers Team is resolution.planning@cabinetoffice.gov.uk.

3. Provision of Corporate Resolution Planning (CRP) Information

3.1 Paragraphs 3 to 5 shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 2.1 of this Schedule or the Supplier is or becomes a Public Sector Dependent Supplier.

3.2 Subject to Paragraphs 3.6, 3.10 and 3.11 of this Schedule:

- (a) where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Buyer or Relevant Buyers with the CRP Information within sixty (60) days of the Effective Date; and
- (b) except where it has already been provided in accordance with Paragraph 3.2(a) where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Buyer or Relevant Buyers with the CRP Information within sixty (60) days of the date of the Relevant Buyer's or Relevant Buyers' request.

3.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 3.2, 3.8 and 3.9 of this Schedule:

- (a) is full, comprehensive, accurate and up to date;
- (b) is split into three parts:
 - (i) Exposure Information (Contracts List)
 - (ii) Corporate Resolvability Assessment (Structural Review);
 - (iii) Financial Information and Commentary

and is structured and presented in accordance with the requirements and explanatory notes set out in the latest published version of the Resolution Planning Guidance Note published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

- (a) ~~(e)~~ incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Buyer or Relevant Buyers to understand and consider the information for approval;
- (b) ~~(d)~~ provides a clear description and explanation of the Supplier Group members that have agreements for goods, services or works provision in respect of UK Public Sector Business and/or Critical National Infrastructure and the nature of those agreements; and
- (c) ~~(e)~~ complies with the requirements set out at Annex 1 (Exposure Information (Contracts List)), Annex 2 (Corporate Resolvability Assessment (Structural Review)) and Annex 3 (Financial Information and Commentary) respectively.

3.4 Following receipt by the Relevant Buyer or Relevant Buyers of the CRP Information pursuant to Paragraphs 3.2, 3.8 and 3.9 of this Schedule, the Buyer shall procure that the Relevant Buyer or Relevant Buyers discuss in good faith the contents of the CRP Information with the Supplier and no later than 60 days after the date on which the CRP Information was delivered by the Supplier and either provide an Assurance to the Supplier that Relevant Buyer or Relevant Buyers approve the CRP Information or that Relevant Buyer or Relevant Buyers reject the CRP Information.

3.5 If the Relevant Buyer or Relevant Buyers reject the CRP Information:

- (a) the Buyer shall (and shall procure that the Cabinet Office Markets and Suppliers Team shall) inform the Supplier in writing of its reasons for its rejection; and
- (b) the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Buyer's or Relevant Buyers' comments, and shall re-submit the CRP Information to the Relevant Buyer or Relevant Buyers for approval within thirty (30) days of the date of the Relevant Buyer's or Relevant Buyers' rejection. - The provisions of Paragraphs 3.3 to 3.5 of this Schedule shall apply again to any resubmitted CRP Information provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

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- 3.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a ~~Central Government~~Crown Body or the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets and Suppliers Team) and has received an Assurance of its CRP Information from that ~~Central Government~~Crown Body and the Cabinet Office Markets and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets and Suppliers Team), then provided that the Assurance remains Valid on the date by which the CRP Information would otherwise be required, the Supplier shall not be required to provide the CRP Information under Paragraph 3.2 if it provides a copy of the Valid Assurance to the Relevant Buyer or Relevant Buyers on or before the date on which the CRP Information would otherwise have been required.
- 3.7 An Assurance shall be deemed Valid for the purposes of Paragraph 3.6 of this Schedule if:
- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than twelve (12) months has elapsed since it was issued and no more than eighteen (18) months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
 - (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Contract had then been in force) have occurred since the date of issue of the Assurance.
- 3.8 If this Contract is a Critical Service Contract, the Supplier shall provide an updated version of the CRP Information (or, in the case of Paragraph 3.8(c) of this Schedule its initial CRP Information) to the Relevant Buyer or Relevant Buyers:
- (a) ~~within~~Within fourteen (14) days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 3.11 of this Schedule) unless the Supplier is relieved of the consequences of the Financial Distress Event (Schedule 24 Financial Difficulties)
 - (b) ~~within~~Within thirty (30) days of a Corporate Change Event unless:
 - (i) the Supplier requests and the Relevant Buyer (acting reasonably) agrees to a Corporate Change Event Grace Period, in the event of which the time period for the Supplier to comply with this Paragraph shall be extended as determined by the Relevant Buyer (acting reasonably) but shall in any case be no longer than six (6) months after the Corporate Change Event. - During a Corporate Change Event Grace Period the Supplier shall regularly and fully engage with the Relevant Buyer to enable it to understand the nature of the Corporate Change Event and the Relevant Buyer shall

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reserve the right to terminate a Corporate Change Event Grace Period at any time if the Supplier fails to comply with this Paragraph; or

- (ii) not required pursuant to Paragraph 3.10;
- (c) within [thirty \(30\)](#) days of the date that:
 - (i) the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 3.10; or
 - (ii) none of the credit rating agencies specified at Paragraph 3.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
- (d) in any event, within [six \(6\)](#) months after each Accounting Reference Date or within [fifteen \(15\)](#) months of the date of the previous Assurance received from the Relevant Buyer (whichever is the earlier), unless:
 - (i) updated CRP Information has been provided under any of Paragraphs 3.8(a), 3.8(b) or 3.8(c) since the most recent Accounting Reference Date (being no more than [twelve \(12\)](#) months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 3.8(d); or
 - (ii) not required pursuant to Paragraph 3.10.

3.9 Where the Supplier is a Public Sector Dependent Supplier and this Contract is not a Critical Service Contract, then on the occurrence of any of the events specified in Paragraphs 3.8(a) to 3.8(d) of this Schedule, the Supplier shall provide at the request of the Relevant Buyer or Relevant Buyers and within the applicable timescales for each event as set out in Paragraph 3.8 (or such longer timescales as may be notified to the Supplier by the Buyer), the CRP Information to the Relevant Buyer or Relevant Buyers.

3.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:

- (a) ~~—~~Aa3 or better from Moody's;
- (b) AA- or better from Standard and Poor's;
- (c) AA- or better from Fitch;

the Supplier will not be required to provide any CRP Information unless or until either (i) a Financial Distress Event occurs (unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph ~~7.16~~ of Schedule 24 (*Financial Difficulties*)) (as defined in Schedule 24 (*Financial Difficulties*)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 3.10, in

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which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 3.8.

3.11 Subject to Paragraph 5, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Buyer or Relevant Buyers that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Buyer or Relevant Buyers, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Supplier shall promptly provide the relevant information to the Relevant Buyer or Relevant Buyers to the extent required under Paragraph 3.8.

4. Termination Rights

4.1 The Buyer shall be entitled to terminate this Contract under Clause 14.4 (*Ending ~~the~~this Contract*) if the Supplier is required to provide CRP Information under Paragraph 3 of this Schedule and either:

- (a) the Supplier fails to provide the CRP Information within 4 months of the Effective Date if this is a Critical Service Contract or otherwise within [four \(4\)](#) months of the Relevant Buyer's or Relevant Buyers' request; or
- (b) the Supplier fails to obtain an Assurance from the Relevant Buyer or Relevant Buyers within [four \(4\)](#) months of the date that it was first required to provide the CRP Information under this Contract.

5. Confidentiality and usage of CRP Information

- 5.1 The Buyer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Supplier and/or Supplier Group members on its UK Public Sector Business and/or services in respect of Critical National Infrastructure and to enable contingency planning to maintain service continuity for end users and protect Critical National Infrastructure in such eventuality.
- 5.2 Where the Relevant Buyer is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Buyer shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage Contract with the Supplier containing terms no less stringent than those placed on the Buyer under Paragraph 5.1 of this Schedule and Clause 19 (*What you must keep Confidential*).
- 5.3 The Supplier shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Buyer or Relevant Buyers pursuant to Paragraph 3 of this Schedule subject, where necessary, to the Relevant Buyer or Relevant Buyers entering into an appropriate confidentiality Contract in the form required by the third party.
- 5.4 Where the Supplier is unable to procure consent pursuant to Paragraph 5.3, the Supplier shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:
- (a) redacting only those parts of the information which are subject to such obligations of confidentiality;
 - (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - (i) summarising the information;
 - (ii) grouping the information;
 - (iii) anonymising the information; and
 - (iv) presenting the information in general terms.
- 5.5 The Supplier shall provide the Relevant Buyer or Relevant Buyers with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Supplier is legally permitted to do so.

ANNEX 1: EXPOSURE: CRITICAL CONTRACTS LIST

- 1 The Supplier shall:
 - 1.1 provide details of all agreements held by members of the Supplier Group where those agreements are for goods, services or works provision and:
 - (a) are with any UK public sector bodies including: ~~central Government departments~~[Crown Bodies](#) and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, local Buyers, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph 1.1(a) of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under ~~the~~[this](#) Contract with the end recipient; or
 - (c) involve or could reasonably be considered to involve Critical National Infrastructure;
 - 1.2 provide the Relevant Buyer with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key sub-contracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link

ANNEX 2: CORPORATE RESOLVABILITY ASSESSMENT (STRUCTURAL REVIEW)

- 1 The Supplier shall:
 - 1.1 provide sufficient information to allow the Relevant Buyer to understand the implications on the Supplier Group's UK Public Sector Business and Critical National Infrastructure agreements listed pursuant to Annex 1 if the Supplier or another member of the Supplier Group is subject to an Insolvency Event.
 - 1.2 ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Supplier Group; and
 - 1.3 provide full details of the importance of each member of the Supplier Group to the Supplier Group's UK Public Sector Business and Critical National Infrastructure agreements listed pursuant to Annex 1 and the dependencies between each.

ANNEX 3: FINANCIAL INFORMATION AND COMMENTARY

- 1 The Supplier shall:
 - 1.1 provide sufficient financial information for the Supplier Group level, contracting operating entities level, and shared services entities' level to allow the Relevant Buyer to understand the current financial interconnectedness of the Supplier Group and the current performance of the Supplier as a standalone entity; and
 - 1.2 ensure that the information is presented in a simple, effective and easily understood manner.
 - 1.3 For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Supplier to comply with its obligations under this Schedule. If such accounts are not available in that timeframe, to the extent permitted by Law financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Relevant Buyer remains protected by confidentiality).