

Core Terms

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Government
Legal Department



Cabinet Office

GLD Standard Form Document

Category	Model Contract – Provision of Services
Title	Model Services Contract
Maturity Level	Medium

Notes:

1. This standard form document is intended for use by lawyers.
2. Use of this document is strongly recommended because it is up to date and reflects mandatory policies, and it should be used as far as possible in its entirety. You should assess whether it is appropriate for your clients' needs and tailor it appropriately if required.
3. Please check the Commercial Law site on LION or on Gov.UK for new versions of this precedent before using it.
4. If you have any questions about this document please contact the Model Services Contract Team at modelservicescontract@cabinetoffice.gov.uk

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FAQs

What is the status of this document?

Please refer to the model contracts selection guide in the accompanying guidance document for further details as to when you should use this document.

What if I have any feedback?

If you have any feedback and comments on its use please forward these to modelservicescontract@cabinetoffice.gov.uk

What will the guidance on the model contract cover?

It is a reader's guide to the contract, setting out why particular commercial and drafting decisions were taken. We expect this to be a public document, which will be published on Gov.UK and on LION.

How will the contracts be maintained to take account of developments in the law and commercial practice?

Cabinet Office will keep the published version up to date.

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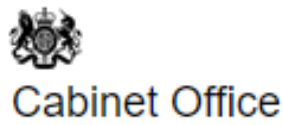
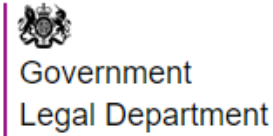
Version control:

Version	Date	Main Changes
0.9(2)	28 June 2013	Corrections to clauses <u>Clause</u> s 7.4, 7.5 and 17.1. Clarification that contract is entered into by the Authority as part of the Crown (clause <u>Clause</u> 1.5) and extension of right of set-off to Crown (clause <u>Clause</u> 10.6). These clauses <u>Clause</u> s will require amendment for contracting authorities that are not part of the Crown.
1.0	29 January 2014	Amendments as a result of consultation. Numerous minor changes and improvements.
1.01	5 November 2015	Hyperlinks to licence information updated. 30-day payment requirement extended to sub-contractors. Provisions required by the Public Contracts Regulations 2015. Changes to definitions of Restricted Country; Supplier Termination Event; SPI Failure and SPI Service Threshold. Other minor improvements.
1.02	26 May 2016	IPR amended to reflect new policy on ownership and open source publication, and to deal with patents; new provisions on transparency; addition to sub-contracting provisions; minor amendments to Disputes procedure and to other provisions.
1.03	1 January 2018	Introduction of Privacy Shield; minor corrections; front cover amended to reflect open government licence terms.
1.04	30 July 2018	Introduction of GDPR data protection clause, updated security schedule, amendment to retention of legal obligations.
1.05	24 January 2019	Interpretation of EU law post-Brexit, new provisions on independent control and joint control, provisions on the Criminal Finances Act 2017.
1.06	29 April 2019	Amendments to respond to Outsourcing Review including: updates to the financial distress schedule and service continuity plan schedule (formerly BCDR plan) to provide enhanced transparency and management of supply chain and Supplier Group financial issues plus amendments to better facilitate disaggregation, including updates to the IPR clause and Exit Schedule. There are also updates to the Insurance Schedule and amendments to the Records schedule to include Virtual Library obligations.
1.06A	4 June 2019	Corrections to minor errors.
1.07	10 July 2020	Updated prompt payment requirements in Clause <u>Clause</u> 15. Publishable Performance Information has been added to Clause <u>Clause</u> 20.1. The force majeure provisions in Clause <u>Clause</u> 30 have been updated.
1.07A	12 November 2020	Updated protection of personal data requirements in clause <u>Clause</u> 21. Standard Contractual Clauses has been added to clause <u>Clause</u> 21.29.
2.0	11 April 2022	Amendment to Supplier data protection liability cap. Introduction of different options for ownership and licensing of foreground IPR, an

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Version	Date	Main Changes
		annex for recording foreground IPR, drafting covering the Crown Use exemption, and amendments to the open source publication IPR clauses. Introduction of collaborative working principles. Amendments to the GDPR data protection clauses and other EU clauses. Updates to the Security Management Schedule. Updates to the financial distress and corporate resolution planning schedules. Updates for social value. Amending clauses around the terms required in subcontracts. Updates to the Exit Management Schedule. Introduction of clauses dealing with whistleblowing, modern slavery, employment law, and conflicts of interest. Updates relating to sustainability. Numerous other minor changes and improvements.
2.0A1	 January <u>August</u> 2023	Formatting throughout made consistent. Fonts, spacing, and formatting updated for accessibility. Schedule 32 added to list of schedules. No other change to content or any substantive changes. <u>Addition of indemnities and move from breach of contract to indemnities for some liabilities to align model contracts. Updates to limitation of liability. Amendments to Power of Attorney provisions. Simplification of supply chain protection provisions. Updates to and simplification of the GDPR data protection clauses. Amendments to Modern Slavery clauses. Amendments to severance clauses. Updates to Security Management Schedule. Amendments to Insurance Schedule. Amendments to Software Schedule. Amendments to Charges and Invoicing Schedule. Amendments to Benchmarking Schedule. Updates to Change Control Procedure Schedule. Updates to Reports and Records Schedule. Amendments to Exit Management Schedule. Amendments to Staff Transfer Schedule. Amendments to IPR Schedule and updates to IPR provisions in Core Terms and Software Schedule. Numerous other minor changes and improvements.</u>



MODEL SERVICES CONTRACT

DATED

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(1) **[THE AUTHORITY]**

and

(2) **[THE SUPPLIER]**

CONTRACT

relating to

[REDACTED]

You must notify your use of this document by emailing modelservicescontract@cabinetoffice.gov.uk, providing the following details: name of Contracting Authority, Authority contract manager details, Supplier and Key Sub-contractor details, contract title and reference number, total value, Critical Service Contract and Public Sector Dependent Supplier status, CPV codes, summary description of services (broken down per Key Sub-contractor with approximate % and value of services being undertaken), start date and term (including extension options).

This Contract is issued by the Cabinet Office and is the copyright of the Crown. You may use and re-use the information within this Contract for commercial and non-commercial purposes without charge under the terms of the Open Government Licence v3.0, which is available at <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/3/>. When you use any information within this Contract, you should include the following attribution, “Contains public sector information licensed under the Open Government Licence v3.0”, and include a link to the Open Government Licence.

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28. Staff Transfer
29. Key Personnel
30. Guarantee
31. Processing Personal Data
32. Intellectual Property Rights

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THIS CONTRACT is made on

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BETWEEN:

- (1) [NAME OF THE AUTHORITY] of [] (the “**Authority**”); and
- (2) [NAME OF THE SUPPLIER] a company registered in [England and Wales] under company number [] whose registered office is at [] (the “**Supplier**”)

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

INTRODUCTION

[Set out description of background and objectives of the procurement - for example:

- (A) The Authority [insert background of relevant functions of the Authority] and wishes to [insert objectives of project].
- (B) On [insert date] the Authority advertised on Find a Tender (reference [insert FTS number]), inviting prospective suppliers to submit proposals for the [insert description of services].
- (C) The Supplier is a leading provider of [insert business of Supplier] and has experience in [insert services being procured].
- (D) On the basis of the Supplier's response to the advertisement and a subsequent tender process, the Authority selected the Supplier as its preferred supplier.
- (E) Following negotiations, the Parties have agreed to contract with each other in accordance with the terms and conditions set out below.]

IT IS AGREED as follows:

Section A: Preliminaries

1 Definitions and Interpretation

- 1.1 In this Contract, unless otherwise provided or the context otherwise requires, capitalised expressions shall have the meanings set out in Schedule 1 (*Definitions*) or the relevant Schedule in which that capitalised expression appears.
- 1.2 Interpretation is as set out in Schedule 1 (*Definitions*).
- 1.3 If there is any conflict between the Clauses and the Schedules and/or any Annexes to the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
- 1.3.1 the Clauses and Schedule 1 (*Definitions*);
 - 1.3.2 Schedules 2 (*Services Description*) and 3 (*Performance Levels*) and their Annexes;
 - 1.3.3 any other Schedules and their Annexes (other than Schedule 8 (*Supplier Solution*) and its Annexes); and
 - 1.3.4 Schedule 8 (*Supplier Solution*) and its Annexes (if any) unless any part of the Supplier Solution offers a better commercial position for the Authority (as decided by the Authority, in its absolute discretion), in which case that part of the Supplier Solution will take precedence over the documents above.
- 1.4 The Schedules and their Annexes form part of this Contract.
- 1.5 In entering into this Contract the Authority is acting as part of the Crown.

2 Due Diligence

- 2.1 The Supplier acknowledges that, subject to the Allowable Assumptions:
- 2.1.1 the Authority has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
 - 2.1.2 it has made its own enquiries to satisfy itself as to the accuracy and adequacy of the Due Diligence Information;
 - 2.1.3 it has satisfied itself (whether by inspection or having raised all relevant due diligence questions with the Authority before the Effective Date) of all relevant details relating to:
 - (a) the Authority Requirements;
 - (b) the suitability of the existing and (to the extent that it is defined or reasonably foreseeable at the Effective Date) future Operating Environment;
 - (c) the operating processes and procedures and the working methods of the Authority;

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

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

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

2.2.1 any unsuitable aspects of the Operating Environment;

2.2.2 any misinterpretation of the Authority Requirements; and/or

2.2.3 any failure by the Supplier to satisfy itself as to the accuracy and/or adequacy of the Due Diligence Information.

2.3 The Parties shall comply with the provisions of Paragraph 6 of Part C of Schedule 15 (*Charges and Invoicing*) in relation to the verification of any Allowable Assumptions.

3 Warranties

3.1 The Authority represents and warrants that:

3.1.1 it has full capacity and authority to enter into and to perform this Contract;

3.1.2 this Contract is ~~executed~~entered into by its duly authorised representative;

3.1.3 there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract; and

3.1.4 its obligations under this Contract constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to

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equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

3.2 The Supplier represents and warrants that:

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

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- 3.2.12 it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under this Contract;
- 3.2.13 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 3.2.14 within the previous 12 months, no Financial Distress Events have occurred or are subsisting (or any events that would be deemed to be Financial Distress Events under this Contract had this Contract been in force) and there are currently no matters that it is aware of that could cause a Financial Distress Event to occur or subsist.

- 3.3 The representations and warranties set out in Clause ~~3.2~~ shall be deemed to be repeated by the Supplier on the Effective Date (if later than the date of signature of this Contract) by reference to the facts then existing.
- 3.4 Each of the representations and warranties set out in Clauses ~~3.1~~ and 3.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any other undertaking in this Contract.
- 3.5 If at any time a Party becomes aware that a representation or warranty given by it under Clause ~~3.1~~ or 3.2 has been breached, is untrue or is misleading, it shall immediately notify the other Party of the relevant occurrence in sufficient detail to enable the other Party to make an accurate assessment of the situation.
- 3.6 For the avoidance of doubt, the fact that any provision within this Contract is expressed as a warranty shall not preclude any right of termination which the Authority may have in respect of breach of that provision by the Supplier.
- 3.7 Except as expressly stated in this Contract, all warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by Law.

3.8 The Supplier indemnifies the Authority against wilful misconduct of the Supplier, Subcontractor and Supplier Personnel that impacts the Contract.

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Section B: The Services

4 Term

4.1 This Contract shall:

- 4.1.1 come into force on the Effective Date, save for Clauses-1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), which shall be binding and enforceable as between the Parties from the date of signature; and
- 4.1.2 unless terminated at an earlier date by operation of Law or in accordance with Clause-31 (*Termination Rights*), terminate:
- (a) at the end of the Initial Term; or
 - (b) if the Authority elects to extend the Initial Term by giving the Supplier at least **insert figure** Working Days' notice before the end of the Initial Term, at the end of the Extension Period.

Condition Precedent

- 4.2 Save for Clauses-1 (*Definitions and Interpretation*), 3 (*Warranties*), 4 (*Term*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 22 (*Publicity and Branding*), 23 (*Limitations on Liability*), 35 (*Waiver and Cumulative Remedies*), 36 (*Relationship of the Parties*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 42 (*Notices*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), this Contract is conditional upon the valid execution and delivery to the Authority of the Guarantee (the "**Condition Precedent**"). The Authority may in its sole discretion at any time agree to waive compliance with the Condition Precedent by giving the Supplier notice in writing.
- 4.3 The Supplier shall satisfy, or procure the satisfaction of, the Condition Precedent as soon as possible. In the event that the Condition Precedent is not satisfied within 20 Working Days after the date of this Contract then, unless the Condition Precedent is waived by the Authority in accordance with Clause-4.2:
- 4.3.1 this Contract shall automatically cease and shall not come into effect; and
- 4.3.2 neither Party shall have any obligation to pay any compensation to the other Party as a result of such cessation.
- 4.4 The Supplier shall consult with the Authority in relation to the steps it takes to satisfy the condition set out in Clause-4.2 and shall keep the Authority fully informed of its progress in satisfying the condition and of any circumstances which are likely to result in the condition not being satisfied by the date set out in Clause-4.3.

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5 Services

Standard of Services

5.1 The Supplier shall provide:

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

5.2 The Supplier shall ensure that:

5.2.1 the Services:

- (a) comply in all respects with the Services Description; and
- (b) are supplied in accordance with the Supplier Solution and the provisions of this Contract; and

5.2.2 where:

- (a) the Operational Services to be provided from any Operational Service Commencement Date are similar to services that the Authority was receiving immediately prior to that Operational Service Commencement Date (such similar services being "**Preceding Services**"); and
- (b) the standard and level of service received by the Authority in respect of any of the Preceding Services in the 12 month period immediately prior to that Operational Service Commencement Date have been disclosed to the Supplier in the Due Diligence Information (such preceding services being "**Relevant Preceding Services**"),

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

5.3 The Supplier shall:

- 5.3.1 perform its obligations under this Contract, including in relation to the supply of the Services and any Goods in accordance with:
 - (a) all applicable Law;
 - (b) Good Industry Practice;
 - (c) the Standards;
 - (d) the Baseline Security Requirements;
 - (e) the Quality Plans;

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- (f) the Authority IT Strategy; and
- (g) the Supplier's own established procedures and practices to the extent the same do not conflict with the requirements of Clauses ~~5.3.1(a)~~ to 5.3.1(f); and

5.3.2 indemnify the Authority against any costs resulting from any breach by the Supplier of any applicable Law relating to the Contract; and

~~5.3.2~~5.3.3 deliver the Services using efficient business processes and ways of working having regard to the Authority's obligation to ensure value for money.

- 5.4 In the event that the Supplier becomes aware of any inconsistency between the requirements of Clauses ~~5.3.1(a)~~ to 5.3.1(f), the Supplier shall immediately notify the Authority Representative in writing of such inconsistency and the Authority Representative shall, as soon as practicable, notify the Supplier which requirement the Supplier shall comply with.

Supplier covenants

- 5.5 The Supplier shall:

- 5.5.1 at all times allocate sufficient resources with the appropriate technical expertise to supply the Deliverables and to provide the Services in accordance with this Contract;
- 5.5.2 save to the extent that obtaining and maintaining the same are Authority Responsibilities and subject to Clause ~~13~~ (*Change*), obtain, and maintain throughout the duration of this Contract, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) it may require and which are necessary for the provision of the Services;
- 5.5.3 ensure that:
 - (a) it shall continue to have all necessary rights in and to the Licensed Software, the Third Party IPRs, the Supplier Background IPRs and any other materials made available by the Supplier (and/or any Sub-contractor) to the Authority which are necessary for the performance of the Supplier's obligations under this Contract and/or the receipt of the Services by the Authority;
 - (b) the release of any new Software or upgrade to any Software complies with the interface requirements in the Services Description and (except in relation to new Software or upgrades which are released to address Malicious Software or to comply with the requirements of Schedule 5 (*Security Management*)) shall notify the Authority 3 months before the release of any new Software or Upgrade;
 - (c) 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;

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- (d) any products or services recommended or otherwise specified by the Supplier for use by the Authority in conjunction with the Deliverables and/or the Services shall enable the Deliverables and/or Services to meet the Authority Requirements; and
 - (e) the Supplier System and Assets used in the performance of the Services will be free of all encumbrances (except as agreed in writing with the Authority);
- 5.5.4 minimise any disruption to the Services, the IT Environment and/or the Authority's operations when carrying out its obligations under this Contract;
- 5.5.5 ensure that any Documentation and training provided by the Supplier to the Authority are comprehensive, accurate and prepared in accordance with Good Industry Practice;
- 5.5.6 co-operate with any Other Supplier notified to the Supplier by the Authority from time to time by providing:
- (a) reasonable information (including any Documentation);
 - (b) advice; and
 - (c) reasonable assistance,
- in connection with the Services to any such Other Supplier to enable such Other Supplier to create and maintain technical or organisational interfaces with the Services and, on the expiry or termination of this Contract for any reason, to enable the timely transition of the Services (or any of them) to the Authority and/or to any Replacement Supplier in accordance with the following collaborative working principles:
- (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) being open, transparent and responsive in sharing relevant and accurate information with such Other Suppliers;
 - (c) where reasonable, adopting common working practices, terminology, standards and technology and a collaborative approach to service development and resourcing with such Other Suppliers;
 - (d) providing reasonable cooperation, support, information and assistance to such Other Suppliers in a proactive, transparent and open way and in a spirit of trust and mutual confidence; and
 - (e) identifying, implementing and capitalising on opportunities to improve ~~deliverables~~Deliverables and deliver better solutions and performance throughout the relationship lifecycle;
- 5.5.7 to the extent it is legally able to do so, hold on trust for the sole benefit of the Authority, all warranties and indemnities provided by third parties or any Sub-contractor in respect of any Deliverables and/or the Services and, where any

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such warranties are held on trust, at its cost enforce such warranties in accordance with any reasonable directions that the Authority may notify from time to time to the Supplier;

- 5.5.8 unless it is unable to do so, assign to the Authority on the Authority's written request and at the cost of the Supplier any such warranties and/or indemnities as are referred to in Clause ~~5.5.7~~;
 - 5.5.9 provide the Authority with such assistance as the Authority may reasonably require during the Term in respect of the supply of the Services;
 - 5.5.10 gather, collate and provide such information and co-operation as the Authority may reasonably request for the purposes of ascertaining the Supplier's compliance with its obligations under this Contract;
 - 5.5.11 notify the Authority in writing as soon as reasonably possible and in any event within 1 month of any change of Control taking place;
 - 5.5.12 notify the Authority in writing within 10 Working Days of their occurrence, of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it that might affect its ability to perform its obligations under this Contract;
 - 5.5.13 ensure that neither it, nor any of its Affiliates, embarrasses the Authority or otherwise brings the Authority into disrepute by engaging in any act or omission in relation to this Contract which is reasonably likely to diminish the trust that the public places in the Authority; and
 - 5.5.14 manage closure or termination of Services and end of life of Goods to take account of the Authority's disposal requirements, including recycling and scope for re-use, and all applicable Standards.
- 5.6 An obligation on the Supplier to do, or to refrain from doing, any act or thing shall include an obligation upon the Supplier to procure that all Sub-contractors and Supplier Personnel also do, or refrain from doing, such act or thing.
- 5.7 Without prejudice to Clauses ~~17.2~~ and ~~17.3~~ (*IPRs Indemnity*) and any other rights and remedies of the Authority howsoever arising, the Supplier shall:
- 5.7.1 remedy any breach of its obligations in Clauses ~~5.5.2~~ to ~~5.5.4~~ inclusive within 3 Working Days of becoming aware of the breach or being notified of the breach by the Authority where practicable or within such other time period as may be agreed with the Authority (taking into account the nature of the breach that has occurred);
 - 5.7.2 remedy any breach of its obligations in Clause ~~5.5.1~~ and Clauses ~~5.5.5~~ to ~~5.5.10~~ inclusive within 20 Working Days of becoming aware of the breach or being notified of the breach by the Authority; and
 - 5.7.3 meet all the costs of, and incidental to, the performance of such remedial work,

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and any failure of the Supplier to comply with its obligations under Clause ~~5.7.1~~ or Clause ~~5.7.2~~ within the specified or agreed timeframe shall constitute a Notifiable Default.

Specially Written Software warranty

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

5.8.1 be free from material design and programming errors;

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

5.8.3 not infringe any Intellectual Property Rights.

Continuing obligation to provide the Services

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

5.9.1 any withholding of the Service Charges by the Authority pursuant to Clause ~~7.2.4(b)~~ (*Performance Failures*);

5.9.2 the existence of an unresolved Dispute; and/or

5.9.3 any failure by the Authority to pay any Charges,

unless the Supplier is entitled to terminate this Contract under Clause ~~31.3.1~~ (*Termination by the Supplier*) for failure to pay undisputed Charges.

Optional Services

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

5.11 If a Change Request is submitted, the Supplier shall, as part of the Impact Assessment provided by the Supplier in relation to such Change Request, provide details of the impact (if any) that the proposed Change will have on the relevant Optional Services.

5.12 Following receipt of the Authority's notice pursuant to Clause ~~5.10~~:

5.12.1 the Parties shall document the inclusion of the relevant Optional Services within the Services in accordance with the Change Control Procedure, modified to reflect the fact that the terms and conditions on which the Supplier shall provide the relevant Optional Services have already been agreed;

5.12.2 the Supplier shall implement and Test the relevant Optional Services in accordance with the Optional Services Implementation Plan;

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- 5.12.3 any additional charges for the Optional Services shall be incorporated in the Charges as specified in Paragraph 3 of Part B of Schedule 15 (*Charges and Invoicing*); and
- 5.12.4 the Supplier shall, from the date agreed in the Optional Services Implementation Plan (or, if later, the date of Achievement of any Milestones associated with the commencement of the relevant Optional Services (if any)), provide the relevant Optional Services to meet or exceed the applicable Target Performance Level in respect of all Performance Indicators applicable to the Optional Services as set out in Annex 1 of Schedule 3 (*Performance Levels*).

Power of attorney

5.13 By way of security for the performance of its obligations under Clauses ~~5.5.7~~ and 5.5.8 (*Supplier covenants*) the Supplier ~~:~~

~~5.13~~5.13.1 hereby irrevocably appoints the Authority as its agent and attorney to act with full power and authority in the Supplier's name and on its behalf to do all such acts and execute all such documents as may be necessary or desirable to enforce any such warranties and/or effect any such assignment as are referred to in such Clauses and to delegate one or more of the powers conferred on it by this Clause ~~5.13~~ (other than the power to delegate) to officer(s) appointed for that purpose by the Authority and may vary or revoke such delegation at any time ~~:~~

5.13.2 shall promptly, at its own expense, execute any deed that the Authority may reasonably require to create or perfect the appointment of the power of attorney referred to in this Clause ~~5.13~~; and

5.13.3 ratifies and confirms, and agrees to ratify and confirm, anything that any of its attorneys may do in the proper and lawful exercise, or purported exercise, of all or any of the rights, powers, authorities and discretions referred to in this Clause ~~5.13~~.

Authority Responsibilities

5.14 The Authority shall comply with its responsibilities set out in Schedule 7 (*Authority Responsibilities*).

6 Implementation

Quality Plans

- 6.1 The Supplier shall develop, within **[insert number]** Working Days of the Effective Date, quality plans that ensure that all aspects of the Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it ("**Quality Plans**").
- 6.2 The Supplier shall obtain the Authority Representative's written approval of the Quality Plans before implementing them, which approval shall not be unreasonably withheld or delayed. The Supplier acknowledges and accepts that the Authority's approval shall not act as an endorsement of the Quality Plans and shall not relieve the Supplier of its responsibility for ensuring that the Services are provided to the standard required by this Contract.

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- 6.3 Following the approval by the Authority of the Quality Plans:
- 6.3.1 the Supplier shall design and deliver all Deliverables in accordance with the Quality Plans; and
 - 6.3.2 any Changes to the Quality Plans shall be agreed in accordance with the Change Control Procedure.

Implementation Plan and Delays

- 6.4 The Parties shall comply with the provisions of Schedule 13 (*Implementation Plan*) in relation to the agreement and maintenance of the Detailed Implementation Plan.
- 6.5 The Supplier shall:
- 6.5.1 comply with the Implementation Plan; and
 - 6.5.2 ensure that each Milestone is Achieved on or before its Milestone Date.
- 6.6 If the Supplier becomes aware that there is, or there is reasonably likely to be, a Delay:
- 6.6.1 it shall:
 - (a) notify the Authority in accordance with Clause ~~25.1~~ (*Rectification Plan Process*); and
 - (b) comply with the Rectification Plan Process in order to address the impact of the Delay or anticipated Delay; and
 - (c) use all reasonable endeavours to eliminate or mitigate the consequences of any Delay or anticipated Delay; and
 - 6.6.2 if the Delay or anticipated Delay relates to a Key Milestone, the provisions of Clause ~~26~~ (*Delay Payments*) shall apply.

Testing and Achievement of Milestones

- 6.7 The Parties shall comply with the provisions of Schedule 14 (*Testing Procedures*) in relation to the procedures to determine whether a Milestone or Test has been Achieved.

7 Performance Indicators

- 7.1 The Supplier shall:
- 7.1.1 provide the Operational Services in such a manner so as to meet or exceed the Target Performance Level for each Performance Indicator from the Milestone Date for each relevant CPP Milestone; and
 - 7.1.2 comply with the provisions of Schedule 3 (*Performance Levels*) in relation to the monitoring and reporting on its performance against the Performance Indicators.

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Performance Failures

7.2 If in any Service Period:

- 7.2.1 a KPI Failure occurs, Service Credits shall be deducted from the Service Charges in accordance with Paragraph 3 of Part C of Schedule 15 (*Charges and Invoicing*);
- 7.2.2 a Material KPI Failure occurs, the Supplier shall comply with the Rectification Plan Process (in addition to Service Credits accruing in accordance with Clause ~~7.2.1~~);
- 7.2.3 a PI Failure occurs, the Supplier shall notify the Authority of the action (if any) it will take to rectify the PI Failure and/or to prevent the PI Failure from recurring; and/or
- 7.2.4 a Material PI Failure occurs:
 - (a) the Supplier shall comply with the Rectification Plan Process; and
 - (b) the Authority may withhold a proportionate amount of the Service Charges in accordance with the process set out in Clause ~~10.7~~ (*Set Off and Withholding*) until the relevant Material PI Failure is rectified to the reasonable satisfaction of the Authority, at which point the Authority shall pay the amount withheld.

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

- 7.3.1 the Supplier has over the previous 12 month period accrued Service Credits in excess of the Service Credit Cap;
- 7.3.2 the KPI Failure:
 - (a) breaches the relevant KPI Service Threshold;
 - (b) has arisen due to the wilful default by the Supplier or any Supplier Personnel; or
 - (c) results in:
 - (i) the corruption or loss of any Authority Data (in which case the remedies under Clause ~~18.7~~ (*Authority Data and Security Requirements*) shall also be available); and/or
 - (ii) the Authority being required to make a compensation payment to one or more third parties;
- 7.3.3 the Supplier has fraudulently misreported its performance against any Performance Indicator; and/or
- 7.3.4 the Authority is otherwise entitled to or does terminate the relevant Services or this Contract pursuant to Clause ~~31.1.2~~ (*Termination by the Authority*).

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Unacceptable KPI Failure

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

7.4.1 the Authority shall (subject to the Service Credit Cap set out in Clause ~~23.4.2~~ (*Financial and other limits*)) be entitled to withhold and retain as compensation for the Unacceptable KPI Failure a sum equal to any Service Charges which would otherwise have been due to the Supplier in respect of that Service Period (such sum being “**Compensation for Unacceptable KPI Failure**”); and

7.4.2 if the Authority withholds and retains such Compensation for Unacceptable KPI Failure, any Service Points and Service Credits that would otherwise have accrued during the relevant Service Period shall not accrue,

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

7.5 The Supplier:

7.5.1 agrees that the application of Clause ~~7.4~~ is commercially justifiable where an Unacceptable KPI Failure occurs; and

7.5.2 acknowledges that it has taken legal advice on the application of Clause ~~7.4~~ and has had the opportunity to price for that risk when calculating the Service Charges.

Critical Performance Failure

7.6 If a Critical Performance Failure occurs, the Authority may exercise its rights to terminate this Contract in whole or in part pursuant to Clause ~~31.1~~ or ~~31.2~~ (*Termination by the Authority*).

Changes to Performance Indicators and Service Credits

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

7.7.1 change the weighting that applies in respect of one or more specific Key Performance Indicators; and/or

7.7.2 convert one or more:

(a) Key Performance Indicators into a Subsidiary Performance Indicator; and/or

(b) Subsidiary Performance Indicators into a Key Performance Indicator (in which event the Authority shall also set out in the notice details of what will constitute a Minor KPI Failure, a Serious KPI Failure and a Severe KPI Failure for the new Key Performance Indicator).

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

7.8.1 the total number of Key Performance Indicators does not exceed 20;

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

7.8.3 there is no change to the Service Credit Cap.

8 Services Improvement

8.1 The Supplier shall have an ongoing obligation throughout the Term to identify new or potential improvements to the Services in accordance with this Clause 8. As part of this obligation the Supplier shall identify and report to the Programme Board once every 12 months on:

8.1.1 the emergence of new and evolving relevant technologies which could improve the IT Environment and/or the Services, and those technological advances potentially available to the Supplier and the Authority which the Parties may wish to adopt;

8.1.2 new or potential improvements to the Services including the quality, responsiveness, procedures, benchmarking methods, likely performance mechanisms and customer support services in relation to the Services;

8.1.3 new or potential improvements to the interfaces or integration of the Services with other services provided by third parties or the Authority which might result in efficiency or productivity gains or reduction of operational risk;

8.1.4 changes in business processes and ways of working that would enable the Services to be delivered at lower cost and/or with greater benefits to the Authority; and/or

8.1.5 changes to the IT Environment, business processes and ways of working that would enable reductions in the total energy consumed in the delivery of Services.

8.2 The Supplier shall ensure that the information that it provides to the Authority shall be sufficient for the Authority to decide whether any improvement should be implemented. The Supplier shall provide any further information that the Authority requests.

8.3 If the Authority wishes to incorporate any improvement identified by the Supplier the Authority shall send the Supplier a Change Request in accordance with the Change Control Procedure.

9 Equipment and Maintenance

Supplier Equipment

9.1 The Supplier shall be solely responsible for the cost of carriage of Supplier Equipment to the Sites and to the Authority Premises, including its off-loading, removal of all packaging and all other associated costs. Likewise on termination or expiry of this Contract the Supplier shall be responsible for the removal and safe disposal of all relevant Supplier Equipment from the Sites and the Authority Premises, including the cost of packing, carriage and making good the Sites and/or the Authority Premises following removal, and taking account of any sustainability requirements, including safe removal of data and recycling requirements.

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- 9.2 All the Supplier's property, including Supplier Equipment, shall remain at the sole risk and responsibility of the Supplier, except that the Authority shall be liable for loss of or damage to any of the Supplier's property located on Authority Premises which is due to the negligent act or omission of the Authority.
- 9.3 Subject to any express provision of the Service Continuity Plan to the contrary, the loss or destruction for any reason of any Supplier Equipment shall not relieve the Supplier of its obligation to supply the Services in accordance with this Contract, including the Target Performance Levels.

Maintenance

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

Supply of Goods

- 9.7 Where, as part of the Services, the Supplier is to sell goods or equipment ("**Goods**") to the Authority:
- 9.7.1 the relevant Goods and their prices shall be as set out in **[insert description of catalogue or include list in Schedules]**;
- 9.7.2 the Supplier shall supply and, where relevant, install the Goods in accordance with the relevant specification;
- 9.7.3 the Supplier shall ensure that the Goods are free from material defects in design, materials and workmanship and remain so for 12 months after delivery;
- 9.7.4 if following inspection or testing the Authority considers that the Goods do not conform with the relevant specification, the Authority shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance; ~~and~~
- 9.7.5 without prejudice to any other rights or remedies of the Authority:
- (a) risk in the Goods shall pass to the Authority at the time of delivery; and
- (b) ownership of the Goods shall pass to the Authority at the time of payment; ~~;~~

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[Guidance: The indemnities in Clauses 9.7.6 and 9.7.7 below are optional to be used where the Authority requires them for its contract]

9.7.6 [the Supplier indemnifies the Authority against the costs of any Recall of the Goods and shall give notice of actual or anticipated action about the Recall of the Goods]; and

9.7.7 [the Authority 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 Authority or its servant or agent. If the Authority 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 Authority 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 Personnel.]

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Section C: Payment, Taxation and Value for Money Provisions

10 Financial and Taxation Matters

Charges and Invoicing

- 10.1 In consideration of the Supplier carrying out its obligations under this Contract, including the provision of the Services, the Authority shall pay the Charges to the Supplier in accordance with the pricing and payment profile and the invoicing procedure specified in Schedule 15 (*Charges and Invoicing*).
- 10.2 Except as otherwise provided, each Party shall each bear its own costs and expenses incurred in respect of compliance with its obligations under Clauses 6.7 (*Testing and Achievement of Milestones*), 12 (*Records, Reports, Audits and Open Book Data*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*) and, to the extent specified therein, Clause 27 (*Remedial Adviser*) and Clause 28 (*Step-In Rights*).
- 10.3 If the Authority fails to pay any undisputed Charges properly invoiced under this Contract, the Supplier shall have the right to charge interest on the overdue amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

VAT

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

Set-off and Withholding

- 10.6 The Authority may set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier under this Contract or under any other agreement between the Supplier and the Authority.
- 10.7 If the Authority wishes to:
- 10.7.1 set off any amount owed by the Supplier to the Crown or any part of the Crown (including the Authority) against any amount due to the Supplier pursuant to Clause 10.6; or
 - 10.7.2 exercise its right pursuant to Clause 7.2.4(b) (*Performance Failures*) to withhold payment of a proportion of the Service Charges,

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

Benchmarking

10.8 The Parties shall comply with the provisions of Schedule 17 (*Benchmarking*) in relation to the benchmarking of any or all of the Services.

Financial Distress

10.9 The Parties shall comply with the provisions of Schedule 18 (*Financial Distress*) in relation to the assessment of the financial standing of the Supplier and other specified entities and the consequences of a change to that financial standing.

Promoting Tax Compliance

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

10.10.1 notify the Authority in writing of such fact within 5 Working Days of its occurrence; and

10.10.2 promptly provide to the Authority:

- (a) details of the steps which the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Authority may reasonably require.

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Section D: Contract Governance

11 Governance

11.1 The Parties shall comply with the provisions of Schedule 21 (*Governance*) in relation to the management and governance of this Contract.

Representatives

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

11.3 The initial Supplier Representative shall be the person named as such in Schedule 29 (*Key Personnel*). Any change to the Supplier Representative shall be agreed in accordance with Clause 14 (*Supplier Personnel*).

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

12 Records, Reports, Audits & Open Book Data

12.1 The Supplier shall comply with the provisions of:

12.1.1 Schedule 24 (*Reports and Records Provisions*) in relation to the maintenance and retention of Records; and

12.1.2 Part A of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the maintenance of Open Book Data.

12.2 The Parties shall comply with the provisions of:

12.2.1 Part B of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the provision of the Financial Reports; and

12.2.2 Part C of Schedule 19 (*Financial Reports and Audit Rights*) in relation to the exercise of the Audit Rights by the Authority or any Audit Agents.

13 Change

Change Control Procedure

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

Change in Law

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

13.2.1 a General Change in Law; or

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- 13.2.2 a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Effective Date.
- 13.3 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in Clause 13.2.2), the Supplier shall:
- 13.3.1 notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
- (a) whether any Change is required to the Services, the Charges or this Contract; and
 - (b) whether any relief from compliance with the Supplier's obligations is required, including any obligation to Achieve a Milestone and/or to meet the Target Performance Levels; and
- 13.3.2 provide the Authority with evidence:
- (a) that the Supplier has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (b) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (c) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of Clause 8 (*Services Improvement*), has been taken into account in amending the Charges.
- 13.4 Any variation in the Charges or relief from the Supplier's obligations resulting from a Specific Change in Law (other than as referred to in Clause 13.2.2) shall be implemented in accordance with the Change Control Procedure.

Section E: Supplier Personnel and Supply Chain

14 Supplier Personnel

14.1 The Supplier shall:

14.1.1 Provide in advance of any admission to Authority Premises a list of the names of all Supplier Personnel requiring such admission, specifying the capacity in which they require admission and giving such other particulars as the Authority may reasonably require;

14.1.2 ensure that all Supplier Personnel:

(a) are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

(b) are vetted in accordance with Good Industry Practice and, where applicable, the security requirements set out in Schedule 2 (*Services Description*) and Schedule 5 (*Security Management*); and

(c) comply with all reasonable requirements of the Authority concerning conduct at the Authority Premises, including the security requirements as set out in Schedule 5 (*Security Management*);

14.1.3 subject to Schedule 28 (*Staff Transfer*), retain overall control of the Supplier Personnel at all times so that the Supplier Personnel shall not be deemed to be employees, agents or contractors of the Authority;

14.1.4 be liable at all times for all acts or omissions of Supplier Personnel, so that any act or omission of a member of any Supplier Personnel which results in a Default under this Contract shall be a Default by the Supplier;

14.1.5 use all reasonable endeavours to minimise the number of changes in Supplier Personnel;

14.1.6 replace (temporarily or permanently, as appropriate) any Supplier Personnel as soon as practicable if any Supplier Personnel have been removed or are unavailable for any reason whatsoever;

14.1.7 bear the programme familiarisation and other costs associated with any replacement of any Supplier Personnel; and

14.1.8 procure that the Supplier Personnel shall vacate the Authority Premises immediately upon the termination or expiry of this Contract.

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

14.2.1 refuse admission to the relevant person(s) to the Authority Premises; and/or

14.2.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s).

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Key Personnel

- 14.3 The Supplier shall ensure that the Key Personnel fulfil the Key Roles at all times during the Term. Schedule 29 (*Key Personnel*) lists the Key Roles and names of the persons who the Supplier shall appoint to fill those Key Roles at the ~~Effective Date~~Operational Service Commencement.
- 14.4 The Authority may identify any further roles as being Key Roles and, following agreement to the same by the Supplier, the relevant person selected to fill those Key Roles shall be included on the list of Key Personnel.
- 14.5 The Supplier shall not remove or replace any Key Personnel (including when carrying out Exit Management) unless:
- 14.5.1 requested to do so by the Authority;
 - 14.5.2 the person concerned resigns, retires or dies or is on maternity leave, paternity leave or shared parental leave or long-term sick leave;
 - 14.5.3 the person's employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee; or
 - 14.5.4 the Supplier obtains the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.6 The Supplier shall:
- 14.6.1 notify the Authority promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less, in which case the Supplier shall ensure appropriate temporary cover for that Key Role);
 - 14.6.2 ensure that any Key Role is not vacant for any longer than 10 Working Days;
 - 14.6.3 give as much notice as is reasonably practicable of its intention to remove or replace any member of Key Personnel and, except in the cases of death, unexpected ill health or a material breach of the Key Personnel's employment contract, this will mean at least 60 Working Days' notice;
 - 14.6.4 ensure that all arrangements for planned changes in Key Personnel provide adequate periods during which incoming and outgoing personnel work together to transfer responsibilities and ensure that such change does not have an adverse impact on the performance of the Services; and
 - 14.6.5 ensure that any replacement for a Key Role:
 - (a) has a level of qualifications and experience appropriate to the relevant Key Role; and
 - (b) is fully competent to carry out the tasks assigned to the Key Personnel whom ~~he or she has~~they have replaced.

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Employment Indemnity

14.7 The Parties agree that:

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

Income Tax and National Insurance Contributions

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

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

Staff Transfer

14.9 The Parties agree that:

- 14.9.1 where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, Schedule 28 (*Staff Transfer*) shall apply as follows:
 - (a) where the Relevant Transfer involves the transfer of Transferring Authority Employees, Part A and Part D of Schedule 28 (*Staff Transfer*) shall apply;
 - (b) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B and Part D of Schedule 28 (*Staff Transfer*) shall apply;
 - (c) where the Relevant Transfer involves the transfer of Transferring Authority Employees and Transferring Former Supplier Employees, Parts A, B and D of Schedule 28 (*Staff Transfer*) shall apply; and
 - (d) Part C of Schedule 28 (*Staff Transfer*) shall not apply;

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- 14.9.2 where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Schedule 28 (*Staff Transfer*) shall apply, Part D of Schedule 28 may apply and Parts A and B of Schedule 28 (*Staff Transfer*) shall not apply; and
- 14.9.3 Part E of Schedule 28 (*Staff Transfer*) shall apply on the expiry or termination of the Services or any part of the Services.

15 Supply Chain Rights and Protections

Advertising Sub-contract Opportunities

15.1 The Supplier shall:

- 15.1.1 subject to Clauses ~~15.3~~ and 15.4, advertise on Contracts Finder all Sub-contract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Term;
- 15.1.2 within ninety (90) days of awarding a Sub-contract to a Sub-contractor, update the notice on Contracts Finder with details of the successful Sub-contractor;
- 15.1.3 monitor the number, type and value of the Sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
- 15.1.4 provide reports on the information at Clause ~~15.1.3~~ to the Authority in the format and frequency as reasonably specified by the Authority; and
- 15.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

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

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

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

Appointment of Sub-contractors

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

- 15.5.1 manage any Sub-contractors in accordance with Good Industry Practice;
- 15.5.2 comply with its obligations under this Contract in the delivery of the Services; and

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- 15.5.3 assign, novate or otherwise transfer to the Authority or any Replacement Supplier any of its rights and/or obligations under each Sub-contract that relates exclusively to this Contract.
- 15.6 Prior to sub-contracting any of its obligations under this Contract, the Supplier shall notify the Authority in writing of:
- 15.6.1 the proposed Sub-contractor's name, registered office and company registration number;
- 15.6.2 the scope of any Services to be provided by the proposed Sub-contractor; and
- 15.6.3 where the proposed Sub-contractor is an Affiliate of the Supplier, evidence that demonstrates to the reasonable satisfaction of the Authority that the proposed Sub-contract has been agreed on "arm's-length" terms.
- 15.7 If requested by the Authority within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6, the Supplier shall also provide:
- 15.7.1 a copy of the proposed Sub-contract; and
- 15.7.2 any further information reasonably requested by the Authority.
- 15.8 The Authority may, within 10 Working Days of receipt of the Supplier's notice issued pursuant to Clause 15.6 (or, if later, receipt of any further information requested pursuant to Clause 15.7), object to the appointment of the relevant Sub-contractor if it considers that:
- 15.8.1 the appointment of a proposed Sub-contractor may prejudice the provision of the Services and/or may be contrary to the interests of the Authority;
- 15.8.2 the proposed Sub-contractor is unreliable and/or has not provided reasonable services to its other customers;
- 15.8.3 the proposed Sub-contractor employs unfit persons; and/or
- 15.8.4 the proposed Sub-contractor should be excluded in accordance with Clause 15.22 (*Termination of sub-contracts*);
- in which case, the Supplier shall not proceed with the proposed appointment.
- 15.9 If:
- 15.9.1 the Authority has not notified the Supplier that it objects to the proposed Sub-contractor's appointment by the later of 10 Working Days of receipt of:
- (a) the Supplier's notice issued pursuant to Clause 15.6; and
- (b) any further information requested by the Authority pursuant to Clause 15.7; and
- 15.9.2 the proposed Sub-contract is not a Key Sub-contract (which shall require the written consent of the Authority in accordance with Clause 15.10 (*Appointment of Key Sub-contractors*),

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the Supplier may proceed with the proposed appointment and, where the Sub-contract is entered into exclusively for the purpose of delivery of the Services, may notify the Authority that the relevant Sub-contract shall constitute a Third Party Contract for the purposes of Schedule 11 (*Third Party Contracts*).

Appointment of Key Sub-contractors

- 15.10 Where the Supplier wishes to enter into a Key Sub-contract or replace a Key Sub-contractor, it must obtain the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed. For these purposes, the Authority may withhold its consent to the appointment of a Key Sub-contractor if it reasonably considers that:
- 15.10.1 the appointment of a proposed Key Sub-contractor may prejudice the provision of the Services or may be contrary to the interests of the Authority;
 - 15.10.2 the proposed Key Sub-contractor is unreliable and/or has not provided reasonable services to its other customers; and/or
 - 15.10.3 the proposed Key Sub-contractor employs unfit persons; and/or
 - 15.10.4 the proposed Key Sub-contractor should be excluded in accordance with Clause 15.22 (*Termination of sub-contracts*).
- 15.11 The Authority consents to the appointment of the Key Sub-contractors listed in Schedule 10 (*Notified Key Sub-contractors*).
- 15.12 Except where the Authority has given its prior written consent, the Supplier shall ensure that each Key Sub-contract shall include:
- 15.12.1 provisions which will enable the Supplier to discharge its obligations under this Contract;
 - 15.12.2 a right under CRTPA for the Authority to enforce any provisions under the Key Sub-contract which are capable of conferring a benefit upon the Authority;
 - 15.12.3 a provision enabling the Authority to enforce the Key Sub-contract as if it were the Supplier;
 - 15.12.4 a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority or any Replacement Supplier without restriction (including any need to obtain any consent or approval) or payment by the Authority;
 - 15.12.5 obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this Contract in respect of:
 - (a) data protection requirements set out in Clauses 18 (*Authority Data and Security Requirements*) and 21 (*Protection of Personal Data*);
 - (b) FOIA requirements set out in Clause 20 (*Transparency and Freedom of Information*);
 - (c) the obligation not to embarrass the Authority or otherwise bring the Authority into disrepute set out in Clause 5.5.13 (*Services*);

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- (d) the keeping of records in respect of the services being provided under the Key Sub-contract, including the maintenance of Open Book Data; and
 - (e) the conduct of Audits set out in Part C of Schedule 19 (*Financial Reports and Audit Rights*);
- 15.12.6 provisions enabling the Supplier to terminate the Key Sub-contract on notice on terms no more onerous on the Supplier than those imposed on the Authority under Clauses ~~31.1.1~~ (*Termination by the Authority*) and 32.5 (*Payments by the Authority*) and Schedule 16 (*Payments on Termination*) of this Contract;
- 15.12.7 a provision restricting the ability of the Key Sub-contractor to sub-contract all or any part of the services provided to the Supplier under the Key Sub-contract without first seeking the written consent of the Authority;
- 15.12.8 a provision enabling the Supplier or the Authority to appoint a Remedial Adviser on substantially the same terms as are set out in Clause ~~27~~ (*Remedial Adviser*);
- 15.12.9 a provision enabling the Supplier, the Authority or any other person on behalf of the Authority to step-in on substantially the same terms as are set out in Clause ~~28~~ (*Step-in Rights*);
- 15.12.10 a provision requiring the Key Sub-contractor to participate in, and if required by the Authority in the relevant Multi-Party Procedure Initiation Notice to procure the participation of all or any of its Sub-contractors in, the Multi-Party Dispute Resolution Procedure; and
- 15.12.11 a provision requiring the Key Sub-contractor to:
 - (a) promptly notify the Supplier and the Authority in writing of any of the following of which it is, or ought to be, aware:
 - (i) the occurrence of a Financial Distress Event in relation to the Key Sub-contractor; or
 - (ii) any fact, circumstance or matter of which it is aware which could cause the occurrence of a Financial Distress Event in relation to the Key Sub-contractor,and in any event, provide such notification within 10 Working Days of the date on which the Key Sub-contractor first becomes aware of such); and
 - (b) co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 18 (*Financial Distress*), including meeting with the Supplier and the Authority to discuss and review the effect of the Financial Distress Event on the continued performance and delivery of the Services, and contributing to and complying with the Financial Distress Remediation Plan, and providing the information specified at Paragraph 4.3(b)(ii) of Schedule 18 (*Financial Distress*).

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

Supply chain protection

~~15.14 The Supplier shall ensure that all For Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into after the Effective Date made wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract);~~

~~15.14.1 where such Sub-Contracts are entered into after the Effective Date, the Supplier will ensure that they all contain provisions: that; or~~

~~15.14.2 giving 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:~~

~~15.14.1(a) give the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;~~

~~15.14.2(b) requiring require the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;~~

~~15.14.3(c) that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause- 15.14.2(b), the invoice shall be regarded as valid and undisputed for the purpose of Clause- 15.14.2(d) after a reasonable time has passed;~~

~~15.14.4(d) requiring require the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;~~

~~15.14.5(e) giving give the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and~~

~~15.14.6(f) requiring require the Sub-contractor to include a clause to the same effect as this Clause- 15.14 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.~~

~~15.15 The Supplier shall take reasonable endeavours to ensure that all Sub-contracts (which in this Sub-Clause means any contract in the Supplier's supply chain entered into before the Effective Date 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:~~

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- ~~15.15.1~~ giving the Supplier a right to terminate the Sub-contract if the Sub-contractor fails to comply in the performance of the Sub-contract with legal obligations in the fields of environmental, social or labour Law;
- ~~15.15.2~~ requiring the Supplier or other party receiving goods or services under the contract to consider and verify invoices under that contract in a timely fashion;
- ~~15.15.3~~ that if the Supplier or other party fails to consider and verify an invoice in accordance with Clause 15.15.2, the invoice shall be regarded as valid and undisputed for the purpose of Clause 15.15.4 after a reasonable time has passed;
- ~~15.15.4~~ requiring the Supplier or other party to pay any undisputed sums which are due from it to the Sub-contractor within a specified period not exceeding thirty (30) days of verifying that the invoice is valid and undisputed;
- ~~15.15.5~~ giving the Authority a right to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period; and
- ~~15.15.6~~ requiring the Sub-contractor to include a clause to the same effect as this Clause 15.15 in any contracts it enters into wholly or substantially for the purpose of performing or contributing to the performance of the whole or any part of this Contract.

~~15.16~~15.15 The Supplier shall:

- ~~15.16.1~~15.15.1 pay any undisputed sums which are due from it to a Sub-contractor within thirty (30) days of verifying that the invoice is valid and undisputed;
- ~~15.16.2~~15.15.2 include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause ~~15.15.1~~, such data to be certified each Quarter by a director of the Supplier as being accurate and not misleading.

~~15.17~~15.16 Without prejudice to Clause ~~15.15.1~~, the Supplier shall:

- ~~15.17.1~~15.16.1 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:
- (a) the date set out for payment in the relevant Sub-contract or Unconnected Sub-contract; or
 - (b) 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
- ~~15.17.2~~15.16.2 include within the Balanced Scorecard Report produced by it pursuant to Schedule 3 (*Performance Levels*) a summary of its compliance with Clause ~~15.16.1~~, such data to be certified every six months by a director of the Supplier as being accurate and not misleading.

~~15.18~~15.17 If any Balanced Scorecard Report shows that in either of the last two six month periods the Supplier failed to pay 95% or above of all Sub-contractor or Unconnected

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Sub-contractor invoices (or other notice of an amount for payment) within sixty (60) days of receipt, the Supplier shall upload to the Virtual Library within **[15]** Working Days of submission of the latest Balanced Scorecard Report an action plan (the “**Action Plan**”) for improvement. The Action Plan shall include, but not be limited to, the following:

~~15.18.1~~15.17.1 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;

~~15.18.2~~15.17.2 actions to address each of the causes set out in Clause ~~15.17.1~~;
and

~~15.18.3~~15.17.3 mechanism for and commitment to regular reporting on progress to the Supplier’s Board.

~~15.19~~15.18 The Action Plan shall be certificated by a director of the Supplier and the Action Plan or a summary of the Action Plan published on the Supplier’s website within **[10]** Working Days of the date on which the Action Plan is uploaded to the Virtual Library.

~~15.20~~15.19 Where the Supplier fails to pay any sums due to any Sub-contractor or Unconnected Sub-contractor in accordance with the terms set out in the relevant Sub-contract or Unconnected Sub-contract, the Action Plan shall include details of the steps the Supplier will take to address this.

~~15.21~~15.20 The Supplier shall comply with the Action Plan or any similar action plan connected to the payment of Sub-contractors or Unconnected Sub-contractors which is required to be submitted to the Authority as part of the procurement process and such action plan shall be included as part of the Supplier’s Solution (to the extent it is not already included).

~~15.22~~15.21 Notwithstanding any provision of Clauses ~~19~~ (*Confidentiality*) and ~~22~~ (*Publicity and Branding*), if the Supplier notifies the Authority (whether in a Balanced Scorecard Report or otherwise) that the Supplier has failed to pay a Sub-contractor’s undisputed invoice within thirty (30) days of receipt or that it has failed to pay 95% or above of its Sub-Contractors or Unconnected Sub-contractors within sixty (60) days after the day on which the Supplier receives an invoice or otherwise has notice of an amount for payment, or the Authority otherwise discovers the same, the Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Termination of Sub-contracts

~~15.23~~15.22 The Authority may require the Supplier to terminate:

~~15.23.1~~15.22.1 a Sub-contract where:

- (a) the acts or omissions of the relevant Sub-contractor have caused or materially contributed to the Authority’s right of termination pursuant to Clause ~~31.1.2~~ (*Termination by the Authority*);
- (b) the relevant Sub-contractor or any of its Affiliates have embarrassed the Authority or otherwise brought the Authority into disrepute by engaging in any act or omission which is reasonably likely to diminish the trust that the public places in the Authority, regardless of whether or not such

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act or omission is related to the Sub-contractor's obligations in relation to the Services or otherwise;

- (c) the relevant Sub-contractor has failed to comply in the performance of its Sub-contract with legal obligations in the fields of environmental, social or labour law; and/or
- (d) the Authority has found grounds for exclusion of the Sub-contractor in accordance with Clause ~~15.23~~ 15.26; and

~~15.23~~ 15.22.2 a Key Sub-contract where there is a change of Control of the relevant Key Sub-contractor, unless:

- (a) the Authority has given its prior written consent to the particular change of Control, which subsequently takes place as proposed; or
- (b) the Authority has not served its notice of objection within 6 months of the later of the date the change of Control took place or the date on which the Authority was given notice of the change of Control.

Competitive Terms

~~15.24~~ 15.23 If the Authority is able to obtain from any Sub-contractor or any other third party (on a like-for-like basis) more favourable commercial terms with respect to the supply of any goods, software or services used by the Supplier or the Supplier Personnel in the supply of the Services, then the Authority may require the Supplier to replace its existing commercial terms with that person with the more favourable commercial terms obtained by the Authority in respect of the relevant item.

~~15.25~~ 15.24 If the Authority exercises its option pursuant to Clause ~~15.23~~ 15.23, then the Charges shall be reduced by an amount that is agreed in accordance with the Change Control Procedure.

Retention of Legal Obligations

~~15.26~~ 15.25 Notwithstanding the Supplier's right to sub-contract pursuant to this Clause ~~15~~ 15, the Supplier shall remain responsible for all acts and omissions of its Sub-contractors and the acts and omissions of those employed or engaged by the Sub-contractors as if they were its own. In respect of any element of the Services delivered by Supplier Personnel and/or which are Sub-contracted by the Supplier, an obligation on the Supplier to do or to refrain from doing any act or thing under this Contract, shall include an obligation on the Supplier to procure that the Supplier Personnel and the Sub-contractor also do or refrain from doing such act or thing in their delivery of those elements of the Services.

Exclusion of Sub-contractors

~~15.27~~ 15.26 Where the Authority considers whether there are grounds for the exclusion of a Sub-contractor under Regulation 57 of the Public Contracts Regulations 2015, then:

~~15.27.1~~ 15.26.1 if the Authority finds there are compulsory grounds for exclusion, the Supplier shall replace or shall not appoint the Sub-contractor;

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~~15.27~~15.26.2 if the Authority finds there are non-compulsory grounds for exclusion, the Authority may require the Supplier to replace or not to appoint the Sub-contractor and the Supplier shall comply with such a requirement.

Reporting SME/VCSE Sub-contracts

~~15.28~~15.27 In addition to any other Management Information requirements set out in this Contract, the Supplier agrees that it shall, at no charge, provide timely, full, accurate and complete Supply Chain Transparency Reports to the Authority thirty (30) days prior to the end of each financial year by providing all of the information described in the Supply Chain Transparency Information Template in the format set out in the Schedule 24 (*Reports and Records Provisions*) Annex 4 and in accordance with any guidance issued by the Authority from time to time.

~~15.29~~15.28 The Authority may update the Supply Chain Transparency Information Template from time to time (including the data required and/or format) by issuing a replacement version with at least thirty (30) days' notice and specifying the date from which it must be used.

Section F: Intellectual Property, Data and Confidentiality

16 Intellectual Property Rights

16.1 The Parties agree that the terms set out in Schedule 32 (*Intellectual Property Rights*) shall apply to this Contract.

17 IPRs Indemnity

17.1 The Supplier shall at all times, during and after the Term, on written demand indemnify the Authority and each other Indemnified Person, and keep the Authority and each other Indemnified Person indemnified, against all Losses incurred by, awarded against or agreed to be paid by an Indemnified Person arising from an IPRs Claim.

17.2 If an IPRs Claim is made, or the Supplier anticipates that an IPRs Claim might be made, the Supplier may, at its own expense and sole option, either:

17.2.1 procure for the Authority or other relevant Indemnified Person the right to continue using the relevant item which is subject to the IPRs Claim; or

17.2.2 replace or modify the relevant item with non-infringing substitutes provided that:

(a) the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

(b) the replaced or modified item does not have an adverse effect on any other services or the IT Environment;

(c) there is no additional cost to the Authority or relevant Indemnified Person (as the case may be); and

(d) the terms and conditions of this Contract shall apply to the replaced or modified Services.

17.3 If the Supplier elects to procure a licence in accordance with Clause- 17.2.1 or to modify or replace an item pursuant to Clause- 17.2.2, but this has not avoided or resolved the IPRs Claim, then:

17.3.1 the Authority may terminate this Contract (if subsisting) in accordance with Clause 31.1 with immediate effect by written notice to the Supplier; and

17.3.2 without prejudice to the indemnity set out in Clause- 17.1, the Supplier shall be liable for all reasonable and unavoidable costs of the substitute items and/or services including the additional costs of procuring, implementing and maintaining the substitute items.

18 Authority Data and Security Requirements

18.1 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

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- 18.2 The Supplier shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Supplier of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.
- 18.3 To the extent that Authority Data is held and/or processed by the Supplier, the Supplier shall supply that Authority Data to the Authority as requested by the Authority in the format specified in Schedule 2 (*Services Description*).
- 18.4 The Supplier shall preserve the integrity of Authority Data and prevent the corruption or loss of Authority Data at all times that the relevant Authority Data is under its control or the control of any Sub-contractor.
- 18.5 The Supplier shall perform secure back-ups of all Authority Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the Service Continuity Plan. The Supplier shall ensure that such back-ups are available to the Authority (or to such other person as the Authority may direct) at all times upon request and are delivered to the Authority at no less than 6 monthly intervals (or such other intervals as may be agreed in writing between the Parties) via a secure encrypted method.
- 18.6 The Supplier shall ensure that any system on which the Supplier holds any Authority Data, including back-up data, is a secure system that complies with the Security Requirements.
- 18.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Supplier's Default so as to be unusable, the Authority may:
- 18.7.1 require the Supplier (at the Supplier's expense) to restore or procure the restoration of Authority Data to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*) and the Supplier shall do so as soon as practicable but not later than 5 Working Days from the date of receipt of the Authority's notice; and/or
- 18.7.2 itself restore or procure the restoration of Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*).
- 18.8 If at any time the Supplier suspects or has reason to believe that Authority Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Authority immediately and inform the Authority of the remedial action the Supplier proposes to take.
- 18.9 The Supplier shall comply with the requirements of Schedule 5 (*Security Management*).
- 18.10 The Authority shall notify the Supplier of any changes or proposed changes to the Baseline Security Requirements.
- 18.11 If the Supplier believes that a change or proposed change to the Baseline Security Requirements will have a material and unavoidable cost implication to the Services it may submit a Change Request. In doing so, the Supplier must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to

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mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Change Control Procedure.

18.12 Until and/or unless a change to the Charges is agreed by the Authority pursuant to Clause-~~18.11~~ the Supplier shall continue to perform the Services in accordance with its existing obligations.

19 Confidentiality

19.1 For the purposes of this Clause-~~19~~, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and “**Recipient**” shall mean the Party which receives or obtains directly or indirectly Confidential Information.

19.2 Except to the extent set out in this Clause-~~19~~ or where disclosure is expressly permitted elsewhere in this Contract, the Recipient shall:

19.2.1 treat the Disclosing Party’s Confidential Information as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);

19.2.2 not disclose the Disclosing Party’s Confidential Information to any other person except as expressly set out in this Contract or without obtaining the owner's prior written consent;

19.2.3 not use or exploit the Disclosing Party’s Confidential Information in any way except for the purposes anticipated under this Contract; and

19.2.4 immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party’s Confidential Information.

19.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

19.3.1 the Recipient is required to disclose the Confidential Information by Law, provided that Clause-~~20~~ (*Transparency and Freedom of Information*) shall apply to disclosures required under the FOIA or the EIRs;

19.3.2 the need for such disclosure arises out of or in connection with:

- (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Contract;
- (b) the examination and certification of the Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority is making use of any Services provided under this Contract; or
- (c) the conduct of a ~~Central Government~~Crown Body review in respect of this Contract; or

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- 19.3.3 the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 19.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 19.5 The Supplier may disclose the Confidential Information of the Authority on a confidential basis only to:
- 19.5.1 Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this Contract;
- 19.5.2 its auditors; and
- 19.5.3 its professional advisers for the purposes of obtaining advice in relation to this Contract.

Where the Supplier discloses Confidential Information of the Authority pursuant to this Clause-19.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Contract by the persons to whom disclosure has been made.

- 19.6 The Authority may disclose the Confidential Information of the Supplier:
- 19.6.1 on a confidential basis to any ~~Central Government~~Crown Body for any proper purpose of the Authority or of the relevant ~~Central Government~~Crown Body;
- 19.6.2 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- 19.6.3 to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- 19.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause-19.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
- 19.6.5 on a confidential basis for the purpose of the exercise of its rights under this Contract, including the Audit Rights, its step-in rights pursuant to Clause-28 (*Step-In Rights*), its rights to appoint a Remedial Adviser pursuant to Clause 27 (*Remedial Adviser*) and Exit Management rights; or
- 19.6.6 on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

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and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause_19.

19.7 Nothing in this Clause_19 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of Intellectual Property Rights.

20 Transparency and Freedom of Information

20.1 The Parties acknowledge that:

20.1.1 the Transparency Reports;

20.1.2 the content of 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 Authority; and

(b) Commercially Sensitive Information; and

20.1.3 the Publishable Performance Information

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

20.2 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the Authority to publish to the general public the Transparency Information in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted). The Authority shall, prior to publication, consult with the Supplier on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.

20.3 The Supplier shall assist and co-operate with the Authority to enable the Authority to publish the Transparency Information, including the preparation of the Transparency Reports in accordance with Paragraph 1 of Schedule 24 (*Reports and Records Provisions*).

20.4 If the Authority believes that publication of any element of the Transparency Information would be contrary to the public interest, the Authority shall be entitled to exclude such information from publication. The Authority acknowledges that it would expect the public interest by default to be best served by publication of the Transparency Information in its entirety. Accordingly, the Authority acknowledges that it will only exclude Transparency Information from publication in exceptional circumstances and agrees that where it decides to exclude information from publication it will provide a clear explanation to the Supplier.

20.5 The Authority shall publish the Transparency Information in a format that assists the general public in understanding the relevance and completeness of the information being published to ensure the public obtain a fair view on how the Contract is being performed, having regard to the context of the wider commercial relationship with the Supplier.

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- 20.6 The Supplier agrees that any Information it holds that is not included in the Transparency Reports but is reasonably relevant to or that arises from the provision of the Services shall be provided to the Authority on request unless the cost of doing so would exceed the appropriate limit prescribed under section 12 of the FOIA. The Authority may disclose such information under the FOIA and the EIRs and may (except for Commercially Sensitive Information, Confidential Information (subject to Clause 19.6.3) and Open Book Data) publish such Information. The Supplier shall provide to the Authority within five (5) Working Days (or such other period as the Authority may reasonably specify) any such Information requested by the Authority.
- 20.7 The Supplier acknowledges that the Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 20.7.1 provide all necessary assistance and cooperation as reasonably requested by the Authority to enable the Authority to comply with its obligations under the FOIA and EIRs;
 - 20.7.2 transfer to the Authority all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 20.7.3 provide the Authority with a copy of all Information held on behalf of the Authority which is requested in a Request For Information and which is in its possession or control in the form that the Authority requires within 5 Working Days (or such other period as the Authority may reasonably specify) of the Authority's request for such Information; and
 - 20.7.4 not respond directly to a Request For Information addressed to the Authority unless authorised in writing to do so by the Authority.
- 20.8 The Supplier acknowledges that the Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Authority shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and EIRs.

21 Protection of Personal Data

21.1 The Supplier shall indemnify the Authority against any and all Losses incurred by the Authority due to breach by the Supplier of Data Protection Legislation or Clause 21.

Status of the Controller

~~21.1~~21.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

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~~21.1.1~~21.2.1 “Controller” (where the other Party acts as the “Processor”);

~~21.1.2~~21.2.2 “Processor” (where the other Party acts as the “Controller”);

~~21.1.3~~21.2.3 “Joint Controller” (where both Parties are considered to jointly control the same Personal Data);

~~21.1.4~~21.2.4 “Independent Controller” of the Personal Data where the other Party is also “Controller” of the same Personal Data in its own right (but there is no element of joint control);

and the Parties shall set out in Schedule 31 (*Processing Personal Data*) which scenario or scenarios are intended to apply under this Contract.

Where one Party is Controller and the other Party its Processor

~~21.2~~21.3 Where a Party is a Processor, the only processing that it is authorised to do is listed in Schedule 31 (*Processing Personal Data*) by the Controller, and may not be determined by the Processor. The term “processing” and any associated terms are to be read in accordance with Article 4 of the UK GDPR and EU GDPR (as applicable).

~~21.3~~21.4 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

~~21.4~~21.5 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:

~~21.4.1~~21.5.1 a systematic description of the envisaged processing operations and the purpose of the processing;

~~21.4.2~~21.5.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;

~~21.4.3~~21.5.3 an assessment of the risks to the rights and freedoms of Data Subjects;
and

~~21.4.4~~21.5.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

~~21.5~~21.6 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

~~21.5.1~~21.6.1 process that Personal Data only in accordance with Schedule 31 (*Processing Personal Data*), unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Authority before processing the Personal Data unless prohibited by Law;

~~21.5.2~~21.6.2 ensure that it has in place Protective Measures, including in the case of the Supplier the measures set out in Clause ~~18~~ (*Authority Data and Security Requirements*), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:

(a) nature of the data to be protected;

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- (b) harm that might result from a Data Loss Event;
- (c) state of technological development; and
- (d) cost of implementing any measures;

21.5.321.6.3 ensure that:

- (a) the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 31 (*Processing Personal Data*));
- (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with the Processor's duties under this ~~Clause 21~~, ~~Clauses 19~~ (*Confidentiality*) and 18 (*Authority Data and Security Requirements*);
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (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 this Contract; and
 - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;

21.5.421.6.4 ~~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 Controller 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 section 74A of DPA 2018) and/or the transfer is in accordance with Article 45 of the UKGDPR (or section 73 of DPA 2018 where applicable); or
- (b) the Controller and/or the Processor 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 Controller which could include relevant parties entering into ~~the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Annex 2 to Schedule 31 (Processing Personal Data)~~, as well as any additional measures determined by the Controller;
 - (i) where the transfer is subject to UK GDPR:

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- (A) the UK International Data Transfer Agreement as published by the Information Commissioner's Office under section 119A(1) of the DPA 2018 [from time to time] OR [and as set out in Annex 2 to Schedule 31 (*Processing Personal Data*)] [Guidance: see guidance notes and Annex 2 for an explanation of these options]; or
- (B) the European Commission's Standard Contractual Clauses per decision 2021/914/EU [set out in Annex 3 to Schedule 31 (*Processing Personal Data*)] [Guidance: see guidance notes and Annex 3 for an explanation of these options] 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 EU SCCs (the "Addendum") [as published by the Information Commissioner's Office from time to time] OR [and as set out in Annex 2 to Schedule 31 (*Processing Personal Data*)] [Guidance: see guidance notes and Annex 2 for an explanation of these options]; 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 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) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data.~~

~~21.5.5 where the Personal Data is subject to EU GDPR, not transfer such 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 Controller or the Processor has provided appropriate safeguards in relation to the transfer in accordance with Article 46 of the EU GDPR as determined by the Controller which could include relevant parties entering into Standard Contractual Clauses in the European Commission's decision 2021/914/EU set out in Annex 3 to Schedule 31 (*Processing Personal Data*) 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 Controller;~~

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- ~~(c) — the Data Subject has enforceable rights and effective legal remedies;~~
- ~~(d) — the Processor complies with its obligations under the EU GDPR 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) ~~the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;~~ and

~~21.5.6~~21.6.5 at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

~~21.6~~21.7 Subject to Clause ~~21.8~~, the Processor shall notify the Controller immediately if it:

~~21.6.4~~21.7.1 receives a Data Subject Request (or purported Data Subject Request);

~~21.6.2~~21.7.2 receives a request to rectify, block or erase any Personal Data;

~~21.6.3~~21.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

~~21.6.4~~21.7.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;

~~21.6.5~~21.7.5 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

~~21.6.6~~21.7.6 becomes aware of a Data Loss Event.

~~21.7~~21.8 The Processor's obligation to notify under Clause ~~21.7~~ shall include the provision of further information to the Controller in phases, as details become available.

~~21.8~~21.9 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause ~~21.7~~ (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

~~21.8.1~~21.9.1 the Controller with full details and copies of the complaint, communication or request;

~~21.8.2~~21.9.2 such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

~~21.8.3~~21.9.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;

~~21.8.4~~21.9.4 assistance as requested by the Controller following any Data Loss Event; and/or

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~~21.8.5~~21.9.5 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.

~~21.9~~21.10 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause ~~21~~. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

~~21.9.1~~21.10.1 the Controller determines that the processing is not occasional;

~~21.9.2~~21.10.2 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

~~21.9.3~~21.10.3 the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

~~21.10~~21.11 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

~~21.11~~21.12 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.

~~21.12~~21.13 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

~~21.12.1~~21.13.1 notify the Controller in writing of the intended Sub-processor and processing;

~~21.12.2~~21.13.2 obtain the written consent of the Controller;

~~21.12.3~~21.13.3 enter into a written agreement with the Sub-processor which ~~gives~~gives effect to the terms set out in this Clause ~~21~~ such that they apply to the Sub-processor; and

~~21.12.4~~21.13.4 provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

~~21.13~~21.14 The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

~~21.14 The Authority may, at any time on not less than 30 Working Days' notice, revise this Clause 21 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).~~

21.15 The Parties agree to take account of any guidance issued by the Information Commissioner's Office or any other regulatory authority. The Authority may on not less than 30 Working Days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office or any other regulatory authority.

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Where the Parties are Joint Controllers of Personal Data

[Guidance: the Authority 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 Authority data and information can create risks for you as an Authority, and you must make sure you understand the consequences of this.]

21.16 In the event that the Parties are Joint Controllers in respect of Personal Data under this Contract, the Parties shall implement Clauses that are necessary to comply with Article 26 of the UK GDPR based on the terms set out in Annex 1 to Schedule 31 (*Processing Personal Data*).

Where the Parties are Independent Controllers of Personal Data

21.17 With respect to Personal Data provided by one Party to another Party for which each Party acts as Controller but which is not under the Joint Control of the Parties, each Party undertakes to comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data as Controller.

21.18 Each Party shall process the Personal Data in compliance with its obligations under the Data Protection Legislation and not do anything to cause the other Party to be in breach of it.

21.19 Where a Party has provided Personal Data to the other Party in accordance with Clause 21.17, the recipient of the Personal Data will provide all such relevant documents and information relating to its data protection policies and procedures as the other Party may reasonably require.

21.20 The Parties shall be responsible for their own compliance with Articles 13 and 14 of the UK GDPR in respect of the processing of Personal Data for the purposes of this Contract.

21.21 The Parties shall only provide Personal Data to each other:

21.21.1 to the extent necessary to perform the respective obligations under this Contract;

21.21.2 in compliance with the Data Protection Legislation (including by ensuring all required fair processing information has been given to affected Data Subjects);

21.21.3 ~~where the Personal Data is subject to UK GDPR and~~ 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 is 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 ~~UK EU~~ GDPR ~~or DPA 2018 Section 73;~~(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

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~~DPA 2018 Section 75) and/or Article 46 of the EU GDPR (where applicable)) as determined by the non-transferring Party which could include the International Data Transfer Agreement or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Annex 2 to Schedule 31 (Processing Personal Data), as well as any additional measures determined by the non-transferring Party; relevant parties entering into:~~

- ~~(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;~~

~~21.21.4 where the Personal Data is subject to EU GDPR and where the provision of Personal Data from one Party to another involves transfer of such data to outside the EU, if 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 EU GDPR; or~~
 - ~~(i) 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 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 [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 [and as set out in Annex 2 to Schedule 31 (Processing Personal Data)] [Guidance: see guidance notes and Annex 2 for an explanation of these options]; or~~
 - ~~(B) the European Commission's Standard Contractual Clauses in the European Commission's decision per decisions 2021/914/EU set out in Annex 3 to Schedule 31 (Processing Personal Data) [or such updated version of such Standard Contractual Clauses as are published by the European Commission from time to time] OR [set out in Annex 3 to Schedule 31 (Processing Personal Data)] [Guidance: see guidance notes and Annex 3 for an explanation of these options] (the "EU SCCs"), together~~~~

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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] OR [and as set out in Annex 2 to Schedule 31 (Processing Personal Data)] [Guidance: see guidance notes and Annex 2 for an explanation of these options]; and/or

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

(b) as well as any additional measures determined by the non-transferring Party/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

21.21.521.21.4 _____ where it has recorded it in Schedule 31 (*Processing Personal Data*).

21.22 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the 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.

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

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

21.24.1 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

21.24.2 where the request or correspondence is directed to the other party and/or relates to the other party's Processing of the Personal Data, the Request Recipient will:

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- (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) 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.

21.25 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 this Contract and shall:

21.25.1 do all such things as reasonably necessary to assist the other Party in mitigating the effects of the Data Breach;

21.25.2 implement any measures necessary to restore the security of any compromised Personal Data;

21.25.3 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

21.25.4 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.

21.26 Personal Data provided by one Party to the other Party may be used exclusively to exercise rights and obligations under this Contract as specified in Schedule 31 (*Processing Personal Data*).

21.27 Personal Data shall not be retained or processed for longer than is necessary to perform each Party's obligations under this Contract which is specified in Schedule 31 (*Processing Personal Data*).

21.28 Notwithstanding the general application of Clauses ~~21.3~~ 21.3 to 21.15 to Personal Data, where the Supplier is required to exercise its regulatory and/or legal obligations in respect of Personal Data, it shall act as an Independent Controller of Personal Data in accordance with Clause ~~21.16~~ 21.16 to 21.27.

Standard Contractual Clauses

21.29 It is noted that on 28 June 2021 the European Commission made an implementing decision pursuant to Article 45 of the EU GDPR on the adequate protection of personal data by the United Kingdom which contains carve-outs for certain transfers outside of the EU to the UK of certain types of Personal Data (the "**UK Adequacy Decision**"). If any transfer of Personal Data which is subject to EU GDPR pursuant to this Contract is not covered by the UK Adequacy Decision or at any time during the term of the Contract the UK Adequacy Decision is:

21.29.1 withdrawn, invalidated, overruled or otherwise ceases to have effect, or

21.29.2 amended in such a way as to affect the transfers of Personal Data outside of the EU which are contemplated under this Contract,

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Clauses 21.30 to 21.31 below shall apply.

21.30 The Parties agree:

- 21.30.1 that without any further action being required they have entered into the Standard Contractual Clauses in the European Commission's decision 2021/914/EU [set out in Annex 43 to Schedule 31 (*Processing Personal Data*)] [Guidance: see guidance notes and Annex 3 for an explanation of these options] in respect of data transfers by the Supplier outside of the EU to the UK;
- 21.30.2 that, where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with those Standard Contractual Clauses as of the date the Parties entered into those Standard Contractual Clauses;
- 21.30.3 to use best endeavours to complete the annexes to the Standard Contractual Clauses promptly and at their own cost for the purpose of giving full effect to them; and
- 21.30.4 that if there is any conflict between this Contract and the Standard Contractual Clauses the terms of the Standard Contractual Clauses shall apply.

21.31 In the event that the European Commission updates, amends, substitutes, adopts or publishes new Standard Contractual Clauses from time to time, the Parties agree:

- 21.31.1 that the most up to date Standard Contractual Clauses from time to time shall be automatically incorporated in place of those in use at the time of such update, amendment, substitution, adoption or publication] OR [Annex 43 to Schedule 31 (*Processing Personal Data*)] [Guidance: see guidance notes and Annex 3 for an explanation of these options] and that such incorporation is not a Change;
- 21.31.2 that where no other appropriate safeguard or exemption applies, that the Personal Data subject to this Contract (and to which Chapter V of the EU GDPR applies) will be transferred in accordance with the relevant form of the most up to date Standard Contractual Clauses as of the date the European Commission decision regarding such new Standard Contractual Clauses becomes effective;
- 21.31.3 to use best endeavours to complete any part of the most up to date Standard Contractual Clauses that a Party must complete promptly and at their own cost for the purpose of giving full effect to them; and
- 21.31.4 that if there is any conflict between this Contract and the most up to date Standard Contractual Clauses the terms of the most up to date Standard Contractual Clauses shall apply.

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22 Publicity and Branding

22.1 The Supplier shall not:

22.1.1 make any press announcements or publicise this Contract or its contents in any way; or

22.1.2 use the Authority's name or brand in any promotion or marketing or announcement of orders;

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

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

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Section G: Liability, Indemnities and Insurance

23 Limitations on Liability

Unlimited liability

23.1 Neither Party limits its liability for:

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

23.2 The Supplier's liability in respect of the indemnities in Clause-~~10.5~~ (VAT), Clause-~~14.7~~ (*Employment Indemnity*), Clause-~~14.8~~ (*Income Tax and National Insurance Contributions*), Clause-~~17~~ (*IPRs Indemnity*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

23.3 The Authority's liability in respect of the indemnities in Clause-~~14.7~~ (*Employment Indemnity*), Schedule 28 (*Staff Transfer*) and the Annexes to Schedule 28 (*Staff Transfer*) shall be unlimited.

Financial and other limits

23.4 Subject to Clauses-~~23.1~~ and 23.2 (*Unlimited Liability*) and Clauses-~~23.7~~ (*Consequential losses*):

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

23.4.2 the Supplier's aggregate liability in respect of loss ~~of~~ or damage to Authority Data ~~or Losses incurred by and~~ the ~~Authority due to breach of Data Protection Legislation that is caused by Default of the Supplier occurring~~ indemnity at ~~Clause~~ 21.1 in each and any Contract Year shall in no event exceed **insert appropriate number in the suggested range of £10 million –20 million**;

23.4.3 the Supplier's aggregate liability in respect of all:

- (a) Service Credits; and
- (b) Compensation for Unacceptable KPI Failure;

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

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- 23.4.4 the Supplier's aggregate liability in respect of all other Losses incurred by the Authority under or in connection with this Contract as a result of Defaults by the Supplier ~~shall in no event exceed~~; including the Supplier's aggregate liability in respect of the indemnities at Clauses 5.3.2, 9.7.6 and 9.7.7 shall in no event exceed:
- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to [150%] of the Estimated Year 1 Charges;
 - (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to [150%] of the Charges paid and/or due to be paid to the Supplier under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
 - (c) in relation to Defaults occurring after the end of the Term, an amount equal to [150%] of the Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term,

provided that where any Losses referred to this Clause-~~23.4.4~~ have been incurred by the Authority as a result of the Supplier's abandonment of this Contract or the Supplier's wilful ~~default, wilful~~ breach of a fundamental term of this Contract or wilful repudiatory breach of this Contract, or the Supplier's aggregate liability in respect of the indemnity at Clause 3.8, the references in such Clause-~~to [150%]~~ shall be deemed to be references to [200%].

- 23.5 Deductions from Charges shall not be taken into consideration when calculating the Supplier's liability under Clause-~~23.4.3~~.
- 23.6 Subject to Clauses-~~23.1~~ and ~~23.3~~ (*Unlimited Liability*) and Clause-~~23.7~~ (*Consequential Losses*) and without prejudice to the Authority's obligation to pay the Charges as and when they fall due for payment:
- 23.6.1 the Authority's total aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of early termination of this Contract by the Authority pursuant to Clause-~~31.1.1~~ (*Termination by the Authority*) or by the Supplier pursuant to Clause-~~31.3.1~~ (*Termination by the Supplier*) shall in no event exceed the following amounts:
- (a) in relation to the Unrecovered Payment, the amount set out in Paragraph 4 of Schedule 16 (*Payments on Termination*);
 - (b) in relation to the Breakage Costs Payment, the amount set out in Paragraph 3.2 of Schedule 16 (*Payments on Termination*); and
 - (c) in relation to the Compensation Payment, the amount set out in Paragraph 6 of Schedule 16 (*Payments on Termination*); and
- 23.6.2 the Authority's aggregate liability in respect of all Losses incurred by the Supplier under or in connection with this Contract as a result of Defaults of the Authority shall in no event exceed:
- (a) in relation to Defaults occurring in the first Contract Year, an amount equal to the Estimated Year 1 Charges;

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- (b) in relation to Defaults occurring during any subsequent Contract Year, an amount equal to the total Charges paid and/or due to be paid under this Contract in the Contract Year immediately preceding the occurrence of the Default; and
- (c) in relation to Defaults occurring after the end of the Term, an amount equal to the total Charges paid and/or due to be paid to the Supplier in the 12 month period immediately prior to the last day of the Term.

Consequential Losses

- 23.7 Subject to Clauses ~~23.1~~, ~~23.2~~ and ~~23.3~~ (*Unlimited Liability*) and Clause ~~23.8~~, neither Party shall be liable to the other Party for:
 - 23.7.1 any indirect, special or consequential Loss; and/or
 - 23.7.2 any loss of profits, turnover, business opportunities or damage to goodwill (in each case whether direct or indirect).
- 23.8 Notwithstanding Clause ~~23.7~~ but subject to Clause ~~23.4~~, the Supplier acknowledges that the Authority may, amongst other things, recover from the Supplier the following Losses incurred by the Authority to the extent that they arise as a result of a Default by the Supplier:
 - 23.8.1 any additional operational and/or administrative costs and expenses incurred by the Authority, including costs relating to time spent by or on behalf of the Authority in dealing with the consequences of the Default;
 - 23.8.2 any wasted expenditure or charges;
 - 23.8.3 the additional cost of procuring Replacement Services for the remainder of the Term and/or replacement Deliverables, which shall include any incremental costs associated with such Replacement Services and/or replacement Deliverables above those which would have been payable under this Contract;
 - 23.8.4 any compensation or interest paid to a third party by the Authority;
 - 23.8.5 any fine or penalty incurred by the Authority pursuant to Law and any costs incurred by the Authority in defending any proceedings which result in such fine or penalty; and
 - 23.8.6 any anticipated savings identified in Schedule 20 (*Anticipated Savings*).

Conduct of indemnity claims

- 23.9 Where under this Contract one Party indemnifies the other Party, the Parties shall comply with the provisions of Schedule 27 (*Conduct of Claims*) in relation to the conduct of claims made by a third person against the Party having (or claiming to have) the benefit of the indemnity.

Mitigation

- 23.10 Each Party shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with this Contract, including any Losses for which the

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relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Contract.

24 Insurance

24.1 The Supplier shall comply with the provisions of Schedule 6 (*Insurance Requirements*) in relation to obtaining and maintaining insurance.

Section H: Remedies and Relief

25 Rectification Plan Process

25.1 In the event that:

25.1.1 there is, or is reasonably likely to be, a Delay; and/or

25.1.2 in any Service Period there has been:

(a) a Material KPI Failure; and/or

(b) a Material PI Failure; and/or

25.1.3 the Supplier commits a ~~material Default that is capable of remedy (and for these purposes a material Default may be a single material Default or a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are remedied) which taken together constitute a material Default)~~ Material Default that is capable of remedy.

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

Notification

25.2 If:

25.2.1 the Supplier notifies the Authority pursuant to Clause ~~25.1~~ that a Notifiable Default has occurred; or

25.2.2 the Authority notifies the Supplier that it considers that a Notifiable Default has occurred (setting out sufficient detail so that it is reasonably clear what the Supplier has to rectify),

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

25.3 The “**Rectification Plan Process**” shall be as set out in Clauses ~~25.4~~ (*Submission of the draft Rectification Plan*) to ~~25.9~~ (*Agreement of the Rectification Plan*).

Submission of the draft Rectification Plan

25.4 The Supplier shall submit a draft Rectification Plan to the Authority for it to review as soon as possible and in any event within 10 Working Days (or such other period as may be agreed between the Parties) after the original notification pursuant to Clause ~~25.2~~

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(*Notification*). The Supplier shall submit a draft Rectification Plan even if the Supplier disputes that it is responsible for the Notifiable Default.

25.5 The draft Rectification Plan shall set out:

- 25.5.1 full details of the Notifiable Default that has occurred, including a root cause analysis;
- 25.5.2 the actual or anticipated effect of the Notifiable Default; and
- 25.5.3 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).

25.6 The Supplier shall promptly provide to the Authority any further documentation that the Authority reasonably requires to assess the Supplier's root cause analysis. If the Parties do not agree on the root cause set out in the draft Rectification Plan, either Party may refer the matter to be determined by an expert in accordance with Paragraph 6 of Schedule 23 (*Dispute Resolution Procedure*).

Agreement of the Rectification Plan

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

- 25.7.1 is insufficiently detailed to be capable of proper evaluation;
- 25.7.2 will take too long to complete;
- 25.7.3 will not prevent reoccurrence of the Notifiable Default; and/or
- 25.7.4 will rectify the Notifiable Default but in a manner which is unacceptable to the Authority.

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

25.9 If the Authority consents to the Rectification Plan:

- 25.9.1 the Supplier shall immediately start work on the actions set out in the Rectification Plan; and
- 25.9.2 the Authority may no longer terminate this Contract in whole or in part on the grounds of the relevant Notifiable Default;

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

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26 Delay Payments

- 26.1 If a Key Milestone has not been Achieved by its relevant Milestone Date, the provisions of Paragraph 1 of Part C of Schedule 15 (*Charges and Invoicing*) shall apply in relation to the payment of Delay Payments.
- 26.2 Delay Payments shall be the Authority's exclusive financial remedy for the Supplier's failure to Achieve a Key Milestone by its Milestone Date except where:
- 26.2.1 the Authority is entitled to or does terminate this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*); or
- 26.2.2 the Delay exceeds the Delay Deduction Period.

27 Remedial Adviser

- 27.1 If:
- 27.1.1 any of the Intervention Trigger Events occur; or
- 27.1.2 the Authority reasonably believes that any of the Intervention Trigger Events are likely to occur,
- (each an "**Intervention Cause**"), the Authority may give notice to the Supplier (an "**Intervention Notice**") giving reasonable details of the Intervention Cause and requiring:
- 27.1.3 a meeting between the Authority Representative and the Supplier Representative to discuss the Intervention Cause; and/or
- 27.1.4 the appointment as soon as practicable by the Supplier of a Remedial Adviser, as further described in this Clause 27.

For the avoidance of doubt, if the Intervention Cause is also a Supplier Termination Event, the Authority has no obligation to exercise its rights under this Clause 27.1 prior to or instead of exercising its right to terminate this Contract.

- 27.2 If the Authority gives notice that it requires the appointment of a Remedial Adviser:
- 27.2.1 the Remedial Adviser shall be:
- (a) a person selected by the Supplier and approved by the Authority; or
- (b) if none of the persons selected by the Supplier have been approved by the Authority (or no person has been selected by the Supplier) within 10 Working Days following the date on which the Intervention Notice is given, a person identified by the Authority;
- 27.2.2 the terms of engagement and start date agreed with the Remedial Adviser must be approved by the Authority; and
- 27.2.3 any right of the Authority to terminate this Contract pursuant to Clause 31.1.2 (*Termination by the Authority*) for the occurrence of that Intervention Cause shall be suspended for 60 Working Days from (and including) the date of the Intervention Notice (or such other period as may be agreed between the Parties)(the "**Intervention Period**").

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- 27.3 The Remedial Adviser's overall objective shall be to mitigate the effects of, and (to the extent capable of being remedied) to remedy, the Intervention Cause and to avoid the occurrence of similar circumstances in the future. In furtherance of this objective (but without diminishing the Supplier's responsibilities under this Contract), the Parties agree that the Remedial Adviser may undertake any one or more of the following actions:
- 27.3.1 observe the conduct of and work alongside the Supplier Personnel to the extent that the Remedial Adviser considers reasonable and proportionate having regard to the Intervention Cause;
 - 27.3.2 gather any information the Remedial Adviser considers relevant in the furtherance of its objective;
 - 27.3.3 write reports and provide information to the Authority in connection with the steps being taken by the Supplier to remedy the Intervention Cause;
 - 27.3.4 make recommendations to the Authority and/or the Supplier as to how the Intervention Cause might be mitigated or avoided in the future; and/or
 - 27.3.5 take any other steps that the Authority and/or the Remedial Adviser reasonably considers necessary or expedient in order to mitigate or rectify the Intervention Cause.
- 27.4 The Supplier shall:
- 27.4.1 work alongside, provide information to, co-operate in good faith with and adopt any reasonable methodology in providing the Services recommended by the Remedial Adviser;
 - 27.4.2 ensure that the Remedial Adviser has all the access it may require in order to carry out its objective, including access to the Assets;
 - 27.4.3 submit to such monitoring as the Authority and/or the Remedial Adviser considers reasonable and proportionate in respect of the Intervention Cause;
 - 27.4.4 implement any reasonable recommendations made by the Remedial Adviser that have been approved by the Authority within the timescales given by the Remedial Adviser; and
 - 27.4.5 not terminate the appointment of the Remedial Adviser prior to the end of the Intervention Period without the prior consent of the Authority (such consent not to be unreasonably withheld).
- 27.5 The Supplier shall be responsible for:
- 27.5.1 the costs of appointing, and the fees charged by, the Remedial Adviser; and
 - 27.5.2 its own costs in connection with any action required by the Authority and/or the Remedial Adviser pursuant to this Clause-~~27~~.
- 27.6 If:
- 27.6.1 the Supplier:

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(a) fails to perform any of the steps required by the Authority in an Intervention Notice; and/or

(b) is in Default of any of its obligations under Clause ~~27.4~~; and/or

27.6.2 the relevant Intervention Trigger Event is not rectified by the end of the Intervention Period,

(each a “**Remedial Adviser Failure**”), the Authority shall be entitled to terminate this Contract pursuant to Clause ~~31.1.2~~ (*Termination by the Authority*).

28 Step-In Rights

28.1 On the occurrence of a Step-In Trigger Event, the Authority may serve notice on the Supplier (a “**Step-In Notice**”) that it will be taking action under this Clause ~~28~~ (*Step-in Rights*), either itself or with the assistance of a third party (provided that the Supplier may require any third parties to comply with a confidentiality undertaking equivalent to Clause ~~19~~ (*Confidentiality*)). The Step-In Notice shall set out the following:

28.1.1 the action the Authority wishes to take and in particular the Services that it wishes to control (the “**Required Action**”);

28.1.2 the Step-In Trigger Event that has occurred and whether the Authority believes that the Required Action is due to the Supplier's Default;

28.1.3 the date on which it wishes to commence the Required Action;

28.1.4 the time period which it believes will be necessary for the Required Action;

28.1.5 whether the Authority will require access to the Supplier's premises and/or the Sites; and

28.1.6 to the extent practicable, the impact that the Authority anticipates the Required Action will have on the Supplier's obligations to provide the Services during the period that the Required Action is being taken.

28.2 Following service of a Step-In Notice, the Authority shall:

28.2.1 take the Required Action set out in the Step-In Notice and any consequential additional action as it reasonably believes is necessary to achieve the Required Action;

28.2.2 keep records of the Required Action taken and provide information about the Required Action to the Supplier;

28.2.3 co-operate wherever reasonable with the Supplier in order to enable the Supplier to continue to provide the Services in relation to which the Authority is not assuming control; and

28.2.4 act reasonably in mitigating the cost that the Supplier will incur as a result of the exercise of the Authority's rights under this Clause ~~28~~.

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- 28.3 For so long as and to the extent that the Required Action is continuing, then:
- 28.3.1 the Supplier shall not be obliged to provide the Services to the extent that they are the subject of the Required Action;
 - 28.3.2 no Deductions shall be applicable in relation to Charges in respect of Services that are the subject of the Required Action and the provisions of Clause 28.4 shall apply to Deductions from Charges in respect of other Services; and
 - 28.3.3 the Authority shall pay to the Supplier the Charges after subtracting any applicable Deductions and the Authority's costs of taking the Required Action.
- 28.4 If the Supplier demonstrates to the reasonable satisfaction of the Authority that the Required Action has resulted in:
- 28.4.1 the degradation of any Services not subject to the Required Action; or
 - 28.4.2 the non-Achievement of a Milestone,
- beyond that which would have been the case had the Authority not taken the Required Action, then the Supplier shall be entitled to an agreed adjustment of the Charges.
- 28.5 Before ceasing to exercise its step in rights under this Clause 28 the Authority shall deliver a written notice to the Supplier (a “**Step-Out Notice**”), specifying:
- 28.5.1 the Required Action it has actually taken; and
 - 28.5.2 the date on which the Authority plans to end the Required Action (the “**Step-Out Date**”) subject to the Authority being satisfied with the Supplier's ability to resume the provision of the Services and the Supplier's plan developed in accordance with Clause 28.6.
- 28.6 The Supplier shall, following receipt of a Step-Out Notice and not less than 20 Working Days prior to the Step-Out Date, develop for the Authority's approval a draft plan (a “**Step-Out Plan**”) relating to the resumption by the Supplier of the Services, including any action the Supplier proposes to take to ensure that the affected Services satisfy the requirements of this Contract.
- 28.7 If the Authority does not approve the draft Step-Out Plan, the Authority shall inform the Supplier of its reasons for not approving it. The Supplier shall then revise the draft Step-Out Plan taking those reasons into account and shall re-submit the revised plan to the Authority for the Authority's approval. The Authority shall not withhold or delay its approval of the draft Step-Out Plan unnecessarily.
- 28.8 The Supplier shall bear its own costs in connection with any step-in by the Authority under this Clause 28, provided that the Authority shall reimburse the Supplier's reasonable additional expenses incurred directly as a result of any step-in action taken by the Authority under:
- 28.8.1 limbs (c) or (d) of the definition of a Step-In Trigger Event; or
 - 28.8.2 limbs (e) and (f) of the definition of a Step-in Trigger Event (insofar as the primary cause of the Authority serving the Step-In Notice is identified as not being the result of the Supplier's Default).

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29 Authority Cause

29.1 Notwithstanding any other provision of this Contract, if the Supplier has failed to:

- 29.1.1 Achieve a Milestone by its Milestone Date;
- 29.1.2 provide the Operational Services in accordance with the Target Performance Levels; and/or
- 29.1.3 comply with its obligations under this Contract,

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

and can demonstrate that the Supplier Non-Performance would not have occurred but for an Authority Cause, then (subject to the Supplier fulfilling its obligations in this Clause 29):

- (a) the Supplier shall not be treated as being in breach of this Contract to the extent the Supplier can demonstrate that the Supplier Non-Performance was caused by the Authority Cause;
- (b) the Authority shall not be entitled to exercise any rights that may arise as a result of that Supplier Non-Performance:
 - (i) to terminate this Contract pursuant to Clause ~~31.1.2~~ (*Termination by the Authority*); or
 - (ii) to take action pursuant to Clauses ~~27~~ (*Remedial Adviser*) or ~~28~~ (*Step-In*);
- (c) where the Supplier Non-Performance constitutes the failure to Achieve a Milestone by its Milestone Date:
 - (i) the Milestone Date shall be postponed by a period equal to the period of Delay that the Supplier can demonstrate was caused by the Authority Cause;
 - (ii) if the Authority, acting reasonably, considers it appropriate, the Implementation Plan shall be amended to reflect any consequential revisions required to subsequent Milestone Dates resulting from the Authority Cause;
 - (iii) if the Milestone is a Key Milestone, the Supplier shall have no liability to pay any Delay Payments associated with the Key Milestone to the extent that the Supplier can demonstrate that such failure was caused by the Authority Cause; and
 - (iv) the Supplier shall be entitled to claim compensation subject to and in accordance with the principles set out in Paragraph 2 of Part C of Schedule 15 (*Charges and Invoicing*); and/or
- (d) where the Supplier Non-Performance constitutes a Performance Failure:
 - (i) the Supplier shall not be liable to accrue Service Credits;

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- (ii) the Authority shall not be entitled to withhold any of the Service Charges pursuant to Clause ~~7.2.4~~(b) (*Performance Failures*);
- (iii) the Authority shall not be entitled to withhold and retain any Compensation for Unacceptable KPI Failure pursuant to Clause ~~7.4.1~~ (*Unacceptable KPI Failure*); and
- (iv) the Supplier shall be entitled to invoice for the Service Charges for the relevant Operational Services affected by the Authority Cause,

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

29.2 In order to claim any of the rights and/or relief referred to in Clause ~~29.1~~, the Supplier shall as soon as reasonably practicable (and in any event within 10 Working Days) after becoming aware that an Authority Cause has caused, or is reasonably likely to cause, a Supplier Non-Performance, give the Authority notice (a “**Relief Notice**”) setting out details of:

29.2.1 the Supplier Non-Performance;

29.2.2 the Authority Cause and its effect, or likely effect, on the Supplier’s ability to meet its obligations under this Contract;

29.2.3 any steps which the Authority can take to eliminate or mitigate the consequences and impact of such Authority Cause; and

29.2.4 the relief and/or compensation claimed by the Supplier.

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

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

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

29.5.1 whether a Supplier Non-Performance would not have occurred but for an Authority Cause; and/or

29.5.2 the nature and/or extent of the relief and/or compensation claimed by the Supplier,

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

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29.6 Any Change that is required to the Implementation Plan or to the Charges pursuant to this Clause-29 shall be implemented in accordance with the Change Control Procedure.

30 Force Majeure

30.1 Subject to the remaining provisions of this Clause-30 (and, in relation to the Supplier, subject to its compliance with its obligations in Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*)), a Party may claim relief under this Clause-30 from liability for failure to meet its obligations under this Contract for as long as and only to the extent that the performance of those obligations is directly affected by a Force Majeure Event. Any failure or delay by the Supplier in performing its obligations under this Contract which results from a failure or delay by an agent, Sub-contractor or supplier shall be regarded as due to a Force Majeure Event only if that agent, Sub-contractor or supplier is itself impeded by a Force Majeure Event from complying with an obligation to the Supplier.

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

30.3 If the Supplier is the Affected Party, it shall not be entitled to claim relief under this Clause-30 to the extent that consequences of the relevant Force Majeure Event:

30.3.1 are capable of being mitigated, but the Supplier has failed to do so;

30.3.2 should have been foreseen and prevented or avoided by a prudent provider of services similar to the Services, operating to the standards required by this Contract; or

30.3.3 are the result of the Supplier's failure to comply with its Service Continuity Plan (except to the extent that such failure is also due to a Force Majeure Event that affects the execution of the Service Continuity Plan).

30.4 Subject to Clause-30.5, as soon as practicable after the Affected Party issues the Force Majeure Notice, and at regular intervals thereafter, the Parties shall consult in good faith and use reasonable endeavours to agree any steps to be taken and an appropriate timetable in which those steps should be taken, to enable continued provision of the Services affected by the Force Majeure Event.

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

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

30.6.1 an Affected Party fails to perform its obligations in accordance with this Contract, then during the continuance of the Force Majeure Event:

(a) the other Party shall not be entitled to exercise any rights to terminate this Contract in whole or in part as a result of such failure other than

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pursuant to Clause ~~31.1.3~~ (*Termination by the Authority*) or Clause ~~31.3.2~~ (*Termination by the Supplier*); and

- (b) neither Party shall be liable for any Default arising as a result of such failure;

30.6.2 the Supplier fails to perform its obligations in accordance with this Contract:

- (a) the Authority shall not be entitled:
 - (i) during the continuance of the Force Majeure Event to exercise its rights under Clause ~~27~~ (*Remedial Adviser*) and/or Clause ~~28~~ (*Step-in Rights*) as a result of such failure;
 - (ii) to receive Delay Payments pursuant to Clause ~~26~~ (*Delay Payments*) to the extent that the Achievement of any Milestone is affected by the Force Majeure Event; and
 - (iii) to receive Service Credits, to withhold any of the Service Charges pursuant to Clause ~~7.2.4(b)~~ (*Performance Failures*) or withhold and retain any of the Service Charges as compensation pursuant to Clause ~~7.4.1~~ (*Unacceptable KPI Failure*) to the extent that a Performance Failure has been caused by the Force Majeure Event; and
- (b) the Supplier shall be entitled to receive payment of the Charges (or a proportional payment of them) only to the extent that the Services (or part of the Services) continue to be performed in accordance with the terms of this Contract during the occurrence of the Force Majeure Event.

30.7 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract.

30.8 Relief from liability for the Affected Party under this Clause ~~30~~ shall end as soon as the Force Majeure Event no longer causes the Affected Party to be unable to comply with its obligations under this Contract and shall not be dependent on the serving of notice under Clause ~~30.7~~.

Section I: Termination and Exit Management

31 Termination Rights

Termination by the Authority

31.1 The Authority may terminate this Contract by issuing a Termination Notice to the Supplier:

31.1.1 for convenience at any time;

~~(a)~~31.1.2 if a Supplier Termination Event occurs;

~~31.1.2~~31.1.3 if a Force Majeure Event endures for a continuous period of more than ninety (90) days; or

~~31.1.3~~31.1.4 if the Contract has been substantially amended to the extent that the Public Contracts Regulations 2015 require a new procurement procedure,

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

31.2 Where the Authority:

31.2.1 is terminating this Contract under Clause ~~31.1.2~~ due to the occurrence of either limb (b),(h) and/or (i) of the definition of Supplier Termination Event, it may rely on a single material Default or on a number of Defaults or repeated Defaults (whether of the same or different obligations and regardless of whether such Defaults are cured) which taken together constitute a material Default; and/or

31.2.2 has the right to terminate this Contract under Clause 31.1.2 or Clause ~~31.1.3~~, it may, prior to or instead of terminating the whole of this Contract, serve a Termination Notice requiring the partial termination of this Contract to the extent that it relates to any part of the Services which are materially affected by the relevant circumstances.

Termination by the Supplier

31.3 The Supplier may, by issuing a Termination Notice to the Authority, terminate:

31.3.1 this Contract if the Authority fails to pay an undisputed sum due to the Supplier under this Contract which in aggregate exceeds £[insert amount equivalent to 1 month's average Charges] and such amount remains outstanding 40 Working Days after the receipt by the Authority of a notice of non-payment from the Supplier; or

31.3.2 any Services that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and this Contract or the relevant Services (as the case may be) shall then terminate on the date specified in the Termination Notice (which shall not be less than 20 Working Days from the date of the issue of the Termination Notice). If the operation of Clause

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~~31.3.2~~ would result in a Partial Termination, the provisions of Clause ~~31.4~~ (*Partial Termination*) shall apply.

Partial Termination

- 31.4 If the Supplier notifies the Authority pursuant to Clause ~~31.3.2~~ (*Termination by the Supplier*) that it intends to terminate this Contract in part and the Authority, acting reasonably, believes that the effect of such Partial Termination is to render the remaining Services incapable of meeting a significant part of the Authority Requirements, then the Authority shall be entitled to terminate the remaining part of this Contract by serving a Termination Notice to the Supplier within 1 month of receiving the Supplier's Termination Notice. For the purpose of this Clause ~~31.4~~, in assessing the significance of any part of the Authority Requirements, regard shall be had not only to the proportion of that part to the Authority Requirements as a whole, but also to the importance of the relevant part to the Authority.
- 31.5 The Parties shall agree the effect of any Change necessitated by a Partial Termination in accordance with the Change Control Procedure, including the effect the Partial Termination may have on any other Services and the Charges, provided that:
- 31.5.1 the Supplier shall not be entitled to an increase in the Charges in respect of the Services that have not been terminated if the Partial Termination arises due to the occurrence of a Supplier Termination Event;
- 31.5.2 any adjustment to the Charges (if any) shall be calculated in accordance with the Financial Model and must be reasonable; and
- 31.5.3 the Supplier shall not be entitled to reject the Change.

32 Consequences of Expiry or Termination

General Provisions on Expiry or Termination

32.1 The provisions of Clauses ~~5.8~~ (*Specially Written Software warranty*), ~~9.7.6~~ (*Indemnity against the recall of goods*), 10.4 and 10.5 (VAT), 10.6 and 10.7 (*Set-off and Withholding*), 12 (*Records, Reports, Audits and Open Book Data*), 14.7 (*Employment Indemnity*), 14.8 (*Income Tax and National Insurance Contributions*), 16 (*Intellectual Property Rights*), 17.1 (*IPRs Indemnity*), 19 (*Confidentiality*), 20 (*Transparency and Freedom of Information*), 21 (*Protection of Personal Data*), 23 (*Limitations on Liability*), 32 (*Consequences of Expiry or Termination*), 38 (*Severance*), 40 (*Entire Agreement*), 41 (*Third Party Rights*), 43 (*Disputes*) and 44 (*Governing Law and Jurisdiction*), and the provisions of Schedules 1 (*Definitions*), 15 (*Charges and Invoicing*), 16 (*Payments on Termination*), 19 (*Financial Reports and Audit Rights*), 23 (*Dispute Resolution Procedure*), 24 (*Reports and Records Provisions*), 25 (*Exit Management*), 28 (*Staff Transfer*), and 32 (*Intellectual Property Rights*), shall survive the termination or expiry of this Contract.

32.2 Accumulated rights of the Parties shall not be affected by termination or expiry of the Contract.

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Exit Management

~~32.2~~32.3 The Parties shall comply with the provisions of Schedule 25 (*Exit Management*) and any current Exit Plan in relation to orderly transition of the Services to the Authority or a Replacement Supplier.

Payments by the Authority

~~32.3~~32.4 If this Contract is terminated by the Authority pursuant to Clause ~~31.1.1~~ (*Termination by the Authority*) or by the Supplier pursuant to Clause ~~31.3.1~~ (*Termination by the Supplier*), ~~or~~ 34.4, the Authority shall pay the Supplier the following payments (which shall be the Supplier's sole remedy for the termination of this Contract):

~~32.3.1~~32.4.1 the Termination Payment; and

~~32.3.2~~32.4.2 the Compensation Payment, if either of the following periods is less than three hundred and sixty-five (365) days:

- (a) the period from (but excluding) the date that the Termination Notice is given (or, where Paragraph 2.1(a) of Part D of Schedule 15 (*Charges and Invoicing*) applies, deemed given) by the Authority pursuant to Clause ~~31.1.1~~ (*Termination by the Authority*) to (and including) the Termination Date; or
- (b) the period from (and including) the date of the non-payment by the Authority referred to in Clause ~~31.3.1~~ (*Termination by the Supplier*) to (and including) the Termination Date.

~~32.4~~32.5 If this Contract is terminated (in part or in whole) by the Authority pursuant to Clauses ~~31.1.2, 31.1.3~~ ~~and/or~~ 31.2 (*Termination by the Authority*), ~~33.8.12(b)~~ ~~and/or~~ 33.12.2, or the Term expires, the only payments that the Authority shall be required to make as a result of such termination (whether by way of compensation or otherwise) are:

~~32.4.1~~32.5.1 payments in respect of any Assets or apportionments in accordance with Schedule 25 (*Exit Management*); and

~~32.4.2~~32.5.2 payments in respect of unpaid Charges for Services received up until the Termination Date.

~~32.5~~32.6 The costs of termination incurred by the Parties shall lie where they fall if:

~~32.5.1~~32.6.1 either Party terminates or partially terminates this Contract for a continuing Force Majeure Event pursuant to Clauses ~~31.1.3~~ or ~~31.2.2~~ (*Termination by the Authority*) or ~~31.3.2~~ (*Termination by the Supplier*); or

~~32.5.2~~32.6.2 the Authority terminates this Contract under Clause ~~31.1.4~~ (*Termination by the Authority*).

Payments by the Supplier

~~32.6~~32.7 In the event of termination or expiry of this Contract, the Supplier shall repay to the Authority all Charges it has been paid in advance in respect of Services not provided by the Supplier as at the date of expiry or termination.

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~~32.7~~32.8 If this Contract is terminated (in whole or in part) by the Authority pursuant to Clause ~~31.1.2~~ (Termination by the Authority) prior to Achievement of one or more CPP Milestones, the Authority may at any time on or within 12 months of the issue of the relevant Termination Notice by issue to the Supplier of written notice (a “**Milestone Adjustment Payment Notice**”) require the Supplier to repay to the Authority an amount equal to the aggregate Milestone Adjustment Payment Amounts in respect of each CPP Milestone to which the Milestone Adjustment Payment Notice relates.

~~32.8~~32.9 A Milestone Adjustment Payment Notice shall specify:

~~32.8.1~~32.9.1 each CPP Milestone to which it relates;

~~32.8.2~~32.9.2 in relation to each such CPP Milestone, each Deliverable relating to that CPP Milestone that the Authority wishes to retain, if any (each such Deliverable being a “**Retained Deliverable**”); and

~~32.8.3~~32.9.3 those Retained Deliverables, if any, the Allowable Price for which the Authority considers should be subject to deduction of an adjusting payment on the grounds that they do not or will not perform in all material respects in accordance with their specification (such adjusting payment being an “**Allowable Price Adjustment**”),

and may form part of a Termination Notice.

~~32.9~~32.10 The Supplier shall within 10 Working Days of receipt of a Milestone Adjustment Payment Notice, in each case as applicable:

~~32.9.1~~32.10.1 notify the Authority whether it agrees that the Retained Deliverables which the Authority considers should be subject to an Allowable Price Adjustment as specified in the relevant Milestone Adjustment Payment Notice should be so subject; and

~~32.9.2~~32.10.2 in relation to each such Retained Deliverable that the Supplier agrees should be subject to an Allowable Price Adjustment, notify the Authority of the Supplier’s proposed amount of the Allowable Price Adjustment and the basis for its approval;

~~32.9.3~~32.10.3 provide the Authority with its calculation of the Milestone Adjustment Payment Amount in respect of each CPP Milestone the subject of the relevant Milestone Adjustment Payment Notice using its proposed Allowable Price Adjustment, including details of:

- (a) all relevant Milestone Payments; and
- (b) the Allowable Price of each Retained Deliverable; and

~~32.9.4~~32.10.4 provide the Authority with such supporting information as the Authority may require.

~~32.10~~32.11 If the Parties do not agree the calculation of a Milestone Adjustment Payment Amount within 20 Working Days of the Supplier’s receipt of the relevant Milestone Adjustment Payment Notice, either Party may refer the Dispute to the Dispute Resolution Procedure.

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~~32.11~~32.12 If the Authority issues a Milestone Adjustment Payment Notice pursuant to Clause ~~32.8~~:

~~32.11.1~~32.12.1 the Authority shall:

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

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

~~32.11.2~~32.12.2 all licences granted by the Supplier pursuant to Schedule 32 (*Intellectual Property Rights*) in respect of Specially Written Software and Project Specific IPRs and any Supplier Non-COTS Software and/or Supplier Background IPRs shall terminate upon such repayment to the extent that they relate to the Non-retained Deliverables.

Section J: Miscellaneous and Governing Law

33 Compliance

Health and Safety

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

33.1.1 all applicable Law regarding health and safety; and

33.1.2 the Health and Safety Policy whilst at the Authority Premises.

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

Employment Law

33.3 The Supplier must perform its obligations meeting the requirements of all applicable Law regarding employment.

Equality and Diversity

33.4 The Supplier shall:

33.4.1 perform its obligations under this Contract (including those in relation to the Services) in accordance with:

(a) all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(b) the Authority's equality and diversity policy as provided to the Supplier from time to time; and

(c) any other requirements and instructions which the Authority reasonably imposes in connection with any equality obligations imposed on the Authority at any time under applicable equality Law; and

33.4.2 take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

Official Secrets Act and Finance Act

33.5 The Supplier shall comply with the provisions of:

33.5.1 the Official Secrets Acts 1911 to 1989; and

33.5.2 section 182 of the Finance Act 1989.

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Conflicts of Interest

33.6 The Supplier:

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

33.6.2 must promptly notify and provide details to the Authority if an actual, potential or perceived Conflict of Interest happens or is expected to happen.

33.7 The Authority 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 Authority, such measures do not or will not resolve an actual or potential Conflict of Interest, the Authority may terminate this Contract in accordance with Clause 31.1.2 immediately by giving notice in writing to the Supplier where there is or may be an actual or potential Conflict of Interest and Clauses 32.2, 32.4 and 32.6 to 32.11 shall apply.

Modern Slavery

33.8 The Supplier:

33.8.1 shall not use, nor allow its sub-contractors to use forced, bonded or involuntary prison labour;

33.8.2 shall not require any Supplier Personnel or the personnel of any sub-contractors to lodge deposits or identity papers with their employer and shall be free to leave their employer after reasonable notice;

33.8.3 warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

33.8.4 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;

33.8.5 shall make reasonable enquires to ensure that its officers, employees and sub-contractors have not been convicted of slavery or human trafficking offences anywhere around the world;

33.8.6 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 sub-contractors anti-slavery and human trafficking provisions;

33.8.7 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 Contract;

33.8.8 shall prepare and deliver to the Authority, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

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[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 Clause 33.8.8]

- 33.8.9 shall not use, nor allow its employees or sub-contractors 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 sub-contractors;
- 33.8.10 shall not use or allow child or slave labour to be used by its sub-contractors; **[and]**
- 33.8.11 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 sub-contractors to the Authority and the Modern Slavery Helpline **[1/4]** **and relevant national or local law enforcement agencies;**
- 33.8.12 if the Supplier is in Default under Clauses 33.8.1 to 33.8.11 the Authority may by notice:
- (a) require the Supplier to remove from performance of the Contract any sub-contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or
 - (b) immediately terminate the Contract in accordance with Clause 31.1.2; and
- 33.8.13 shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority 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);

[Guidance – Sub-clauses 33.8.14 to 33.8.17, 33.8.17, and Clauses 33.9 and 33.10 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 05/19 (02/23 (Tackling Modern Slavery in Government Supply Chains)). Authorities should consider which requirements, including any additional requirements, are appropriate for their Contract.]

~~33.8.12~~ **33.8.14** **[Optional:** shall comply with any request by the Authority to complete the Modern Slavery Assessment Tool within sixty (60) days of such request; **Guidance: If this sub-clause is included then also include the optional definition of Modern Slavery Assessment Tool in Schedule 1.]**

~~33.8.13~~ **[Optional:** shall, if the Supplier or the Authority identifies any occurrence of modern slavery connected to this Contract, comply with any request of the Authority to follow the Rectification Plan Process 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

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~~and such remedial action plan shall be deemed to be a Rectification Plan;]~~

~~33.8.14~~ 33.8.15 [Optional: shall comply with any request by the Authority to provide a Supply Chain Map within fourteen (14) days of such request; **Guidance: If this sub-clause is included then also include the optional definition of Supply Chain Map in Schedule 1.**]

~~33.8.15~~ 33.8.16 [Optional: shall comply with any request by the Authority to provide a copy of any reports of any sub-contractor regarding any or all of ~~workforce~~ workplace conditions, working or employment practices and recruitment practices within fourteen (14) days of such request;]

~~33.8.16~~ 33.8.17 [Optional: 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;] [and]

~~33.8.17~~ [Optional: 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 Authority and relevant national or local law enforcement agencies.]

33.9 [Optional: The following shall be added to the definition of “Audit” in Paragraph 1.1 of Schedule 19 (*Financial Reports and Audit Rights*) immediately after limb (t):

“(u) to carry out an unannounced or semi-announced inspection of any Site and speak directly to any Supplier Personnel in a confidential manner and in the native language of such Supplier Personnel in respect of workforce conditions, working or employment practices and recruitment practices;”

33.10 For the purposes of an audit carried out pursuant to limb (u) of the definition of “Audit”, in addition to any other rights under the Contract, the Authority may instruct the Supplier to carry out such an audit of any Sub-Contractor by an independent third party and, if so instructed, the Supplier shall deliver a report to the Authority within ninety (90) days of such instruction.]

33.11 If the Supplier notifies the Authority pursuant to Clause ~~33.13~~ 33.8.11 it shall respond promptly to the Authority’s enquiries, co-operate with any investigation, and allow the Authority to audit any books, records and/or any other relevant documentation in accordance with the Contract.

33.12 If the Supplier is in Default under Clause ~~33.8~~ **Guidance: Include if Optional clause Clause 33.10 is included or Clause 33.10**] the Authority may by notice:

33.12.1 require the Supplier to remove from performance of the Contract any Sub-Contractor, Supplier Personnel or other persons associated with it whose acts or omissions have caused the Default; or

33.12.2 immediately terminate the Contract: in accordance with Clause 31.1.2.

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Whistleblowing

33.13 As soon as it is aware of it the Supplier and Supplier Personnel must report to the Authority any actual or suspected breach of:

33.13.1 Law;

33.13.2 Clauses ~~33.1~~ to 33.8 or 33.14; or

33.13.3 Clause ~~37~~.

33.14 The Supplier must not retaliate against any of the Supplier Personnel who in good faith reports a breach listed in this Clause to the Authority or a Prescribed Person.

34 Assignment and Novation

34.1 The Supplier shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Contract without the prior written consent of the Authority.

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

34.2.1 any ~~Central Government~~Crown Body; or

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

and the Supplier shall, at the Authority's request, enter into a novation agreement in such form as the Authority shall reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause ~~34.2~~.

34.3 A change in the legal status of the Authority such that it ceases to be a ~~Central Government~~Crown Body shall not (subject to Clause ~~34.4~~) affect the validity of this Contract and this Contract shall be binding on any successor body to the Authority.

34.4 If the Authority assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under this Contract to a body which is not a ~~Central Government~~Crown Body or if a body which is not a ~~Central Government~~Crown Body succeeds the Authority (any such body a "**Successor Body**"), the Supplier shall have the right to terminate for an Insolvency Event affecting the Successor Body identical to the right of termination of the Authority under limb (k) of the definition of Supplier Termination Event (as if references in that limb (k) to the Supplier and the Guarantor were references to the Successor Body) ~~and the consequences of termination set out in Clause 32.3 shall apply.~~

35 Waiver and Cumulative Remedies

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

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

36 Relationship of the Parties

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

37 Prevention of Fraud and Bribery

37.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Effective Date:

37.1.1 committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

37.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

37.2 The Supplier shall not during the term of this Contract:

37.2.1 commit a Prohibited Act; and/or

37.2.2 do or suffer anything to be done which would cause the Authority or any of the Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

37.3 The Supplier shall during the term of this Contract:

37.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;

37.3.2 have in place reasonable prevention measures (as defined in sections 45(3) and 46(4) of the Criminal Finance Act 2017) to ensure that Associated Persons of the Supplier do not commit tax evasion facilitation offences as defined under that Act;

37.3.3 keep appropriate records of its compliance with its obligations under Clause 37.3.1 and make such records available to the Authority on request; and

37.3.4 take account of any guidance about preventing facilitation of tax evasion offences which may be published and updated in accordance with Section 47 of the Criminal Finances Act 2017.

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- 37.4 The Supplier shall immediately notify the Authority in writing if it becomes aware of any breach of Clause ~~37.1~~ and/or 37.2, or has reason to believe that it has or any of the Supplier Personnel have:
- 37.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
 - 37.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
 - 37.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.
- 37.5 If the Supplier makes a notification to the Authority pursuant to Clause ~~37.4~~, the Supplier shall respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to Audit any books, Records and/or any other relevant documentation in accordance with Clause ~~12~~ (*Records, Reports, Audits and Open Book Data*).
- 37.6 If the Supplier is in Default under Clauses ~~37.1~~ and/or 37.2, the Authority may by notice:
- 37.6.1 require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused the Default; or
 - 37.6.2 immediately terminate this Contract in accordance with Clause 31.1.2.
- 37.7 Any notice served by the Authority under Clause ~~37.6~~ shall specify the nature of the Prohibited Act, the identity of the Party who the Authority believes has committed the Prohibited Act and the action that the Authority has elected to take (including, where relevant, the date on which this Contract shall terminate).

38 Severance

- 38.1 If any provision or part provision of this Contract ~~(or part of any provision)~~ is held to be void or otherwise becomes invalid, illegal or unenforceable ~~by~~for any court of competent jurisdictionreason, such provision ~~(or part)-provision~~ shall to the extent necessary to ensure that the remaining provisions of this Contract are not void or unenforceable be deemed ~~to be~~ deleted and, but that shall not affect the validity and/or enforceability of the remaining provisionsrest of this Contract ~~shall not be affected~~.
- ~~38.2 In the event that any deemed deletion under Clause 38.1 is so fundamental as to prevent the accomplishment of the purpose of this Contract or materially alters the balance of risks and rewards in this Contract, either Party may give notice to the other Party requiring the Parties to commence good faith negotiations to amend this Contract so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in this Contract and, to the extent that is reasonably possible, achieves the Parties' original commercial intention.~~
- ~~38.3 If the Parties are unable to agree on the revisions to this Contract within 5 Working Days of the date of the notice given pursuant to Clause 38.2, the matter shall be dealt with in accordance with Paragraph 4 (Commercial Negotiation) of Schedule 23 (Dispute~~

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~~Resolution Procedure) except that if the representatives are unable to resolve the dispute within 30 Working Days of the matter being referred to them, this Contract shall automatically terminate with immediate effect. The costs of termination incurred by the Parties shall lie where they fall if this Contract is terminated pursuant to this Clause 38.3.~~

39 Further Assurances

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

40 Entire Agreement

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

40.2 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

40.3 Nothing in this Clause 40 shall exclude any liability in respect of misrepresentations made fraudulently.

41 Third Party Rights

41.1 The provisions of Clause 17.1 (*IPRs Indemnity*), Paragraphs 2.1 and 2.6 of Part A, Paragraphs 2.1, 2.6, 3.1 and 3.3 of Part B, Paragraphs 2.1 and 2.3 of Part C, Part D and Paragraphs 1.4, 2.3 and 2.8 of Part E of Schedule 28 (*Staff Transfer*) and the provisions of Paragraph 6.9 of Schedule 25 (*Exit Management*) (together "**Third Party Provisions**") confer benefits on persons named or identified in such provisions other than the Parties (each such person a "**Third Party Beneficiary**") and are intended to be enforceable by Third Parties Beneficiaries by virtue of the CRTPA.

41.2 Subject to Clause 41.1, a person who is not a Party to this Contract has no right under the CRTPA to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

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

41.4 Any amendments or modifications to this Contract may be made, and any rights created under Clause 41.1 may be altered or extinguished, by the Parties without the consent of any Third Party Beneficiary.

42 Notices

42.1 Any notices sent under this Contract must be in writing.

42.2 Subject to Clause 42.4, the following table sets out the method by which notices may be served under this Contract and the respective deemed time and proof of service:

Manner of Delivery	Deemed time of service	Proof of service
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Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1st Class or other prepaid, next Working Day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day (if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

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

	Supplier	Authority
Contact		
Address		
Email		

- 42.4 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in the table in Clause 42.2:

42.4.1 Step-In Notices;

42.4.2 Force Majeure Notices;

42.4.3 notices issued by the Supplier pursuant to Clause 31.3 (*Termination by the Supplier*);

42.4.4 Termination Notices; and

42.4.5 Dispute Notices.

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- 42.5 Failure to send any original notice by personal delivery or recorded delivery in accordance with Clause-~~42.4~~ shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in Clause-~~42.2~~) or, if earlier, the time of response or acknowledgement by the other Party to the email attaching the notice.
- 42.6 This Clause-~~42~~ does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution (other than the service of a Dispute Notice under Schedule 23 (*Dispute Resolution Procedure*)).

43 Disputes

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

44 Governing Law and Jurisdiction

- 44.1 This Contract and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 44.2 Subject to Clause-~~43~~ (*Disputes*) and Schedule 23 (*Dispute Resolution Procedure*) (including the Authority’s right to refer the dispute to arbitration), the Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Contract or its subject matter or formation.

This Contract has been duly ~~executed~~entered into by the Parties on the date which appears at the head of its page 1.

SIGNED for and on behalf of)
 [name of the Supplier] by a director:)
)
) Signature:

Name (block capitals):

Director

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SIGNED for and on behalf of
[name of the Authority]

)
)
)
) Signature:

Name (block
capitals):

Position:



Model Services Agreement Combined Schedules

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Amendments in this version

Version number	Date	Amendments
Version 1.02	5 June 2014	Minor formatting changes and correcting paragraph numbering in Schedules 2.4 Annex 1 and 7.3 Annex 2.
Version 1.03	5 November 2015	Schedule 2.2 definitions of Availability and Service Availability; Schedule 2.4 new definitions in Security Management Schedule; Schedule 8.3 model mediation agreement; Schedule 8.5 para 7.5 to allow normal recruitment; Schedule 9 Pensions Annexes additions in event Admission Agreement breached; various minor typing corrections; improved numbering and headings in Schedules.
Version 1.04	26 May 2016	Schedule 8.3 minor amendments; Schedule 8.4 addition of Transparency Reports; other minor amendments.
Version 1.05	1 January 2018	Introduction of Privacy Shield; minor corrections; improvements to clauses 16, 17 and 19A and to

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Version number	Date	Amendments
		Schedule 9; introduction of e-invoicing in Schedule 7 Part E; front cover amended to reflect open government licence terms.
Version 1.06	30 July 2018	Update to Schedule 2.4 (<i>Security Management</i>), Staff Transfer 7.1 (<i>Staff Transfer</i>) including new Pensions Provisions for LGPS and NHS, Schedule 11 (<i>Processing Personal Data</i>).
Version 1.07	24 January 2019	Update to Schedule 11 (<i>Processing Data</i>) – New annex on Joint Control.
Version 1.08	29 April 2019	Update to Schedule 2.2 (<i>Performance Levels</i>), Schedule 2.4 (<i>Security Management</i>), Schedule 2.5 (<i>Insurance Requirements</i>), Schedule 5 (<i>Software</i>) - updated table only, Schedule 6.2 (<i>Testing Procedures</i>), Schedule 7 (<i>Charges and Invoicing</i>), Schedule 7.4 (<i>Financial Distress</i>), Schedule 7.5 (<i>Financial Reports and Audit Rights</i>) Schedule 8.4 (<i>Reports and Records Provisions</i>), Schedule 8.5 (<i>Exit Management</i>), Schedule 8.6 (<i>Service Continuity Plan and Corporate Resolution Planning</i>).
Version 1.08A	4 June 2019	Corrections to minor errors.
Version 1.09	10 July 2020 CONTINUOUSLY	New Transparency KPIs inserted to the KPI tables at Annex 1 to Schedule 2.2. New environmental requirements annexed to Schedule 2.3. New Assurance Process added to Security Management Schedule 2.4 at Part A to supplement Accreditation Process. New draft ethical wall agreement inserted at Annex 2 of Schedule 8.5. New TUPE staffing information tables inserted at Annex E2 of Schedule 9. Updating of pensions provisions to reflect the requirements at Part D at Schedule 9.
Version 1.09A	12 November 2020	New list of schedules inserted. New Standard Contract Clauses added to Schedule 11 at Annex 2 and Annex 3.

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Version number	Date	Amendments
Version 2.0	11 April 2022	Schedules renumbered. New Schedule 32 (Intellectual Property Rights) <u>Schedule 32 (Intellectual Property Rights)</u> added. Updates to Schedules 1, 2, 3, 4, 5, 6 (Guidance only) 9, 12 (minor updates only) 18, 19 (minor updates only), 23 (very minor updates only) 24, 25, 26, 28, 29 (minor updates only), 3030 (very minor updates only), and 31.
Version 2.0A1	31 July 2023	Formatting and paragraph numbering throughout Schedules made consistent. Fonts, spacing, and formatting updated for accessibility. Schedules available as separate documents. No change to content or any substantive changes. Addition of indemnities and move from breach of contract to indemnities for some liabilities to align model contracts. Updates to limitation of liability. Amendments to Power of Attorney provisions. Simplification of supply chain protection provisions. Updates to and simplification of the GDPR data protection clauses. Amendments to Modern Slavery clauses. Amendments to severance clauses. Updates to Security Management Schedule. Amendments to Insurance Schedule. Amendments to Software Schedule. Amendments to Charges and Invoicing Schedule. Amendments to Benchmarking Schedule. Updates to Change Control Procedure Schedule. Updates to Reports and Records Schedule. Amendments to Exit Management Schedule. Amendments to Staff Transfer Schedule. Amendments to IPR Schedule and updates to IPR provisions in Core Terms and Software Schedule. Numerous other minor changes and improvements.

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Schedule 1

Definitions

Schedule 1: Definitions

1.1. Definitions

- 1.1 In the Contract, unless the context otherwise requires, capitalised expressions shall have the meanings set out in this ~~Schedule 1 (Definitions)~~ 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 Contract, unless the context otherwise requires:
 - 1.3.1 the singular includes the plural and vice versa;
 - 1.3.2 reference to a gender includes the other gender and the neuter;
 - 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;
 - 1.3.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated ~~or re-enacted~~, replaced or re-enacted (including as a consequence of the Retained EU Law (Revocation and Reform) Act 2023) from time to time;
 - 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**”;
 - 1.3.6 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;
 - 1.3.7 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 Contract;
 - 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;
 - 1.3.9 references to “**Paragraphs**” are, unless otherwise provided, references to the paragraph of the appropriate Schedules unless otherwise provided; and
 - 1.3.10 references to a series of Clauses or Paragraphs shall be inclusive of the clause numbers specified.

Schedule 1- (Definitions)

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- 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
- 1.3.12 where the Buyer is a Crown Body it shall be treated as contracting with the Crown as a whole.
- 1.4 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):
- 1.4.1 any EU regulation, EU decision, EU tertiary legislation or provision of the EEA agreement (“**EU References**”) which is to form part of domestic law by application of Section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after 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
- 1.4.2 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.
- 1.5 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Supplier shall notify the Authority and the Parties shall update this Contract with a reference to the replacement hyperlink.

“Accounting Reference Date” means in each year the date to which the Supplier prepares its annual audited financial statements;

“Achieve”

(a) in respect of a Test, to successfully pass a Test without any Test Issues; and

(b) in respect of a Milestone, the issue of a Milestone Achievement Certificate in respect of that Milestone in accordance with the provisions of ~~Schedule 14 (Testing Procedures)~~; Schedule 14 (Testing Procedures);

and **“Achieved”** and **“Achievement”** shall be construed accordingly;

“Affected Party” the Party seeking to claim relief in respect of a Force Majeure Event;

“Affiliate” in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

“Allowable Assumptions” the assumptions set out in Annex 5 of ~~Schedule 15 (Charges and Invoicing)~~; Schedule 15 (Charges and Invoicing);

Schedule 1- (Definitions)

[Subject to Contract]

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“Allowable Price”

in relation to the Retained Deliverables relating to a CPP Milestone, if any, an amount determined in accordance with the formula:

$A - B$

where:

- (a) A is an amount equal to the Costs incurred by the Supplier in providing or developing the relevant Retained Deliverables as reflected in the Financial Model together with an amount equal to the Anticipated Contract Life Profit Margin thereon; and
- (b) B is an amount equal to the Allowable Price Adjustment relating to the relevant Retained Deliverables, if any, or if there is no such Allowable Price Adjustment, zero,

provided that the Allowable Price for any Retained Deliverables shall in no circumstances exceed the aggregate amount of the Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone;

“Allowable Price Adjustment”

has the meaning given in Clause 32.8(c) (*Payments by the Supplier*);

“Annual Contract Report”

has the meaning given in ~~Schedule 19 (Financial Reports and Audit Rights)~~; Schedule 19 (*Financial Reports and Audit Rights*);

“Annual Revenue”

means, for the purposes of determining whether an entity is a Public Sector Dependent Supplier, the audited consolidated aggregate revenue (including share of revenue of joint ventures and Associates) reported by the Supplier or, as appropriate, the Supplier Group in its most recent published accounts, subject to the following methodology:

- (a) figures for accounting periods of other than 12 months should be scaled pro rata to produce a proforma figure for a 12 month period; and
- (b) where the Supplier, the Supplier Group and/or their joint ventures and Associates report in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;

“Anticipated Contract Life Profit Margin”

has the meaning given in ~~Schedule 15 (Charges and Invoicing)~~; Schedule 15 (*Charges and Invoicing*);

Schedule 1- (Definitions)

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“Approved Sub-Licensee”

any of the following:

- (a) a ~~Central Government~~Crown Body;
- (b) any third party providing services to a ~~Central Government~~Crown Body; and/or
- (c) any body (including any private sector body) which performs or carries on any of the functions and/or activities that previously had been performed and/or carried on by the Authority;

“Assets”

all assets and rights used by the Supplier to provide the Services in accordance with this Contract but excluding the Authority Assets;

“Associated Person”

has the meaning given to it in Section 44(4) of the Criminal Finances Act 2017;

“Associates”

means, in relation to an entity, an undertaking in which the entity owns, directly or indirectly, between 20% and 50% of the voting rights and exercises a degree of control sufficient for the undertaking to be treated as an associate under generally accepted accounting principles;

“Assurance”

means written confirmation from a Relevant Authority to the Supplier that the CRP Information is approved by the Relevant Authority;

“ATP Milestone”

the Milestone linked to Authority to Proceed for the relevant Operational Services set out in the Implementation Plan;

“Audit”

any exercise by the Authority of its Audit Rights pursuant to Clause 12 (*Records, Reports, Audit and Open Book Data*) and ~~Schedule 19 (Financial Reports and Audit Rights)~~; Schedule 19 (Financial Reports and Audit Rights);

“Audit Agents”

- (a) the Authority’s internal and external auditors;
- (b) the Authority’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 Authority to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

Schedule 1- (Definitions)

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- “Audit Rights”** the audit and access rights referred to in ~~Schedule 19~~ *(Financial Reports and Audit Rights)*; ~~Schedule 19~~ *(Financial Reports and Audit Rights)*;
- “Authority Assets”** the Authority Materials, the Authority infrastructure and any other data, software, assets, equipment or other property owned by and/or licensed or leased to the Authority and which is or may be used in connection with the provision or receipt of the Services;
- “Authority Background IPRs”** (a) IPRs owned by the Authority before the Effective Date, including IPRs contained in any of the Authority’s Know-How, documentation, processes and procedures;
- (b) IPRs created by the Authority independently of this Contract; and/or
- (c) Crown Copyright which is not available to the Supplier otherwise than under this Contract;
- but excluding IPRs owned by the Authority subsisting in the Authority Software;
- “Authority Cause”** any material breach by the Authority of any of the Authority Responsibilities, except to the extent that such breach is:
- (a) the result of any act or omission by the Authority to which the Supplier has given its prior consent; or
- (b) caused by the Supplier, any Sub-contractor or any Supplier Personnel;
- “Authority Data”** (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
- (i) supplied to the Supplier by or on behalf of the Authority; and/or
- (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or
- (b) any Personal Data for which the Authority is the Controller;
- “Authority IT Strategy”** the Authority’s IT policy in force as at the Effective Date (a copy of which has been supplied to the Supplier), as updated

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from time to time in accordance with the Change Control Procedure;

“Authority Materials” the Authority Data together with any materials, documentation, information, programs and codes supplied by the Authority to the Supplier, the IPRs in which:

- (a) are owned or used by or on behalf of the Authority; and
- (b) are or may be used in connection with the provision or receipt of the Services,

but excluding any Project Specific IPRs, Specially Written Software, Supplier Software, Third Party Software and Documentation relating to Supplier Software or Third Party Software;

“Authority Premises” premises owned, controlled or occupied by the Authority and/or any ~~Central Government~~Crown Body which are made available for use by the Supplier or its Sub-contractors for provision of the Services (or any of them);

“Authority Representative” the representative appointed by the Authority pursuant to Clause 11.4 (*Representatives*);

“Authority Requirements” ~~the requirements of the Authority set out in Schedule 2 (Services Description), Schedule 3 (Performance Levels), Schedule 4, Schedule 5 (Security Management), Schedule 6 (Insurance Requirements), Schedule 13 (Implementation Plan), Schedule 24 (Reports and Records Provisions), Schedule 25 (Exit Management) and Schedule 26 (Service Continuity Plan and Corporate Resolution Planning);~~ the requirements of the Authority set out in Schedule 2 (Services Description), Schedule 3 (Performance Levels), Schedule 4 (Standards), Schedule 5 (Security Management), Schedule 6 (Insurance Requirements), Schedule 13 (Implementation Plan), Schedule 24 (Reports and Records Provisions), Schedule 25 (Exit Management) and Schedule 26 (Service Continuity Plan and Corporate Resolution Planning);

“Authority Responsibilities” the responsibilities of the Authority specified in ~~Schedule 7 (Authority Responsibilities);~~ Schedule 7 (Authority Responsibilities);

“Authority Software” software which is owned by or licensed to the Authority (other than under or pursuant to this Contract) and which is or will be used by the Supplier for the purposes of providing the Services;

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“Authority System”	the Authority’s computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Authority or the Supplier in connection with this Contract which is owned by the Authority or licensed to it by a third party and which interfaces with the Supplier System or which is necessary for the Authority to receive the Services;
“Authority to Proceed” or “ATP”	the authorisation to the Supplier to commence the provision of the relevant Operational Services to the Authority, provided by the Authority in the form of a Milestone Achievement Certificate in respect of the ATP Milestone;
“Balanced Scorecard Report”	has the meaning given in Paragraph 1.1.2 of Part B of Schedule 3 (Performance Levels) ; Schedule 3 (Performance Levels) ;
“Baseline Security Requirements”	the Authority’s baseline security requirements, the current copy of which is contained in Annex 1 (Baseline Security Requirements), as updated from time to time by the Authority and notified to the Supplier;
“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means the written confirmation from the Board in accordance with Paragraph 8 of Schedule 18 (Financial Distress) ; Schedule 18 (Financial Distress) ;
“Breakage Costs Payment”	has the meaning given in Schedule 16 (Payments on Termination) ; Schedule 16 (Payments on Termination) ;
“Cabinet Office Markets and Suppliers Team”	means the UK Government’s team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
“Central Government Body”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) — Government Department; (b) — Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); (c) — Non-Ministerial Department; or (d) — Executive Agency;

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“Certificate of Costs”	has the meaning given in Schedule 15 (Charges and Invoicing) ;Schedule_15_(Charges and Invoicing);
“Change”	any change to this Contract;
“Change Authorisation Note”	a form setting out an agreed Contract Change which shall be substantially in the form of Annex 2: Change Authorisation Note;
“Change Control Procedure”	the procedure for changing this Contract set out in Schedule 22 (Change Control Procedure) ;Schedule_22_(Change Control Procedure);
“Change in Law”	any change in Law which impacts on the performance of the Services which comes into force after the Effective Date;
“Change Request”	a written request for a Contract Change substantially in the form of 1- (Change Request Form) ;_(Change Request Form);
“Charges”	the charges for the provision of the Services set out in or otherwise calculated in accordance with Schedule 15 (Charges and Invoicing) ;Schedule_15_(Charges and Invoicing);, including any Milestone Payment or Service Charge;
“Class 1 Transaction”	has the meaning set out in the listing rules issued by the UK Listing Authority;
“CNI”	means Critical National Infrastructure;
“Commercially Sensitive Information”	the information listed in Schedule 9 (Commercially Sensitive Information) Schedule_9_(Commercially Sensitive Information) comprising the information of a commercially sensitive nature relating to: (a) the pricing of the Services; (b) details of the Supplier’s IPRs; and (c) the Supplier’s business and investment plans; which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss;
“Comparable Supply”	the supply of services to another customer of the Supplier that are the same or similar to any of the Services;

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“Compensation for Unacceptable KPI Failure”

has the meaning given in Clause 7.4(a) (*Unacceptable KPI Failure*);

“Compensation Payment”

has the meaning given in ~~Schedule 16 (Payments on Termination)~~; Schedule 16 (Payments on Termination);

“Condition Precedent”

has the meaning given in Clause 4.2 (*Condition Precedent*);

“Confidential Information”

- (a) Information, including all Personal Data, which (however it is conveyed) is provided by the Disclosing Party pursuant to or in anticipation of this Contract that relates to:
- (i) the Disclosing Party Group; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Disclosing Party Group;
- (b) other Information provided by the Disclosing Party pursuant to or in anticipation of this Contract that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to the Recipient’s attention or into the Recipient’s possession in connection with this Contract;
- (c) discussions, negotiations, and correspondence between the Disclosing Party or any of its directors, officers, employees, consultants or professional advisers and the Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Contract and all matters arising therefrom; and
- (d) Information derived from any of the above,
- but not including any Information which:
- (i) was in the possession of the Recipient without obligation of confidentiality prior to its disclosure by the Disclosing Party;
 - (ii) the Recipient obtained on a non-confidential basis from a third party who is not, to the Recipient’s knowledge or belief, bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient;

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- (iii) was already generally available and in the public domain at the time of disclosure otherwise than by a breach of this Contract or breach of a duty of confidentiality;
- (iv) was independently developed without access to the Confidential Information; or
- (v) relates to the Supplier's:
 - (1) performance under this Contract; or
 - (2) failure to pay any Sub-contractor as required pursuant to Clause 15.15(a) (*Supply Chain Protection*);

“Conflict of Interest”	a conflict between the financial or personal duties of the Supplier or the Supplier Personnel and the duties owed to the Authority under the Contract, in the reasonable opinion of the Authority;
<u>“Contract”</u>	<u>the contract between the Authority and the Supplier;</u>
“Contract Change”	any change to this Contract other than an Operational Change;
“Contract Inception Report”	the initial financial model in a form agreed by the Supplier and the Authority in writing on or before the Effective Date;
“Contracts Finder”	the online government portal which allows suppliers to search for information about contracts as prescribed by Part 4 of the Public Contract Regulations 2015;
“Contract Year”	<ul style="list-style-type: none">(a) a period of 12 months commencing on the Effective Date; or(b) thereafter a period of 12 months commencing on each anniversary of the Effective Date; <p>provided that the final Contract Year shall end on the expiry or termination of the Term;</p>
“Control”	the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and “Controls” and “Controlled” shall be interpreted accordingly;
“Controller”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;

“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 Authority, 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 Authority, 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 25% of the Net Asset Value of the Supplier or the ultimate Parent Undertaking of the Supplier Group respectively in any 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;

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“Corporate Change Event Grace Period”	means a grace period agreed to by the Relevant Authority 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 Paragraphs 2 and Annex 2: Corporate Resolvability Assessment (Structural Review) of Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) ; <u>Schedule 26 (Service Continuity Plan and Corporate Resolution Planning)</u> ;
“Costs”	has the meaning given in Schedule 15 (Charges and Invoicing) ; <u>Schedule 15 (Charges and Invoicing)</u> ;
“CPP Milestone”	a contract performance point as set out in the Implementation Plan, being the Milestone at which the Supplier has demonstrated that the Supplier Solution or relevant Service is working satisfactorily in its operating environment in accordance with Schedule 14 (Testing Procedures) ; <u>Schedule 14 (Testing Procedures)</u> ;
“Critical National Infrastructure”	means those critical elements of UK national infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in: (a) major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or (b) significant impact on the national security, national defence, or the functioning of the UK;
“Critical Performance Failure”	(a) the Supplier accruing in aggregate [insert number] or more Service Points (in terms of the number of points allocated) in any period of [insert number] months; or (b) the Supplier accruing Service Credits or Compensation for Unacceptable KPI Failure which meet or exceed the Service Credit Cap;
“Critical Service Contract”	means the overall status of the Services provided under this Contract as determined by the Authority and specified in Paragraph 1.1 of Part B to Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) ; <u>of Part B to</u>

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Schedule 26 (Service Continuity Plan and Corporate Resolution Planning);

“Crown Body”	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and the National Assembly for Wales <u>Welsh Government</u>), including government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
“Crown Copyright”	has the meaning given in the Copyright, Designs and Patents Act 1988
“CRP Information”	means the Corporate Resolution Planning Information, together, the: <ul style="list-style-type: none">(a) Exposure Information (Contracts List);(b) Corporate Resolvability Assessment (Structural Review); and(c) Financial Information and Commentary
“CRTPA”	the Contracts (Rights of Third Parties) Act 1999;
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data <u>Breach</u> <u>Loss Event</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”	<ul style="list-style-type: none">(a) the UK GDPR;(b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;(c) all applicable Law about the processing of personal data and privacy; and(d) (to the extent that it applies) the EU GDPR;
“Data Subject”	has the meaning given to it in the UK GDPR or the EU GDPR as the context requires;

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- “Data Subject Request”** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to their Personal Data;
- “Deductions”** all Service Credits, Compensation for Unacceptable KPI Failure, Delay Payments or any other deduction which is paid or payable to the Authority under this Contract;
- “Default”** any breach of the obligations of the relevant Party (including abandonment of this Contract in breach of its terms, repudiatory breach or breach of a fundamental term) or any other default, act, omission, negligence or statement:
- (a) in the case of the Authority, of its employees, servants, agents; or
 - (b) in the case of the Supplier, of its Sub-contractors or any Supplier Personnel,
- in connection with or in relation to the subject-matter of this Contract and in respect of which such Party is liable to the other;
- “Defect”**
- (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)~~(a) any failure of any Deliverable to provide the performance, features and functionality specified in the Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria; or
- ~~(d)~~(b) 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 Authority Requirements or the Documentation (including any adverse effect on response times) regardless of whether or not it prevents the relevant Deliverable from meeting its associated Test Success Criteria;
- “Delay”**
- (a) a delay in the Achievement of a Milestone by its Milestone Date; or

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	(b) a delay in the design, development, testing or implementation of a Deliverable by the relevant date set out in the Implementation Plan;
“Delay Deduction Period”	the period of one hundred (100) days commencing on the relevant Milestone Date;
“Delay Payments”	the amounts payable by the Supplier to the Authority in respect of a Delay in Achieving a Key Milestone as specified in Schedule 15 (Charges and Invoicing) ; Schedule_15_(Charges and Invoicing);
“Deliverable”	an item- or , feature <u>or software</u> delivered or to be delivered by the Supplier at or before a Milestone Date or at any other stage during the performance of this Contract;
“Dependent Parent Undertaking”	means any Parent Undertaking which provides any of its Subsidiary Undertakings and/or Associates, whether directly or indirectly, with any financial, trading, managerial or other assistance of whatever nature, without which the Supplier would be unable to continue the day to day conduct and operation of its business in the same manner as carried on at the time of entering into this Contract, including for the avoidance of doubt the provision of the Services in accordance with the terms of this Contract;
“Detailed Implementation Plan”	the plan developed and revised from time to time in accordance with Paragraphs 3 and 4 of Schedule 13 (Implementation Plan) ; Schedule_13_(Implementation Plan);
“Disclosing Party”	has the meaning given in Clause 19.1 (<i>Confidentiality</i>);
“Disclosing Party Group”	(a) where the Disclosing Party is the Supplier, the Supplier and any Affiliates of the Supplier; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government <u>Crown</u> Body with which the Authority or the Supplier interacts in connection with this Contract;
“Dispute”	any dispute, difference or question of interpretation arising out of or in connection with this Contract, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where this Contract directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;

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“Dispute Notice”	a written notice served by one Party on the other stating that the Party serving the notice believes that there is a Dispute;
“Dispute Resolution Procedure”	the dispute resolution procedure set out in Schedule 23 (Dispute Resolution Procedure) ; Schedule 23 (Dispute Resolution Procedure);
“Documentation”	<p>descriptions of the Services and Performance Indicators, details of the Supplier System (including (i) vendors and versions for off-the-shelf components and (ii) source code and build information for proprietary components), relevant design and development information, technical specifications of all functionality including those not included in standard manuals (such as those that modify system performance and access levels), configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation as:</p> <ul style="list-style-type: none">(a) is required to be supplied by the Supplier to the Authority under this Contract;(b) would reasonably be required by a competent third party capable of Good Industry Practice contracted by the Authority to develop, configure, build, deploy, run, maintain, upgrade and test the individual systems that provide Services;(c) is required by the Supplier in order to provide the Services; and/or(d) has been or shall be generated for the purpose of providing the Services;
“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
“DPA 2018”	the Data Protection Act 2018;
“Due Diligence Information”	any information supplied to the Supplier by or on behalf of the Authority prior to the Effective Date;

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“EEA”	European Economic Area
“Effective Date”	the later of: (a) the date on which this Contract is signed by both Parties; and (b) the date on which the Condition Precedent has been satisfied or waived in accordance with Clause 4.2 (<i>Condition Precedent</i>);
“EIRs”	the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or any Central Government <u>Crown</u> Body in relation to such Regulations;
“Emergency Maintenance”	ad hoc and unplanned maintenance provided by the Supplier where: (a) the Authority reasonably suspects that the IT Environment or the Services, or any part of the IT Environment or the Services, has or may have developed a fault, and notifies the Supplier of the same; or (b) the Supplier reasonably suspects that the IT Environment or the Services, or any part the IT Environment or the Services, has or may have developed a fault;
“Employee Liabilities”	all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following: (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;

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- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

“Employment Regulations”

the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

“Estimated Year 1 Charges”

the estimated Charges payable by the Authority during the first Contract Year, as set out in the Financial Model;

“Estimated Initial Service Charges”

the estimated Service Charges payable by the Authority during the period of 12 months from the first Operational Service Commencement Date, as set out in the Financial Model;

“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;

“EU”

European Union

“Exit Management”

services, activities, processes and procedures to ensure a smooth and orderly transition of all or part of the Services from the Supplier to the Authority and/or a Replacement Supplier, as set out or referred to in ~~Schedule 25 (Exit Management)~~; Schedule 25 (Exit Management);

“Exit Plan”

the plan produced and updated by the Supplier during the Term in accordance with Paragraph 4 of ~~Schedule 25 (Exit Management)~~; Schedule 25 (Exit Management);

“Expedited Dispute Timetable”

the reduced timetable for the resolution of Disputes set out in Paragraph 3 of ~~Schedule 23 (Dispute Resolution Procedure)~~; Schedule 23 (Dispute Resolution Procedure);

“Expert”

has the meaning given in ~~Schedule 23 (Dispute Resolution Procedure)~~; Schedule 23 (Dispute Resolution Procedure);

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“Expert Determination”	the process described in Paragraph 6 of Schedule 23 (Dispute Resolution Procedure) ; Schedule 23 (Dispute Resolution Procedure) ;
“Exposure Information (Contracts List)”	means part of the CRP Information relating to the Supplier Group to be provided by the Supplier in accordance with Paragraphs Paragraph 2 and Annex 1 of Part B of Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) ; Part B of Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) ;
“Extension Period”	a period of <input checked="" type="checkbox"/> years from the end of the Initial Term;
“Financial Distress Event”	the occurrence of one or more of the events listed in Paragraph 3.1 of Schedule 18 (Financial Distress) ; Schedule 18 (Financial Distress) ;
“Financial Information and Commentary”	means part of the CRP Information requirements set out in accordance with Paragraphs Paragraph 2 and Annex 3 of Part B of Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) ; Part B of Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) ;
“Financial Distress Remediation Plan”	a plan setting out how the Supplier will ensure the continued performance and delivery of the Services in accordance with this Contract in the event that a Financial Distress Event occurs. This plan should include what the Authority would need to put in place to ensure performance and delivery of the Services in accordance with this Contract up to and including any Insolvency Event in respect of the relevant FDE Group entity and may refer to the Insolvency Continuity Plan in this regard;
“Financial Model”	has the meaning given in Schedule 19 (Financial Reports and Audit Rights) ; Schedule 19 (Financial Reports and Audit Rights) ;
“Financial Reports”	has the meaning given in Schedule 19 (Financial Reports and Audit Rights) ; Schedule 19 (Financial Reports and Audit Rights) ;
“Financial Transparency Objectives”	has the meaning given in Schedule 19 (Financial Reports and Audit Rights) ; Schedule 19 (Financial Reports and Audit Rights) ;
“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

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Information Commissioner or any relevant ~~Central Government~~Crown Body in relation to such Act;

- “Force Majeure Event”** any event outside the reasonable control of either Party affecting its performance of its obligations under this Contract arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control and which are not attributable to any wilful act, neglect or failure to take reasonable preventative action by that Party, including riots, war or armed conflict, acts of terrorism, acts of government, local government or regulatory bodies, fire, flood, storm or earthquake, or other natural disaster but excluding any industrial dispute relating to the Supplier or the Supplier Personnel or any other failure in the Supplier’s or a Sub-contractor’s supply chain;
- “Force 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;
- “Former Supplier”** has the meaning given in ~~Schedule 28 (Staff Transfer)~~; Schedule 28 (Staff Transfer);
- “General Anti-Abuse Rule”**
- (a) the legislation in Part 5 of the Finance Act 2013; and
 - (b) any future legislation introduced into Parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
- “General Change in Law”** a Change in Law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply;
- “Good Industry Practice”** at any time the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of services similar to the Services to a customer like the Authority, such supplier seeking to comply with its contractual obligations in full and complying with applicable Laws;
- “Goods”** has the meaning given in Clause 9.7 (*Supply of Goods*);
- “Guarantee”** the deed of guarantee in favour of the Authority entered into by the Guarantor on or about the date of this Contract (which is in the form set out in ~~Schedule 29 (Key Personnel)~~, Schedule 29 (Key Personnel), or any guarantee acceptable to the Authority that replaces it from time to time;

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“Guarantor”	[insert name] , a company registered in [insert country] with company number [insert company number] and whose registered office is at [insert registered address] ;
“Halifax Abuse Principle”	the principle explained in the CJEU Case C-255/02 Halifax and others;
“Health and Safety Policy”	the health and safety policy of the Authority and/or other relevant Central Government Crown Body as provided to the Supplier on or before the Effective Date and as subsequently provided to the Supplier from time to time except any provision of any such subsequently provided policy that cannot be reasonably reconciled to ensuring compliance with applicable Law regarding health and safety;
“HMRC”	HM Revenue & Customs;
“Impact Assessment”	has the meaning given in Schedule 22 (Change Control Procedure) ;Schedule_22_(Change Control Procedure);
“Implementation Plan”	the Outline Implementation Plan or (if and when approved by the Authority pursuant to Paragraph 3 of Schedule 13 (Implementation Plan))Schedule_13_(Implementation Plan)) the Detailed Implementation Plan as updated in accordance with Paragraph 4 of Schedule 13 (Implementation Plan) Schedule_13_(Implementation Plan) from time to time;
“Implementation Services”	the implementation services described as such in the Services Description;
“Implementation Services Commencement Date”	the date on which the Supplier is to commence provision of the first of the Services, being [insert date] ;
“Indemnified Person”	the Authority and each and every person to whom the Authority (or any direct or indirect sub-licensee of the Authority) sub-licenses, assigns or novates any Relevant IPRs or rights in Relevant IPRs in accordance with 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;
“Information”	all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form);

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- “Initial Term”** the period of **[x years]** from and including the Effective Date;
- “Initial Upload Date”** means the occurrence of an event detailed in ~~Schedule 24 (Reports and Records Provisions)~~ *Schedule 24 (Reports and Records Provisions)* Annex 3: Records To Upload To Virtual Library) which requires the Supplier to provide its initial upload of the relevant information to the Virtual Library;
- “Insolvency Event”** with respect to any person, means:
- (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:
 - (i) (being a company or a LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or
 - (ii) (being a partnership) is deemed unable to pay its debts within the meaning of section 222 of the Insolvency Act 1986;
 - (b) that person commences negotiations with one or more of its creditors (using a voluntary arrangement, scheme of arrangement or otherwise) with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with one or more of its creditors or takes any step to obtain a moratorium pursuant to Section 1A and Schedule A1 of the Insolvency Act 1986 other than (in the case of a company, a LLP or a partnership) for the sole purpose of a scheme for a solvent amalgamation of that person with one or more other companies or the solvent reconstruction of that person;
 - (c) another person becomes entitled to appoint a receiver over the assets of that person or a receiver is appointed over the assets of that person;
 - (d) a creditor or encumbrancer of that person attaches or takes possession of, or a distress, execution or other such process is levied or enforced on or sued against, the whole or any part of that person’s assets and such attachment or process is not discharged within fourteen (14) days;
 - (e) that person suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

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- (f) where that person is a company, a 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 a LLP) the holder of a qualifying floating charge over the assets of that person has become entitled to appoint or has appointed an administrative receiver; or
 - (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) 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;
- “Intellectual Property Rights” or “IPRs”**
- (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 names, 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;
- “Intervention Cause”** has the meaning given in Clause 27.1 (*Remedial Adviser*);

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“Intervention Notice”	has the meaning given in Clause 27.1 (<i>Remedial Adviser</i>);
“Intervention Period”	has the meaning given in Clause 27.2(c) (<i>Remedial Adviser</i>);
“Intervention Trigger Event”	<p>(a) any event falling within limb (a), (b), (c), (e), (f) or (g) of the definition of a Supplier Termination Event;</p> <p>(b) a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;</p> <p>(c) the Supplier accruing in aggregate [insert number of points which is 75% of the points that would constitute a “Critical Performance Failure”] or more Service Points (in terms of the number of points allocated) in any period of [insert number of months taken from definition of “Critical Performance Failure”] months;</p> <p>(d) the Supplier accruing Service Credits which meet or exceed 75% of the Service Credit Cap; and/or</p> <p>(e) the Supplier not Achieving a Key Milestone within seventy-five (75) days of its relevant Milestone Date;</p>
“IP Completion Day”	has the meaning given to it in the European Union (Withdrawal Agreement) Act 2020;
“IPRs Claim”	any claim against any Indemnified Person of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any Relevant IPRs save for any such claim to the extent that it is caused by any use by or on behalf of that Indemnified Person of any Relevant IPRs, or the use of the Authority Software by or on behalf of the Supplier, in either case in combination with any item not supplied or recommended by the Supplier pursuant to this Contract or for a purpose not reasonably to be inferred from the Services Description or the provisions of this Contract;
“IT”	information and communications technology;
“IT Environment”	the Authority System and the Supplier System;
“Joint Controllers”	where two or more Controllers jointly determine the purposes and means of processing; <u>has the meaning given in Article 26 of the UK GDPR, or EU GDPR, as the context requires;</u>
“Key Milestone”	the Milestones identified in the Implementation Plan as key milestones and in respect of which Delay Payments may be payable in accordance with Paragraph 1 of Part C of Schedule 15 (Charges and Invoicing) <u>Schedule_15 (Charges and</u>

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	<p><i>Invoicing</i>) if the Supplier fails to Achieve the Milestone Date in respect of such Milestone;</p>
“Key Performance Indicator”	<p>the key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 3 (Performance Levels); Schedule_3 (<i>Performance Levels</i>);</p>
“Key Personnel”	<p>those persons appointed by the Supplier to fulfil the Key Roles, being the persons listed in Schedule 29 (Key Personnel) Schedule_29 (<i>Key Personnel</i>) against each Key Role as at the Effective Date or as amended from time to time in accordance with Clauses 14.5 and 14.6 (<i>Key Personnel</i>);</p>
“Key Roles”	<p>a role described as a Key Role in Schedule 29 (Key Personnel) Schedule_29 (<i>Key Personnel</i>) and any additional roles added from time to time in accordance with Clause 14.4 (<i>Key Personnel</i>);</p>
“Key Sub-contract”	<p>each Sub-contract with a Key Sub-contractor;</p>
“Key Sub-contractor”	<p>any Sub-contractor:</p> <ul style="list-style-type: none">(a) which, in the opinion of the Authority, performs (or would perform if appointed) a critical role in the provision of all or any part of the Services; and/or(b) with a Sub-contract with a contract value which at the time of appointment exceeds (or would exceed if appointed) 10% of the aggregate Charges forecast to be payable under this Contract (as set out in the Financial Model);
“Know-How”	<p>all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the other Party’s possession before this Contract;</p>
“KPI Failure”	<p>a failure to meet the Target Performance Level in respect of a Key Performance Indicator;</p>
“KPI Service Threshold”	<p>shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (Performance Levels); Schedule_3 (<i>Performance Levels</i>);</p>
“Law”	<p>any law, statute, 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</p>

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relevant court of law, or directives or requirements of any regulatory body with which the Supplier is bound to comply;

“LED”

Law Enforcement Directive (Directive (EU) 2016/680);

“Licensed Software”

all and any Software licensed by or through the Supplier, its Sub-contractors or any third party to the Authority for the purposes of or pursuant to this Contract, including any Supplier Software, Third Party Software and/or any Specially Written Software;

“Losses”

losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

“Maintenance Schedule”

shall have the meaning set out in Clause 9.4 (*Maintenance*);

“Malicious Software”

any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

“Management Information”

the management information specified in ~~Schedule 3 (Performance Levels), Schedule 15 (Charges and Invoicing)~~ Schedule 3 (Performance Levels), Schedule 15 (Charges and Invoicing) and ~~Schedule 21 (Governance)~~ Schedule 21 (Governance) to be provided by the Supplier to the Authority;

“Material KPI Failure”

- (a) a Serious KPI Failure;
- (b) a Severe KPI Failure; or
- (c) a failure by the Supplier to meet a KPI Service Threshold;

“Material PI Failure”

- (a) a failure by the Supplier to meet the PI Service Threshold in respect of 25% or more of the Subsidiary Performance Indicators that are measured in that Service Period; and/or
- (b) a failure by the Supplier to meet the Target Performance Level in respect of 50% or more of the Subsidiary Performance Indicators that are measured in that Service Period;

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“Measurement Period”	in relation to a Key Performance Indicator or Subsidiary Performance Indicator, the period over which the Supplier’s performance is measured (for example, a Service Period if measured monthly or a 12 month period if measured annually);
“Milestone”	an event or task described in the Implementation Plan which, if applicable, shall be completed by the relevant Milestone Date;
“Milestone Achievement Certificate”	the certificate to be granted by the Authority when the Supplier has Achieved a Milestone, which shall be in substantially the same form as that set out in Annex 3 of Schedule 14 (Testing Procedures) ; Schedule_14_(Testing Procedures);
“Milestone Adjustment Payment Amount”	<p>in respect of each CPP Milestone the subject of a Milestone Adjustment Payment Notice, an amount determined in accordance with the formula:</p> $A - B$ <p>where:</p> <p>(a) A is an amount equal to the aggregate sum of all Milestone Payments paid to the Supplier in respect of the Milestones (or in the case of Partial Termination, the Milestones for the parts of the Services terminated) relating to that CPP Milestone; and</p> <p>(b) B is an amount equal to the aggregate Allowable Price for the Retained Deliverables relating to that CPP Milestone or, if there are no such Retained Deliverables, zero;</p>
“Milestone Adjustment Payment Notice”	has the meaning given in Clause 32.7 (<i>Payments by the Supplier</i>);
“Milestone Date”	the target date set out against the relevant Milestone in the Implementation Plan by which the Milestone must be Achieved;
“Milestone Payment”	a payment identified in Schedule 15 (Charges and Invoicing) Schedule_15_(Charges and Invoicing) to be made following the issue of a Milestone Achievement Certificate;
“Milestone Retention”	has the meaning given in Schedule 15 (Charges and Invoicing) ; Schedule_15_(Charges and Invoicing);
“Minor KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (Performance Levels) ; Schedule_3_(Performance Levels);

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[Optional: “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>

[Guidance note:
Include this definition if
Optional Clause 33.8(l)
is included in the Core
Terms]

“~~month~~Month”

a calendar month and “~~monthly~~” shall be interpreted accordingly;

“Multi-Party Dispute Resolution Procedure”

has the meaning given in Paragraph 9.1 of ~~Schedule 28 (Staff Transfer)~~Schedule_28_(Staff Transfer) of ~~Schedule 23 (Dispute Resolution Procedure)~~;Schedule_23_(Dispute Resolution Procedure);

“Multi-Party Procedure Initiation Notice”

has the meaning given in Paragraph 9.2 of ~~Schedule 23 (Dispute Resolution Procedure)~~;Schedule_23_(Dispute Resolution Procedure);

“NCSC”

the National Cyber Security Centre or any replacement or successor body carrying out the same function;

“New Releases”

an item produced primarily to extend, alter or improve the Software and/or any Deliverable by providing additional functionality or performance enhancement (whether or not defects in the Software and/or Deliverable are also corrected) while still retaining the original designated purpose of that item;

“Non-trivial Customer Base”

a significant customer base with respect to the date of first release and the relevant market but excluding Affiliates and other entities related to the licensor;

“Non-retained Deliverables”

in relation to a CPP Milestone Payment Notice and each CPP Milestone the subject of that CPP Milestone Payment Notice, Deliverables provided to the Authority which relate to the relevant CPP Milestone(s) and which are not Retained Deliverables;

“Notifiable Default”

shall have the meaning given in Clause 25.1 (*Rectification Plan Process*);

“Object Code”

software and/or data in machine-readable, compiled object code form;

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“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:</p> <ul style="list-style-type: none">(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or <p>(b) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a civil penalty for fraud or evasion;</p>
“Open Book Data”	has the meaning given in <i>Schedule 19 (Financial Reports and Audit Rights)</i> ; <i>Schedule 19 (Financial Reports and Audit Rights)</i> ;
<u>“Open Licence”</u>	<u>means any material that is published for use, with rights to access, copy and 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;</u>
“Open Source”	computer Software that is released on the internet for use by any person, such release usually being made under a recognised open source licence and stating that it is released as open source;
“Operating Environment”	the Authority System and the Sites;
“Operational Change”	any change in the Supplier’s operational procedures which in all respects, when implemented:

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- (a) will not affect the Charges and will not result in any other costs to the Authority;
- (b) may change the way in which the Services are delivered but will not adversely affect the output of the Services or increase the risks in performing or receiving the Services;
- (c) will not adversely affect the interfaces or interoperability of the Services with any of the Authority's IT infrastructure; and
- (d) will not require a change to this Contract;

“Operational Service Commencement Date”

in relation to an Operational Service, the later of:

- (a) the date identified in the Operational Services Implementation Plan upon which the Operational Service is to commence; and
- (b) where the Implementation Plan states that the Supplier must have Achieved the relevant ATP Milestone before it can commence the provision of that Operational Service, the date upon which the Supplier Achieves the relevant ATP Milestone;

“Operational Services”

the operational services described as such in the Services Description;

“Optional Services”

the services described as such in ~~Schedule 2 (Services Description)~~ Schedule 2 (Services Description) which are to be provided by the Supplier if required by the Authority in accordance with Clause 5.10 (*Optional Services*);

“Optional Services Implementation Plan”

the implementation plan to effect the Optional Services agreed between the Parties prior to the Effective Date and, if not agreed prior to the Effective Date, to be developed by the Supplier and approved by the Authority;

“Other Supplier”

any supplier to the Authority (other than the Supplier) which is notified to the Supplier from time to time;

“Outline Implementation Plan”

the outline plan set out at Annex A of ~~Schedule 13 (Implementation Plan)~~ Schedule 13 (Implementation Plan);

“Parent Undertaking”

has the meaning set out in section 1162 of the Companies Act 2006;

“Partial Termination”

the partial termination of this Contract to the extent that it relates to the provision of any part of the Services as further provided for in Clause 31.2(b) (*Termination by the Authority*) or

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31.3(b) (*Termination by the Supplier*) or otherwise by mutual agreement by the Parties;

“Parties” and “Party”	have the meanings respectively given on page 1 of this Contract;
“Performance Failure”	a KPI Failure or a PI Failure;
“Performance Indicators”	the Key Performance Indicators and the Subsidiary Performance Indicators;
“Permitted Maintenance”	has the meaning given in Clause 9.4 (<i>Maintenance</i>);
“Performance Monitoring Report”	has the meaning given in Schedule 3 (Performance Levels) ; <u>Schedule 3 (Performance Levels)</u> ;
“Personal Data”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“ Personal Data Breach Loss Event ”	has the meaning given in the UK GDPR or the EU GDPR as the context requires;
“PI Failure”	a failure to meet the Target Performance Level in respect of a Subsidiary Performance Indicator;
“PI Service Threshold”	shall be as set out against the relevant Subsidiary Performance Indicator in Table 2 in Part A of Annex 1 of Schedule 3 (Performance Levels) ; <u>Schedule 3 (Performance Levels)</u> ;
“Preceding Services”	has the meaning given in Clause 5.2(b) (<i>Standard of Services</i>);
“Prescribed Person”	a legal adviser, an MP, or an appropriate body which a whistleblower may make a disclosure to as detailed in ‘Whistleblowing: list of prescribed people and bodies’, 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 , as updated from time to time;
“Processor”	has the meaning given to it under the UK GDPR or the EU GDPR as the context requires;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and suppliers of the Processor and/or of any Sub-processor

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engaged in the performance of its obligations under this Contract;

“Programme Board”

the body described in Paragraph 5 of ~~Schedule 21~~ ~~(Governance)~~; Schedule 21 (Governance);

“Prohibited Act”

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Authority a financial or other advantage to:
 - (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;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) an offence:
 - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
 - (ii) under legislation or common law concerning fraudulent acts; or
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Authority (including offences by the Supplier under Part 3 of the Criminal Finances Act 2017); or
- (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;

“Protective Measures”

appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it; including those outlined in Schedule 5 (Security Management);

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- “Project Specific IPRs”** (a) Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract and updates and amendments of these items including (but not limited to) database schema; and/or
- (b) Intellectual Property Rights arising as a result of the performance of the Supplier’s obligations under this Contract;

but shall not include the Supplier Background IPRs or the Specially Written Software;

“Public Sector Dependent Supplier” means a supplier where that supplier, or that supplier’s group has Annual Revenue of £50 million or more of which over 50% is generated from UK Public Sector Business;

“Publishable Performance Information” means any of the information in the Performance Monitoring Report as it relates to a Performance Indicator where it is expressed as publishable in the table in Annex 1 which shall not constitute Commercially Sensitive Information;

“Quality Plans” has the meaning given in Clause 6.1 (*Quality Plans*);

“Quarter” the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Contract);

“Recipient” has the meaning given in Clause 19.1 (*Confidentiality*);

“Recall” 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;

“Records” has the meaning given in ~~Schedule 24 (Reports and Records Provisions)~~; Schedule_24 (Reports and Records Provisions);

“Rectification Plan” a plan to address the impact of, and prevent the reoccurrence of, a Notifiable Default;

“Rectification Plan Failure” (a) the Supplier failing to submit or resubmit a draft Rectification Plan to the Authority within the timescales specified in Clauses 25.4 (*Submission of the draft Rectification Plan*) or 25.8 (*Agreement of the Rectification Plan*);

(b) the Authority, acting reasonably, rejecting a revised draft of the Rectification Plan submitted by the Supplier

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pursuant to Clause 25.7 (*Agreement of the Rectification Plan*);

- (c) the Supplier failing to rectify a material Default within the later of:
 - (i) 30 Working Days of a notification made pursuant to Clause 25.2 (*Notification*); and
 - (ii) where the Parties have agreed a Rectification Plan in respect of that material Default and the Supplier can demonstrate that it is implementing the Rectification Plan in good faith, the date specified in the Rectification Plan by which the Supplier must rectify the material Default;
- (d) a Material KPI Failure re-occurring in respect of the same Key Performance Indicator for the same (or substantially the same) root cause in any of the 3 Measurement Periods subsequent to the Measurement Period in which the initial Material KPI Failure occurred;
- (e) the Supplier not Achieving a Key Milestone by the expiry of the Delay Deduction Period; and/or
- (f) following the successful implementation of a Rectification Plan, the same Notifiable Default recurring within a period of 6 months for the same (or substantially the same) root cause as that of the original Notifiable Default;

“Rectification Plan Process”

the process set out in Clauses 25.4 (*Submission of the draft Rectification Plan*) to 25.9 (*Agreement of the Rectification Plan*);

“Registers”

has the meaning given in ~~Schedule 25 (Exit Management)~~; Schedule 25 (*Exit Management*);

“Reimbursable Expenses”

has the meaning given in ~~Schedule 15 (Charges and Invoicing)~~; ~~1~~

“Relevant Authority” or “Relevant Authorities”

means the Authority and the Cabinet Office Markets and Suppliers Team or, where the Supplier is a Strategic Supplier, the Cabinet Office Markets and Suppliers Team;

“Relevant IPRs”

IPRs used to provide the Services or as otherwise provided and/or licensed by the Supplier (or to which the Supplier has provided access) to the Authority or a third party in the fulfilment of the Supplier’s obligations under this Contract including IPRs in the Specially Written Software, the Supplier Non-COTS Software, the Supplier Non-COTS Background

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IPRs, the Third Party Non-COTS Software and the Third Party Non-COTS IPRs but excluding any IPRs in the Authority Software, the Authority Background IPRs, the Supplier COTS Software, the Supplier COTS Background IPRs, the Third Party COTS Software and/or the Third Party COTS IPRs;

“Relevant Preceding Services”

has the meaning given in Clause 5.2(b) (*Standard of Services*);

“Relevant Requirements”

all applicable Law relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

“Relevant Tax Authority”

HMRC, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;

“Relevant Transfer”

a transfer of employment to which the Employment Regulations applies;

“Relief Notice”

has the meaning given in Clause 29.2 (*Authority Cause*);

“Remedial Adviser”

the person appointed pursuant to Clause 27.2 (*Remedial Adviser*);

“Remedial Adviser Failure”

has the meaning given in Clause 27.6 (*Remedial Adviser*);

“Replacement Services”

any services which are the same as or substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry or termination or Partial Termination of this Contract, whether those services are provided by the Authority internally and/or by any third party;

“Replacement Supplier”

any third party service provider of Replacement Services appointed by the Authority from time to time (or where the Authority is providing replacement Services for its own account, the Authority);

“Request For Information”

a Request for Information under the FOIA or the EIRs;

“Required Action”

has the meaning given in Clause 28.1(a) (*Step-In Rights*);

“Retained Deliverables”

has the meaning given in Clause 32.8(b) (*Payments by the Supplier*);

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“Risk Register”	the register of risks and contingencies that have been factored into any Costs due under this Contract, a copy of which is set out in Annex 4 of Schedule 15 (Charges and Invoicing) ; Schedule_15_(Charges and Invoicing);
“Security Management Plan”	the Supplier’s security plan as attached as Annex 2 of Schedule 5 (Security Management) Schedule_5_(Security Management) and as subsequently developed and revised pursuant to Paragraphs 3 and 4 of Schedule 5 (Security Management) ; Schedule_5_(Security Management);
“Serious KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (Performance Levels) ; Schedule_3_(Performance Levels);
“Service Charges”	the periodic payments made in accordance with Schedule 15 (Charges and Invoicing) Schedule_15_(Charges and Invoicing) in respect of the supply of the Operational Services;
“Service Continuity Plan”	any plan prepared pursuant to Paragraph 2 of Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) Schedule_26_(Service Continuity Plan and Corporate Resolution Planning) as may be amended from time to time;
“Service Continuity Services”	the business continuity, disaster recovery and insolvency continuity services set out in Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) Schedule_26_(Service Continuity Plan and Corporate Resolution Planning)
“Service Credit Cap”	(a) in the period of 12 months from the first Operational Service Commencement Date to occur after the Effective Date, [x]% of the Estimated Initial Service Charges; and (b) during the remainder of the Term, [x]% of the Service Charges paid and/or due to be paid to the Supplier under this Contract in the period of 12 months immediately preceding the Service Period in respect of which Service Credits are accrued;
“Service Credits”	credits payable by the Supplier due to the occurrence of 1 or more KPI Failures, calculated in accordance with Paragraph 3 of Part C of Schedule 15 (Charges and Invoicing) ; of Schedule_15_(Charges and Invoicing);
“Service Period”	a calendar month, save that: (a) the first service period shall begin on the first Operational Service Commencement Date and shall

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expire at the end of the calendar month in which the first Operational Service Commencement Date falls; and

- (b) the final service period shall commence on the first day of the calendar month in which the Term expires or terminates and shall end on the expiry or termination of the Term;

“Service Points”	in relation to a KPI Failure, the points that are set out against the relevant Key Performance Indicator in the fifth column of the table in Annex 1 of Schedule 3 (Performance Levels) ; Schedule 3 (Performance Levels) ;
“Services”	any and all of the services to be provided by the Supplier under this Contract, including those set out in Schedule 2 (Services Description) ; Schedule 2 (Services Description) ;
“Service Transfer Date”	has the meaning given in Schedule 28 (Staff Transfer) ; Schedule 28 (Staff Transfer) ;
“Services Description”	the services description set out in Schedule 2 (Services Description) ; Schedule 2 (Services Description) ;
“Severe KPI Failure”	shall be as set out against the relevant Key Performance Indicator in Table 1 of Part A of Annex 1 of Schedule 3 (Performance Levels) ; Schedule 3 (Performance Levels) ;
“Sites”	any premises (including the Authority Premises, the Supplier’s premises or third party premises): (a) from, to or at which: (i) the Services are (or are to be) provided; or (ii) the Supplier manages, organises or otherwise directs the provision or the use of the Services; or (b) where: (i) any part of the Supplier System is situated; or (ii) any physical interface with the Authority System takes place;
“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;

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“Social Value”	the additional social benefits that can be achieved in the delivery of the Contract, set out in the Authority’s Requirements;
“Social Value PI”	The Social Value performance indicators set out in Table 2 of Part A: Key Performance Indicators and Subsidiary Performance Indicators Tables of Annex 1: Key Performance Indicators and Subsidiary Performance Indicators of Schedule 3 (Performance Levels); <u>of Schedule 3 (Performance Levels);</u>
“Social Value KPI”	The Social Value key performance indicators set out in Table 1 of Part A of Annex 1 of Schedule 3 (Performance Levels); <u>Schedule 3 (Performance Levels);</u>
“Software”	Specially Written Software, Supplier Software and Third Party Software;
“Software Supporting Materials”	has the meaning given in Paragraph 2.1(b) 1.1.1 of Schedule 32 (Intellectual Property Rights) <u>Schedule 32 (Intellectual Property Rights)</u> (Specially Written Software and Project Specific IPRs);
“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 Supplier Software or Third Party Software created specifically for the purposes of this Contract.
“Specific Change in Law”	a Change in Law that relates specifically to the business of the Authority and which would not affect a Comparable Supply;
“Staffing Information”	has the meaning given in Schedule 28 (Staff Transfer); <u>Schedule 28 (Staff Transfer);</u>
“Standards”	the standards, policies and/or procedures identified in Schedule 4 (Standards); <u>Schedule 4 (Standards);</u>
“Step-In Notice”	has the meaning given in Clause 28.1 (<i>Step-In Rights</i>);

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- “Step-In Trigger Event”** (a) any event falling within the definition of a Supplier Termination Event;
- ~~(a)(b)~~ a Default by the Supplier that is materially preventing or materially delaying the performance of the Services or any material part of the Services;
- ~~(b)(c)~~ the Authority considers that the circumstances constitute an emergency despite the Supplier not being in breach of its obligations under this Contract;
- ~~(c)(d)~~ the Authority being advised by a regulatory body that the exercise by the Authority of its rights under Clause 28 (*Step-In Rights*) is necessary;
- ~~(d)(e)~~ the existence of a serious risk to the health or safety of persons, property or the environment in connection with the Services; and/or
- ~~(e)(f)~~ a need by the Authority to take action to discharge a statutory duty;
- “Step-Out Date”** has the meaning given in Clause 28.5(b) (*Step-In Rights*);
- “Step-Out Notice”** has the meaning given in Clause 28.5 (*Step-In Rights*);
- “Step-Out Plan”** has the meaning given in Clause 28.6 (*Step-In Rights*);
- “Strategic Supplier”** means those suppliers to government listed at <https://www.gov.uk/government/publications/strategic-suppliers>;
- “Sub-contract”** any contract or agreement (or proposed contract or agreement) between the Supplier (or a Sub-contractor) and any third party whereby that third party agrees to provide to the Supplier (or the Sub-contractor) all or any part of the Services or facilities or services which are material for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof;
- “Sub-contractor”** any third party with whom:
- (a) the Supplier enters into a Sub-contract; or
- (b) a third party under (a) above enters into a Sub-contract, or the servants or agents of that third party;
- “Sub-processor”** any third party appointed to process Personal Data on behalf of the ~~Supplier~~Processor related to this Contract;

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“Subsidiary Performance Indicator”	the performance indicators set out in Table 2 of Part A of Annex 1 of Schedule 3 (Performance Levels) ; Schedule 3 (Performance Levels);
“Subsidiary Undertaking”	has the meaning set out in section 1162 of the Companies Act 2006;
“Successor Body”	has the meaning given in Clause 34.4 (<i>Assignment and Novation</i>);
“Supplier Background IPRs”	<p>(a) Intellectual Property Rights owned by the Supplier before the Effective Date, for example those subsisting in the Supplier’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier’s Know-How or generic business methodologies; and/or</p> <p>(b) Intellectual Property Rights created by the Supplier independently of this Contract,</p> <p>which in each case is or will be used before or during the Term for designing, testing implementing or providing the Services but excluding Intellectual Property Rights owned by the Supplier subsisting in the Supplier Software;</p>
“Supplier COTS Background IPRs”	<p>Any embodiments of Supplier Background IPRs that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
“Supplier COTS Software”	<p>Supplier Software (including open source software) that:</p> <p>(a) the Supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the Supplier save as to price; and</p> <p>(b) has a Non-trivial Customer Base;</p>
“Supplier Equipment”	the hardware, computer and telecoms devices and equipment used by the Supplier or its Sub-contractors (but not hired, leased or loaned from the Authority) for the provision of the Services;

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“Supplier Group”	means the Supplier, its Dependent Parent Undertakings and all Subsidiary Undertakings and Associates of such Dependent Parent Undertakings;
“Supplier Non-COTS Background IPRs”	Any embodiments of Supplier Background IPRs that have been delivered by the Supplier to the Authority and that are not Supplier COTS Background IPRs;
“Supplier Non-COTS Software”	Supplier Software that is not Supplier COTS Software;
“Supplier Non-Performance”	has the meaning given in Clause 29.1 (<i>Authority Cause</i>);
“Supplier Personnel”	all directors, officers, employees, agents, consultants and contractors of the Supplier and/or of any Sub-contractor engaged in the performance of the Supplier’s obligations under this Contract;
“Supplier Profit”	has the meaning given in Schedule 15 (Charges and Invoicing) ; <u>Schedule_15_(Charges and Invoicing)</u> ;
“Supplier Profit Margin”	has the meaning given in Schedule 15 (Charges and Invoicing) ; <u>Schedule_15_(Charges and Invoicing)</u> ;
“Supplier Representative”	the representative appointed by the Supplier pursuant to Clause 11.3 (<i>Representatives</i>);
“Supplier Software”	software which is proprietary to the Supplier (or an Affiliate of the Supplier) and which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (Software) ; <u>Schedule_12_(Software)</u> ;
“Supplier Solution”	the Supplier’s solution for the Services set out in Schedule 8 (Supplier Solution) <u>Schedule_8_(Supplier Solution)</u> including any Annexes of that Schedule;
“Supplier System”	the information and communications technology system used by the Supplier in implementing and performing the Services including the Software, the Supplier Equipment, configuration and management utilities, calibration and testing tools and related cabling (but excluding the Authority System);
“Supplier Termination Event”	(a) the Supplier’s level of performance constituting a Critical Performance Failure; <u>in accordance with Clause 7.6</u> ;

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- (b) the Supplier committing a ~~material~~Material Default which is irremediable;
- (c) as a result of the Supplier's Default, the Authority incurring Losses in any Contract Year which exceed 80% of the value of the aggregate annual liability cap for that Contract Year as set out in Clause 23.6(a) (*Financial and other Limits*);
- (d) a Remedial Adviser Failure;
- (e) a Rectification Plan Failure;
- (f) where a right of termination is expressly reserved in this Contract, including pursuant to:
 - (i) Clause 17 (*IPRs Indemnity*);
 - (ii) Clause ~~36~~33 (*Compliance*);
 - (iii) Clause 37.6(b) (*Prevention of Fraud and Bribery*); and/or
 - (iv) Paragraph 6 of ~~Schedule 18~~ (*Financial Distress*); Schedule 18 (*Financial Distress*);
 - (v) Paragraph 3 of Part B to ~~Schedule 26~~ (*Service Continuity Plan and Corporate Resolution Planning*); Schedule 26 (*Service Continuity Plan and Corporate Resolution Planning*);
- (g) the representation and warranty given by the Supplier pursuant to ~~Clause~~Clauses 3.2(h) or 3.2(i) (*Warranties*) being materially untrue or misleading;
- (h) the Supplier committing a material Default under Clause 10.10 (*Promoting Tax Compliance*) or failing to provide details of steps being taken and mitigating factors pursuant to Clause 10.10 (*Promoting Tax Compliance*) which in the reasonable opinion of the Authority are acceptable;
- (i) the Supplier committing a material Default under any of the following Clauses:
 - (i) Clause 5.5(j) (*Services*);
 - (ii) Clause 21 (*Protection of Personal Data*);
 - (iii) Clause 20 (*Transparency and Freedom of Information*);
 - (iv) Clause 19 (*Confidentiality*); ~~and~~

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- (v) Clause 33 (*Compliance*); ~~and/or~~
- (vi) in respect of any security requirements or Cyber Essentials obligations set out in ~~Schedule 2 (Services Description), Schedule 5 (Security Management)~~ Schedule 2 (Services Description), Schedule 5 (Security Management) or the Baseline Security Requirements; ~~and/or~~
- (vii) in respect of any requirements set out in ~~Schedule 28 (Staff Transfer); Schedule 32 (Intellectual Property Rights)~~ and/or
- (viii) in respect of any requirements set out in Schedule 28 (Staff Transfer);
- (j) any failure by the Supplier to implement the changes set out in a Benchmark Report as referred to in Paragraph 5.9 of ~~Schedule 17 (Benchmarking);~~ Schedule 17 (Benchmarking);
- (k) an Insolvency Event occurring in respect of the Supplier or the Guarantor;
- (l) the Guarantee ceasing to be valid or enforceable for any reason (without the Guarantee being replaced with a comparable guarantee to the satisfaction of the Authority with the Guarantor or with another guarantor which is acceptable to the Authority);
- (m) a change of Control of the Supplier or a Guarantor unless:
 - (i) the Authority has given its prior written consent to the particular Change of Control, which subsequently takes place as proposed; or
 - (ii) the Authority has not served its notice of objection within 6 months of the later of the date on which the Change of Control took place or the date on which the Authority was given notice of the ~~Change~~ change of Control;
- (n) a change of Control of a Key Sub-contractor unless, within 6 months of being notified by the Authority that it objects to such change of Control, the Supplier terminates the relevant Key Sub-contract and replaces it with a comparable Key Sub-contract which is approved by the Authority pursuant to Clause 15.10 (*Appointment of Key Sub-contractors*);
- (o) any failure by the Supplier to enter into or to comply with an Admission Agreement under ~~the Annex to either~~

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~~Part A or Part B of Schedule 28 (Staff Transfer); under Part D of Schedule 28 (Staff Transfer);~~

- (p) the Authority has become aware that the Supplier should have been excluded under Regulation 57(1) or (2) of the Public Contracts Regulations 2015 from the procurement procedure leading to the award of this Contract;
- (q) a failure by the Supplier to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law; ~~or~~

~~(r) in relation to Schedule 5 (Security Management);~~

(r) in relation to Schedule 5 (Security Management);

- (i) the Authority has issued two rejection notices in respect of the Security Management Plan under [Paragraph 4.5.2 (Part A)/ Paragraph 6.8.2 (Part B)];
- (ii) the Supplier fails to implement a change required by the Required Changes Register in accordance with the timescales set out in the Required Changes Register;
- (iii) Supplier COTS Software and Third Party COTS Software is not within mainstream support unless the Authority has agreed in writing;
- (iv) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; ~~set out in the Annexes to~~ Schedule 5 (Security Management); and/or,
- ~~(v) the Supplier fails to comply with the Incident Management Process;~~

~~(s) the Supplier is in Material Default of any Joint Controller Agreement relating to the Contract;~~

~~(t) a Default that occurs and continues to occur on one or more occasions within 6 Months following the Authority serving a warning notice on the Supplier that it may terminate for persistent breach of the Contract; or~~

~~(v)(u) the Supplier or its Affiliates embarrass or bring the Authority into disrepute or diminish the public trust in them;~~

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[Optional: “Supply Chain Map”

[Guidance note:

Include this definition if Optional Clause 33.8(n) is included in the Core Terms]

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:

(a) the name, registered office and company registration number of each entity in the supply chain;

(b)(a) the function of each entity in the supply chain; and

the location of any premises at which an entity in the supply chain carries out a function in the supply chain;]

“Supply Chain Transparency Report”

means the report provided by the Supplier to the Authority in the form set out in Annex 4 of ~~Schedule 24 (Reports and Records Provisions)~~; Schedule 24 (Reports and Records Provisions);

“Target Performance Level”

the minimum level of performance for a Performance Indicator which is required by the Authority, as set out against the relevant Performance Indicator in the tables in Annex 1 of ~~Schedule 3 (Performance Levels)~~; Schedule 3 (Performance Levels);

“Term”

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

“Termination Assistance Notice”

has the meaning given in Paragraph 5 of ~~Schedule 25 (Exit Management)~~; Schedule 25 (Exit Management);

“Termination Assistance Period”

in relation to a Termination Assistance Notice, the period specified in the Termination Assistance Notice for which the Supplier is required to provide the Termination Services as such period may be extended pursuant to Paragraph 5.2 of ~~Schedule 25 (Exit Management)~~; Schedule 25 (Exit Management);

“Termination Date”

the date set out in a Termination Notice on which this Contract (or a part of it as the case may be) is to terminate;

“Termination Notice”

a written notice of termination given by one Party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Contract (or any part thereof) on a specified date and setting out the grounds for termination;

“Termination Payment”

the payment determined in accordance with ~~Schedule 16 (Payments on Termination)~~; Schedule 16 (Payments on Termination);

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“Termination Services”	the services and activities to be performed by the Supplier pursuant to the Exit Plan, including those activities listed in Annex 1 of Schedule 25 (Exit Management) , Schedule 25 (Exit Management), and any other services required pursuant to the Termination Assistance Notice;
“Test Issues”	has the meaning given in Schedule 14 (Testing Procedures) ; Schedule 14 (Testing Procedures);
“Tests” and “Testing”	any tests required to be carried out under this Contract, as further described in Schedule 14 (Testing Procedures) Schedule 14 (Testing Procedures) and “Tested” shall be construed accordingly;
“Test Success Criteria”	has the meaning given in Schedule 14 (Testing Procedures) ; Schedule 14 (Testing Procedures);
“Third Party Auditor”	an independent third party auditor as appointed by the Authority from time to time to confirm the completeness and accuracy of information uploaded to the Virtual Library in accordance with the requirements outlined in Schedule 24 (Reports and Records Provisions) ; Schedule 24 (Reports and Records Provisions);
“Third Party Beneficiary”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party COTS IPRs”	Third Party IPRs that: <ol style="list-style-type: none">the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; andhas a Non-trivial Customer Base;
“Third Party COTS Software”	Third Party Software (including open source software) that: <ol style="list-style-type: none">the supplier makes generally available commercially prior to the date of this Contract (whether by way of sale, lease or licence) on standard terms which are not typically negotiated by the supplier save as to price; andhas a Non-trivial Customer base;
“Third Party IPRs”	Intellectual Property Rights owned by a third party, but excluding Intellectual Property Rights owned by the third party subsisting in any Third Party Software, which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services;

Schedule 1- (Definitions)

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“Third Party Non-COTS IPRs”	Third Party IPRs that are not Third Party COTS IPRs;
“Third Party Non-COTS Software”	Third Party Software that is not Third Party COTS Software;
“Third Party Provisions”	has the meaning given in Clause 41.1 (<i>Third Party Rights</i>);
“Third Party Software”	software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which in any case is, will be or is proposed to be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 12 (Software) ; <u>Schedule 12 (Software)</u> ;
“Transferring Assets”	has the meaning given in Paragraph 6.2.1 of Schedule 25 (Exit Management) ; <u>Schedule 25 (Exit Management)</u> ;
“Transferring Authority Employees”	has the meaning given in Schedule 28 (Staff Transfer) ; <u>Schedule 28 (Staff Transfer)</u> ;
“Transferring Former Supplier Employees”	has the meaning given in Schedule 28 (Staff Transfer) ; <u>Schedule 28 (Staff Transfer)</u> ;
“Transferring Supplier Employees”	has the meaning given in Schedule 28 (Staff Transfer) ; <u>Schedule 28 (Staff Transfer)</u> ;
“Transparency Information”	has the meaning given in Clause 20.1 (<i>Transparency and Freedom of Information</i>);
“Transparency Reports”	has the meaning given in Schedule 24 (Reports and Records Provisions) ; <u>Schedule 24 (Reports and Records Provisions)</u> ;
“UK”	the United Kingdom;
“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 <u>has the meaning as set out in section 3(10) of the DPA 2018, supplemented by section 205(4) of the DPA 2018;</u>

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“UK Public Sector Business”

means any goods, service or works provision to UK public sector bodies, including ~~Central Government Departments~~Crown 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;

“Unacceptable KPI Failure”

the Supplier failing to achieve the KPI Service Threshold in respect of more than 50% of the Key Performance Indicators that are measured in that Service Period;

“Unconnected Sub-contract”

any contract or agreement which is not a Sub-contract and is between the Supplier and a third party (which is not an Affiliate of the Supplier) and is a qualifying contract under regulation 6 of The Reporting on Payment Practices and Performance Regulations 2017;

“Unconnected Sub-contractor”

any third party with whom the Supplier enters into an Unconnected Sub-contract;

“Unrecovered Payment”

has the meaning given in ~~Schedule 16 (Payments on Termination)~~; Schedule 16 (Payments on Termination);

“Updates”

in relation to any Software and/or any Deliverable means a version of such item which has been produced primarily to overcome Defects in, or to improve the operation of, that item;

“Update Requirement”

means the occurrence of an event detailed in ~~Schedule 24 (Reports and Records Provisions)~~ Schedule 24 (Reports and Records Provisions) (Annex 3: *Records To Upload To Virtual Library*) which requires the Supplier to update the relevant information hosted on the Virtual Library;

“Upgrades”

means any patch, New Release or upgrade of Software and/or a Deliverable, including standard upgrades, product enhancements, and any modifications, but excluding any Update which the Supplier or a third party software supplier (or any Affiliate of the Supplier or any third party) releases during the Term;

“Valid”

in respect of an Assurance, has the meaning given to it in Paragraph 2.7 of Part B to ~~Schedule 26 (Service Continuity Plan and Corporate Resolution Planning)~~; Schedule 26 (Service Continuity Plan and Corporate Resolution Planning);

“VAT”

value added tax as provided for in the Value Added Tax Act 1994;

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“VCSE”

means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

“Virtual Library”

means the data repository hosted by the Supplier containing the information about this Contract and the Services provided under it in accordance with ~~Schedule 24 (Reports and Records Provisions); and~~ Schedule 24 (Reports and Records Provisions); and

“Working Day”

any day other than a Saturday, Sunday or public holiday in England and Wales.

Schedule 2

Services Description

Schedule 2: Services Description

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

[insert definitions as required]

22. Introduction

2.1 [Outline why the Authority has identified that it needs the Supplier to provide the Services.]

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

33. Services Description

3.1 **Implementation Services** – [Description of the services to be provided by the Supplier for the design, build, test, implementation and roll out of the Operational Services]

3.2 **Operational Services** – [Description of the business as usual services including Operational Hours]

3.3 **Interface Requirements** - [insert as required]

3.3.1 technical interface and

3.3.2 management obligations/responsibilities]

3.4 **Security Requirements** [insert as required]

3.5 **Social Value Requirements** – [Description of the additional social, environmental and economic benefits to be delivered in line with the [Public Services \(Social Value\) Act 2012](#), [PPN 06/20](#), and Authority policies and practices]

3.6 **Other Authority Requirements** – [Description of any other requirements of the Authority e.g. wider sustainability requirements and other Authority commitments]

3.7 **Optional Services** - [insert as required]

Schedule 3

Performance Levels

Schedule 3: Performance Levels

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Available”	has the meaning given in Paragraph 1.1 of Part B of Annex 1;
“End User”	any person authorised by the Authority to use the IT Environment and/or the Services;
“Help Desk”	the single point of contact help desk set up and operated by the Supplier for the purposes of this Contract;
“Non-Available”	in relation to the IT Environment or the Services, that the IT Environment or the Services are not Available;
“Performance Monitoring Report”	has the meaning given in Paragraph 1.1.1 of Part B;
“Performance Review Meeting”	the regular meetings between the Supplier and the Authority to manage and review the Supplier’s performance under this Contract, as further described in Paragraph 1.5 of Part B;
“Repeat KPI Failure”	has the meaning given in Paragraph 3.1 of Part A;
“Satisfaction Survey”	has the meaning given in Paragraph 6.1 of Part B of Annex 1;
“Service Availability”	has the meaning given in Paragraph 2 of Part B of Annex 1;
“Service Downtime”	any period of time during which any of the Services are not Available; and
“System Response Time”	has the meaning given in Paragraph 3.1 of Part B of Annex 1.

Part A: Performance Indicators and Service Credits

41. Performance Indicators

- 1.1 Annex 1 sets out the Key Performance Indicators and Subsidiary Performance Indicators which the Parties have agreed shall be used to measure the performance of the Services and Social Value by the Supplier.
- 1.2 The Supplier shall monitor its performance against each Performance Indicator and shall send the Authority a report detailing the level of service actually achieved in accordance with Part B.
- 1.3 Service Points, and therefore Service Credits, shall accrue for any KPI Failure and shall be calculated in accordance with Paragraphs 2, 3 and 55.

22. Service Points

- 2.1 If the level of performance of the Supplier during a Service Period achieves the Target Performance Level in respect of a Key Performance Indicator, no Service Points shall accrue to the Supplier in respect of that Key Performance Indicator.
- 2.2 If the level of performance of the Supplier during a Service Period is below the Target Performance Level in respect of a Key Performance Indicator, Service Points shall accrue to the Supplier in respect of that Key Performance Indicator as set out in Paragraph 2.3.
- 2.3 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure shall be the applicable number as set out in Annex 1 depending on whether the KPI Failure is a Minor KPI Failure, a Serious KPI Failure or a Severe KPI Failure, unless the KPI Failure is a Repeat KPI Failure when the provisions of Paragraph 3.2 shall apply.

33. Repeat KPI Failures and Related KPI Failures

Repeat KPI Failures

- 3.1 If a KPI Failure occurs in respect of the same Key Performance Indicator in any two consecutive Measurement Periods, the second and any subsequent such KPI Failure shall be a “Repeat KPI Failure”.
- 3.2 The number of Service Points that shall accrue to the Supplier in respect of a KPI Failure that is a Repeat KPI Failure shall be calculated as follows:

$$SP = P \times 2$$

where:

SP = the number of Service Points that shall accrue for the Repeat KPI Failure; and

P = the applicable number of Service Points for that KPI Failure as set out in Annex 1 depending on whether the Repeat KPI Failure is a Minor KPI Failure, a Serious KPI Failure, a Severe KPI Failure or a failure to meet the KPI Service Threshold.

Schedule 3- (Performance Levels)

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[Worked example based on the following Service Points regime for Service Availability:

Service Availability Severity Levels	Service Points
Target Performance Level: 99%	0
Minor KPI Failure: 98.0% - 98.9%	1
Serious KPI Failure: 97.0% - 97.9%	2
Severe KPI Failure: 96.0% - 96.9%	3
KPI Service Threshold: below 96%	4

Example 1:

If the Supplier achieves Service Availability of 98.5% in a given Measurement Period, it will incur a Minor KPI Failure for Service Availability in that Measurement Period and accordingly accrue 1 Service Point. If, in the next Measurement Period, it achieves Service Availability of 96.5%, it will incur a Severe KPI Failure and accordingly accrue 3 Service Points, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 6 Service Points for the failure (i.e. $SP = 3 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will again incur 6 Service Points.

Example 2:

If the Supplier achieves Service Availability of 96.5% in a given Measurement Period, it will incur a Severe KPI Failure for Service Availability in that Measurement Period and accordingly accrue 3 Service Points. If, in the next Measurement Period, it achieves Service Availability of 98.5%, it will incur a Minor KPI Failure and accordingly accrue 1 Service Point, but as the failure is a Repeat Failure, this amount is doubled and so the Supplier will incur 2 Service Points for the failure (i.e. $SP = 1 \times 2$). If in the next Measurement Period it achieves Service Availability of 96.5%, the Supplier will incur 6 Service Points.]

Related KPI Failures

3.3 If any specific Key Performance Indicators refer to both Service Availability and System Response Times, the System Response Times achieved by the Supplier for any period of time during a Service Period during which the relevant Service or element of a Service is determined to be Non-Available shall not be taken into account in calculating the average System Response Times over the course of that Service Period. Accordingly, the Supplier shall not incur any Service Points for failure to meet System Response Times in circumstances where such failure is a result of, and the Supplier has already incurred Service Points for, the Service being Non-Available.

44. Permitted Maintenance

4.1 The Supplier shall be allowed to book a maximum of [insert number] hours Service Downtime for Permitted Maintenance in any one Service Period which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the Authority.

55. Service Credits

5.1 ~~Schedule 15 (Charges and Invoicing)~~ Schedule 15 (Charges and Invoicing) sets out the mechanism by which Service Points shall be converted into Service Credits.

Schedule 3:- (Performance Levels)

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

Part B: Performance Monitoring

41. Performance Monitoring and Performance Review

- 1.1 Within 10 Working Days of the end of each Service Period, the Supplier shall provide:
 - 1.1.1 a report to the Authority Representative which summarises the performance by the Supplier against each of the Performance Indicators as more particularly described in Paragraph 1.2 (the “**Performance Monitoring Report**”); and
 - 1.1.2 a report created by the Supplier to the Authority’s senior responsible officer which summarises the Supplier’s performance over the relevant Service Period as more particularly described in Paragraph 1.3 (the “**Balanced Scorecard Report**”).

Performance Monitoring Report

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

Information in respect of the Service Period just ended

- 1.2.1 for each Key Performance Indicator and Subsidiary Performance Indicator, the actual performance achieved over the Service Period, and that achieved over the previous 3 Measurement Periods;
- 1.2.2 a summary of all Performance Failures that occurred during the Service Period;
- 1.2.3 the severity level of each KPI Failure which occurred during the Service Period and whether each PI Failure which occurred during the Service Period fell below the PI Service Threshold;
- 1.2.4 which Performance Failures remain outstanding and progress in resolving them;
- 1.2.5 for any Material KPI Failures or Material PI Failures occurring during the Service Period, the cause of the relevant KPI Failure or PI Failure and the action being taken to reduce the likelihood of recurrence;
- 1.2.6 the status of any outstanding Rectification Plan processes, including:
 - (a) whether or not a Rectification Plan has been agreed; and
 - (b) where a Rectification Plan has been agreed, a summary of the Supplier’s progress in implementing that Rectification Plan;
- 1.2.7 for any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence;
- 1.2.8 the number of Service Points awarded in respect of each KPI Failure;
- 1.2.9 the Service Credits to be applied, indicating the KPI Failure(s) to which the Service Credits relate;

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- 1.2.10 the conduct and performance of any agreed periodic tests that have occurred, such as the annual failover test of the Service Continuity Plan;
- 1.2.11 relevant particulars of any aspects of the Supplier's performance which fail to meet the requirements of this Contract;
- 1.2.12 such other details as the Authority may reasonably require from time to time; and

Information in respect of previous Service Periods

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

Information in respect of the next Quarter

- 1.2.16 any scheduled Service Downtime for Permitted Maintenance and Updates that has been agreed between the Authority and the Supplier for the next Quarter.

Balanced Scorecard Report

- 1.3 The Balanced Scorecard Report shall be presented in the form of an online accessible dashboard and, as a minimum, shall contain a high level summary of the Supplier's performance over the relevant Service Period, including details of the following:
 - 1.3.1 financial indicators;
 - 1.3.2 the Target Performance Levels achieved;
 - 1.3.3 behavioural indicators;
 - 1.3.4 performance against its obligation to pay its Sub-contractors within thirty (30) days of receipt of an undisputed invoice;
 - 1.3.5 performance against its obligation to pay its Unconnected Sub-contractors within sixty (60) days of receipt of an invoice;
 - 1.3.6 Milestone trend chart, showing performance of the overall programme;
 - 1.3.7 sustainability indicators, for example net zero carbon, waste minimisation or performance to support a circular economy; and
 - 1.3.8 Social Value (as applicable).
- 1.4 The Performance Monitoring Report and the Balanced Scorecard Report shall be reviewed and their contents agreed by the Parties at the next Performance Review Meeting held in accordance with Paragraph 1.5.
- 1.5 The Parties shall attend meetings on a monthly basis (unless otherwise agreed) to review

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the Performance Monitoring Reports and the Balanced Scorecard Reports. The Performance Review Meetings shall (unless otherwise agreed):

- 1.5.1 take place within 5 Working Days of the Performance Monitoring Report being issued by the Supplier;
 - 1.5.2 take place at such location and time (within normal business hours) as the Authority shall reasonably require (unless otherwise agreed in advance); and
 - 1.5.3 be attended by the Supplier Representative and the Authority Representative.
- 1.6 The Authority shall be entitled to raise any additional questions and/or request any further information from the Supplier regarding any KPI Failure and/or PI Failure.

21. Performance Records

~~2.11.1~~ The Supplier shall keep appropriate documents and records (including Help Desk records, staff records, timesheets, training programmes, staff training records, goods received documentation, supplier accreditation records, complaints received etc) in relation to the Services being delivered. Without prejudice to the generality of the foregoing, the Supplier shall maintain accurate records of call histories for a minimum of 12 months and provide prompt access to such records to the Authority upon the Authority's request. The records and documents of the Supplier shall be available for inspection by the Authority and/or its nominee at any time and the Authority and/or its nominee may make copies of any such records and documents.

~~2.21.2~~ In addition to the requirement in Paragraph 2.1 to maintain appropriate documents and records, the Supplier shall provide to the Authority such supporting documentation as the Authority may reasonably require in order to verify the level of the performance of the Supplier both before and after each Operational Service Commencement Date and the calculations of the amount of Service Credits for any specified period.

~~2.31.3~~ The Supplier shall ensure that the Performance Monitoring Report, the Balanced Scorecard Report (as well as historic Performance Monitoring Reports and historic Balance Scorecard Reports) and any variations or amendments thereto, any reports and summaries produced in accordance with this Schedule and any other document or record reasonably required by the Authority are available to the Authority on-line and are capable of being printed.

31. Performance Verification

~~3.11.1~~ The Authority reserves the right to verify the Availability of the IT Environment and/or the Services and the Supplier's performance under this Contract against the Performance Indicators including by sending test transactions through the IT Environment or otherwise.

Annex 1: Key Performance Indicators and Subsidiary Performance Indicators

Part A: Key Performance Indicators and Subsidiary Performance Indicators Tables

[Guidance – these tables now contain space to insert Key Performance Indicators and/or Subsidiary Performance Indicators relating to Social Value. You should 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 and/or PIs, and include these below

Contracting Authorities should use pre-market engagement to inform the selection of relevant, proportionate and non-discriminatory questions and criteria from the Social Value Model in order to inform the choice of relevant Social Value KPIs and/or PIs.]

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Operational Services and the Key Performance Indicators relating to Social Value are set out below:

41. Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information [Guidance note: It is HMG’s intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total).]
KPI1	[Service Availability]	See Paragraph 1 of Part B of this Annex		Target Performance Level: [99%] Minor KPI Failure: [98.0% - 98.9%] Serious KPI Failure: [97.0% - 97.9%] Severe KPI Failure: [96.0% - 96.9%]	0 [1] [2] [3]	[YES/NO]

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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information [Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)]
				KPI Service Threshold: [below 96%]	[4]	
KPI2	[Supplier System Response Times]	See Paragraph 3 of Part B of this Annex		Target Performance Level: [X] seconds Minor KPI Failure: [X] seconds Serious KPI Failure: [X] seconds Severe KPI Failure: [X] seconds KPI Service Threshold: [X] seconds	0 [1] [2] [3] [4]	[YES/NO]
KPI3	[Help Desk Response Times]	See Paragraph 4 of Part B of this Annex		Target Performance Level: [X] seconds Minor KPI Failure: [X] seconds Serious KPI Failure: [X] seconds Severe KPI Failure: [X] seconds KPI Service Threshold: [X] seconds	0 [1] [2] [3] [4]	[YES/NO]

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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information [Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)]
KPI4	[Fix Times]	See Paragraph 5 of Part B of this Annex		Target Performance Level: [X] minutes Minor KPI Failure: [X] minutes Serious KPI Failure: [X] minutes Severe KPI Failure: [X] minutes KPI Service Threshold: [X] minutes	0 [1] [2] [3] [4]	[YES/NO]
KPI5	[Satisfaction Surveys]	See Paragraph 6 of Part B of this Annex		Target Performance Level: [x]% Minor KPI Failure: [x]%-[x]% Serious KPI Failure: [x]%-[x]% Severe KPI Failure: [x]%-[x]% KPI Service Threshold: below [x]%	0 [1] [2] [3] [4]	[YES/NO]
KPI6	[Virtual Library Completeness]	See Paragraph 7 of Part B of this Annex		Target Performance Level: [x]% Minor KPI Failure: [x]%-[x]%	0 [1]	[YES/NO]

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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information [Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)]
				Serious KPI Failure: [x]%-[x]% Severe KPI Failure: [x]%-[x]% KPI Service Threshold: below [x]%	[2] [3] [4]	
KPI7	[Social Value KPI 1] [Guidance note: Contracting authorities should consider carefully whether the Social Value targets chosen should be KPIs or PIs. In a market with a mature understanding and offerings around Social Value, designating them as KPIs will be appropriate (i.e. allowing for Service	[insert definition]		Target Performance Level: [] Minor KPI Failure: [] Serious KPI Failure: [] Severe KPI Failure: [] Service Threshold: []	0 [1] [2] [3] [4]	[YES/NO]

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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information [Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)].]
	Credits to be used as a remedy). In a less mature market, they should be PIs (i.e. making plans for rectification the main remedy and with the ability to withhold a proportionate amount of Service Charges until the PI failure is rectified in the case of material failure]. .]					
KPI8	[Social Value KPI 2]	[insert definition]		Target Performance Level: [] Minor KPI Failure: [] Serious KPI Failure: [] Severe KPI Failure: [] Service Threshold: []	0 [1] [2] [3] [4]	[YES/NO]
KPI9	[Social Value KPI 3]	[insert definition]		Target Performance Level: [] Minor KPI Failure: []	0 [1]	[YES/NO]

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No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information [Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)].]
				Serious KPI Failure: [] Severe KPI Failure: [] Service Threshold: []	[2] [3] [4]	

21. Subsidiary Performance Indicators

No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Publishable Performance Information [Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)].]
PI1	[Sustainability/ Efficiency indicators]	[See Schedule 2 (Services Description) [See Schedule_2 (Services Description)]]		Target Performance Level: [xx%] Service Threshold: [xx%]	[YES/NO]
PI2	[Vulnerability Patching Performance]	[See Schedule 2 (Services Description)[See Schedule_2]		Target Performance Level: [xx%] Service Threshold: [xx%]	[YES/NO]

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No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Publishable Performance Information [Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)].]
		<i>(Services Description)]</i>			
PI3	[Social Value PI] [Guidance note: Contracting authorities should consider carefully whether the Social Value targets chosen should be KPIs or PIs. In a market with a mature understanding and offerings around Social Value, designating them as KPIs will be appropriate (i.e. allowing for Service Credits to be used as a remedy). In a less	[See Schedule 2 (Services Description)] [See Schedule 2 (Services Description)]		Target Performance Level: [xx%] Service Threshold: [xx%]	[YES/NO]

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No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Publishable Performance Information [Guidance note : It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)].]
	mature market, they should be PIs (i.e. making plans for rectification the main remedy and with the ability to withhold a proportionate amount of Service Charges until the PI failure is rectified in the case of material failure)].]				

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Optional Services

The Key Performance Indicators and Subsidiary Performance Indicators that shall apply to the Optional Services are set out below:

32. Key Performance Indicators

No.	Key Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Service Points	Publishable Performance Information <i>[Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)]</i>
KPI1	[]	[]		Target Performance Level: [] Minor KPI Failure: [] Serious KPI Failure: [] Severe KPI Failure: [] Service Threshold: []	0 [1] [2] [3] [4]	[YES/NO]

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43. Subsidiary Performance Indicators

No.	Subsidiary Performance Indicator Title	Definition	Frequency of Measurement	Severity Levels	Publishable Performance Information <i>[Guidance note: It is HMG's intention to publish the top KPIs in the vast majority of contracts. The Authority must select at least three KPI/PIs which shall be publishable and also must select the single most important Social Value KPI/PI, which shall be publishable (four KPIs/PIs in total)]</i>
PI1	[]	[]		Target Performance Level: [] Service Threshold: []	[YES/NO]

Part B: Definitions

41. Available

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

1.1.1 End Users are able to access and utilise all the functions of the Supplier System and/or the Services; and

1.1.2 the Supplier System is able to process the Authority Data and to provide any required reports within the timescales set out in the Services Description (as measured on a 24 x 7 basis); and

1.1.3 all Performance Indicators other than Service Availability are above the KPI Service Threshold.

22. Service Availability

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

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

where:

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

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

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

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

2.2.2 Service Points shall accrue if:

~~1.(a)~~ any Service Downtime occurs as a result of Emergency Maintenance undertaken by the Supplier; or

~~(e)(b)~~ where maintenance undertaken by the Supplier exceeds **[insert number]** hours in any Service Period.

33. Response Times

3.1 The “**System Response Time**” is the round trip time taken to process a message or request of the IT Environment and/or the Services, and shall be measured from the moment the last packet of data which relates to a particular message is received at the external interface of the IT Environment until a response is generated and the first block of data leaves the external interface (including, for the avoidance of doubt, the time taken for any necessary processing).

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3.2 The Supplier System Response Time shall be the average System Response Time measured over the course of a Service Period.

44. Help Desk Response Times

4.1 Measurement of Help Desk response times will be based on the time taken for a Help Desk operative to answer a call. Calls receiving an automated response or placed into a queuing system shall be deemed not to have been answered.

4.2 The Supplier shall monitor the Help Desk response times and shall provide the results of such monitoring to the Authority in accordance with the provisions of Part B of this Schedule.

55. Fix Times

5.1 The “**Fix Time**” of a Service Incident is the period from the time that the Service Incident has been reported to the Supplier to the point of its Resolution and “**Resolution**” means in relation to a Service Incident either:

5.1.1 the root cause of the Service Incident has been removed and the Services are being provided in accordance with the Services Description and Service Target Performance Levels; or

5.1.2 the Authority has been provided with a workaround in relation to the Service Incident deemed acceptable by the Authority.

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

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

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

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

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

“Operational Hours” In relation to any Service, the hours for which that Service is to be operational as set out in ~~Schedule 2 (Services Description)~~; Schedule 2 (Services Description);

“Service Incident” a reported occurrence of a failure to deliver any part of the Services in accordance with the Authority Requirements or the Performance Indicators;

“Severity 1 Service Incident” a Service Incident which, in the reasonable opinion of the Authority:

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- (a) constitutes a loss of the Service which prevents a large group of End Users from working;
- (b) has a critical impact on the activities of the Authority;
- (c) causes significant financial loss and/or disruption to the Authority; or
- (d) results in any material loss or corruption of Authority Data;

Non-exhaustive examples:

- (a) a loss of power to a data centre causing failure of Services; or
- (b) a failure of the Services to provide user authentication service;

“Severity 2 Service Incident”

a Service Incident which, in the reasonable opinion of the Authority has the potential to:

- (a) have a major (but not critical) adverse impact on the activities of the Authority and no workaround acceptable to the Authority is available;
- ~~(b)~~(a) have a major (but not critical) adverse impact on the activities of the Authority and no workaround acceptable to the Authority is available; or
- ~~(c)~~(a) cause a financial loss and/or disruption to the Authority which is more than trivial but less severe than the significant financial loss described in the definition of a Severity 1 Service Failure;

Non-exhaustive examples:

- (a) corruption of organisational database tables; or
- ~~(b)~~(a) loss of ability to update Authority Data.

“Severity 3 Service Incident”

a Service Incident which, in the reasonable opinion of the Authority has the potential to:

- (a) have a major adverse impact on the activities of the Authority which can be reduced to a moderate adverse impact due to the availability of a workaround acceptable to the Authority; or
- ~~(b)~~(a) have a moderate adverse impact on the activities of the Authority;

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Non-exhaustive example:

- (a) inability to access data for a class of customers;

“Severity 4 Service Incident”

a Service Incident which, in the reasonable opinion of the Authority has the potential to have a minor adverse impact on the provision of the Services to End Users;

Non-exhaustive example:

- (a) inability to access data for a single customer; and

“Severity 5 Service Incident”

a Service Incident comprising a flaw which is cosmetic and, as such, does not undermine the End User’s confidence in the information being displayed;

Non-exhaustive examples:

- (a) spelling error; or
- (b) misalignment of data on screen display.

66. Satisfaction Surveys

6.1 In order to assess the level of performance of the Supplier, the Authority may undertake satisfaction surveys in respect of End Users or various groups of End Users (each such survey a “**Satisfaction Survey**”), the results of which may be reflected in the Balanced Scorecard Report. The subject matter of Satisfaction Surveys may include:

6.1.1 the assessment of the Supplier’s performance by the End Users against the agreed Key Performance Indicators and Subsidiary Performance Indicators; and/or

6.1.2 other suggestions for improvements to the Services.

6.2 The Authority shall reflect in the Balanced Scorecard Report any aspects of the Supplier’s performance of the Services which the responses to the Satisfaction Surveys reasonably suggest are not meeting the Services Description.

77. Virtual Library Completeness

7.1 The Virtual Library shall be complete where all of the information required under ~~Schedule 24 (Reports and Records Provisions)~~ Schedule 24 (Reports and Records Provisions) (Annex 3: Records To Upload To Virtual Library) has been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.

Schedule 4

Standards

Schedule 4: Standards

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

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

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

22. General

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

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

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

33. Technology and Digital Services Practice

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

44. Open Data Standards & Standards Hub

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

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

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

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

55. Technology Architecture Standards

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

66. Accessible Digital Standards

- 6.1 The Supplier shall comply with (or with equivalents to):
- 6.1.1 the World Wide Web Consortium (W3C) Web Accessibility Initiative (WAI) Web Content Accessibility Guidelines (WCAG) 2.1 Conformance Level AA; and
- 6.1.2 ISO/IEC 13066-1: 2011 Information Technology – Interoperability with assistive technology (AT) – Part 1: Requirements and recommendations for interoperability.

77. Service Management Software & Standards

- 7.1 Subject to Paragraphs 2 to 4 (inclusive), the Supplier shall reference relevant industry and HM Government standards and best practice guidelines in the management of the Services, including the following and/or their equivalents:
- 7.1.1 ITIL v4;
- 7.1.2 ISO/IEC 20000-1 2018 "Information technology — Service management – Part 1";
- 7.1.3 ISO/IEC 20000-2 2019 "Information technology — Service management – Part 2";
- 7.1.4 ISO 10007: 2017 "Quality management systems – Guidelines for configuration management"; and
- 7.1.5 ISO 22313:2020 "Security and resilience. Business continuity management systems. Guidance on the use of ISO 22301" and, ISO/IEC 27031:2011 and ISO 22301:2019.
- 7.2 For the purposes of management of the Services and delivery performance the Supplier shall make use of Software that complies with Good Industry Practice including availability, change, incident, knowledge, problem, release & deployment, request fulfilment, service asset and configuration, service catalogue, service level and service portfolio management. If such Software has been assessed under the ITIL Software Scheme as being compliant to "Bronze Level", then this shall be deemed acceptable.

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88. Sustainability

- 8.1 The Supplier shall comply with the sustainability requirements set out in ~~the Annex to this Schedule~~. Annex 1 to this Schedule 4.

99. Hardware Safety Standards

- 9.1 The Supplier shall comply with those BS or other standards relevant to the provision of the Services, including the following or their equivalents:
- 9.1.1 any new hardware required for the delivery of the Services (including printers), shall conform to BS EN IEC 62368-1:2020+A11:2020 or subsequent replacements. In considering where to site any such hardware, the Supplier shall consider the future working user environment and shall position the hardware sympathetically, wherever possible;
 - 9.1.2 any new audio, video and similar electronic apparatus required for the delivery of the Services, shall conform to the following standard: BS EN IEC 62368-1:2020+A11:2020 or any subsequent replacements;
 - 9.1.3 any new laser printers or scanners using lasers, required for the delivery of the Services, shall conform to either of the following safety Standards: BS EN 60825-1:2014 or any subsequent replacements; and
 - 9.1.4 any new apparatus for connection to any telecommunication network, and required for the delivery of the Services, shall conform to the following safety Standard: BS EN 62949:2017 or any subsequent replacements.
- 9.2 Where required to do so as part of the Services, the Supplier shall perform electrical safety checks in relation to all equipment supplied under this Contract in accordance with the relevant health and safety regulations.

Annex 1: Sustainability

[Guidance – As set out in the MSC Guidance, this annex Annex 1 has been designed to provide a starting point for sustainability requirements in any procurement. Authorities are expected to tailor the annex to their specific procurements. Authorities may also choose whether or not to include any paragraph or sub-paragraph marked optional. Authorities 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 Contract. Authorities 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. Authorities should also note that some obligations, such as compliance with the Authority’s sustainability requirements, for example net zero commitments or EDI, will require the Authority to provide the requirements to the Supplier.]

41. Definitions

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

“Permitted Item”	means those items which are permissible under this Contract to the extent set out in Table B of this Annex Annex 1;
“Prohibited Items”	means those items which are not permissible under this Contract as set out at Table A of this Annex Annex 1;
“Sustainability Reports”	written reports to be completed by the Supplier containing the information outlined in Table C of this Annex Annex 1; and
“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.

22. Public Sector Equality Duty

2.1 In addition to legal obligations, where the Supplier is providing a Service to which the Public Sector Equality duty applies, the Supplier shall support the Authority in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010 by ensuring that it fulfils its obligations under the Contract in a way that seeks to:

2.1.1 eliminate discrimination, harassment or victimisation and any other conduct prohibited by the Equality Act 2010; and

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2.1.2 advance:

- (a) equality of opportunity; and
- (b) 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.

2.2 [Optional: In delivering the Service, the Supplier will comply with the Authority's equality, diversity and inclusion requirements, to be provided to the Supplier by the Authority.]

2.3 [Optional: The Supplier shall ensure that it fulfils its obligations under the Contract in a way that does not discriminate against individuals because of socio-economic background, working pattern or having parental or other caring responsibilities.]

33. Environmental Requirements

- 3.1 The Supplier must perform its obligations meeting in all material respects the requirements of all applicable Laws Contract regarding the environment.
- 3.2 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.
- 3.3 In performing its obligations under the Contract the Supplier shall, where applicable to the Contract, to the reasonable satisfaction of the Authority:
 - 3.3.1 demonstrate low carbon resource efficiency, including minimising the use of resources and responding promptly to the Authority's reasonable questions;
 - 3.3.2 prioritise waste management in accordance with the Waste Hierarchy as set out in Law;
 - 3.3.3 be responsible for ensuring that any waste generated by the Supplier and sent for recycling, disposal or other recovery as a consequence of this Contract is taken 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;
 - 3.3.4 ensure that it and any third parties used to undertake recycling disposal or other recovery as a consequence of this Contract do so in a legally compliant way, 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;
 - 3.3.5 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; minimise the release of greenhouse gases (including carbon dioxide emissions), air pollutants, volatile organic compounds and other substances damaging to health and the environment; and
 - 3.3.6 reduce and minimise carbon emissions by taking into account factors

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including, but not limited to, the locations from which materials are sourced, the transport of materials, the locations from which the work force are recruited and emissions from offices and on-site equipment.

- 3.4 In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Authority (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.
- 3.5 The Supplier shall not provide to the Authority Goods or Deliverables which comprise wholly or partly of Prohibited Items unless such item is a Permitted Item.
- 3.6 The Supplier shall not use anything which comprises wholly or partly of the Prohibited Items to provide the Services under this Contract unless:
- 3.6.1 it is a Permitted Item; or
- 3.6.2 the use is primarily related to the management of the Supplier's own facilities or internal operations as opposed to the provision of Services.
- 3.7 **[Optional: The Supplier must have a documented management system and controls in place to manage the environmental impacts of delivering the Services.]**
- 3.8 **[Optional: The Supplier shall ensure that any Services are designed, sourced and delivered in a manner which is environmentally and socially responsible.]**
- 3.9 **[Optional: In delivering the Services, the Supplier must comply with the Authority's sustainability requirements, to be provided to the Supplier by the Authority.]**
- 3.10 **[Optional: In performing its obligations under the Contract, the Supplier shall to the reasonable satisfaction of the Authority:**
- 3.10.1 **[Optional: demonstrate that the whole life cycle impacts (including end of use) associated with the Services that extend beyond direct operations into that of the supply chain have been considered and reduced];**
- 3.10.2 **[Optional: 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];**
- 3.10.3 **[Optional: 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];**
- 3.10.4 **[Optional: enhance the natural environment and connecting communities with the environment]; and**
- 3.10.5 **[Optional: achieve continuous improvement in environmental (and social) performance.]].]**

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3.11 [Optional: The Supplier shall inform the Authority within one Working Day in the event that a permit, licence or exemption to carry or send waste generated under this Contract is revoked.]

3.12 [Guidance note: Insert any other environmental requirement the Authority wishes to add, e.g. those in line with the Government Greening Commitments], the Greening government: ICT and digital services strategy 2020 to 2025 and point 12 of the Technology Code of Practice.]

3.13 The Supplier shall meet the applicable Government Buying Standards applicable to Services which can be found online at:

<https://www.gov.uk/government/collections/sustainable-procurement-the-government-buying-standards-gbs>.

44. Supplier Code of Conduct

4.1 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.pdf

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1163536/Supplier_Code_of_Conduct_v3.pdf

4.2 The Authority expects to meet, and expects its suppliers and subcontractors to meet, the standards set out in that Code.

55. Reporting Requirements

5.1 The Supplier shall comply with reasonable requests by the Authority for information evidencing compliance:

5.1.1 with Paragraphs 2.1, 3.1 to 3.6, 3.13 and 4 of this Annex Annex 1 within [fourteen (14)] days of such request; and

5.1.2 With Paragraphs 2.2, 2.3 and 3.7 to 3.12 of this Annex Annex 1 within [thirty (30) days] of such request[.]/[.

provided that such requests are limited to [two] per Contract Year.]

5.2 The Supplier shall complete the Sustainability Report in relation to its provision of the Services under this Contract and provide the Sustainability Report to the Authority on the date and frequency outlined in Table C of this Annex Annex 1.

Table A – Prohibited Items

<p>The following consumer single use plastics are Prohibited Items:</p>	<p>Catering</p> <p>(a) Single use sachets e.g. coffee pods, sauce sachets, milk sachets</p> <p>(b) Take away cutlery</p> <p>(c) Take away boxes and plates</p> <p>(d) Cups made wholly or partially of plastic</p>
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	<p>(e) Straws</p> <p>(f) Stirrers</p> <p>(g) Water bottles</p>
	<p>Facilities</p> <p>(a) Single use containers e.g. hand soap, cleaning products</p> <p>(b) Wipes containing plastic</p>
	<p>Office Supplies</p> <p>(a) Plastic envelopes</p> <p>(b)(a) Plastic wrapping for brochures</p> <p>(c)(a) Paper or card which is bleached with chlorine</p>
	<p>Packaging</p> <p>(d)(a) Single use plastic packaging from deliveries where avoidable e.g. shrink wrapped packaging from office supplier or facilities products.</p> <p>(e)(a) Single use carrier bags</p>
Authority specific Prohibitions	<p>[Authority to consider other items outside of the Cabinet Office 2020 commitment to be prohibited]</p> <p>[Conflict minerals as defined by the https://www.gov.uk/guidance/conflict-minerals, E.g. non-recyclable plastic pens]</p>
Project specific Prohibitions	<p>[Insert insert items specific to the project which you wish to prohibit use of for sustainability reasons]</p>

Table_B – Permitted Items

Authority Permitted Items	<p>[Authority to consider whether there are other items which it may wish to expressly authorise]</p>
Project Specific Permitted Items	<p>[A market consultation should be undertaken before issuing the ITT to ensure that necessary items are not precluded from this project.]</p> <p>Items should be permitted for operational, technical, economic, or environmental reasons. The Authority should include the circumstances that the prohibition should not apply if the exception should apply in only limited instances.]</p>

Table_C – Sustainability Reports

[Guidance -note: All reports and the content of these reports in Table C are optional. Authorities 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

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subject matter of the 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 Contract, the key sustainability impacts identified; the sustainability improvements planned or delivered; and the risks to the Services 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 carry, store or dispose waste]
[Greenhouse Gas Emissions]	[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. Greenhouse gas reporting from emissions sources (Scope 1, Scope 2 and Scope 3), and specific activities as requested by the Authority. This may include activities such as transportation, energy use and waste disposal.]	[On the anniversary of the Effective Date]
[Water Use]	[Volume in metres cubed.]	[On the anniversary of the Effective Date]
[Other]	[]	[]

Schedule 5

Security Management

Schedule 5: Security Management

[Guidance]

1.(a) This Schedule was provided by the Cabinet Office Commercial Information Assurance team who have provided two alternative Security procedures for HMG replacing the legacy long and short form Security Schedules:

1.(a) Part A Part A to this Schedule - Security Assurance

(e)(b) Part B to this Schedule - Security Accreditation

2.(a) The essential difference between the two versions of this Schedule is that the Accreditation version requires the Authority to directly assess the security of the systems used to Process Authority Data. The Assurance Schedule requires less Authority involvement in that review process. In the Assurance Schedule, the decision whether or not to allow the Supplier to Process Authority Data is based on a desktop review of the Supplier's Security Management Plan. The decision whether to use the Assurance or Accreditation version of the Schedule depends mainly on the quantity and nature of the Authority Data which the Supplier will Process. In addition, the Authority will need to consider whether it possesses, or has access to, the technical capability to perform the accreditation role.

3.(a) The Authority or organisation running the procurement will need to consider several definitions used in the versions of this Schedule and adapt them to the Services being provided. The Schedule incorporates a series of "flow downs" to different categories of Sub-contractor to ensure that those bodies contribute to the Supplier's compliance with the obligations in this Schedule. These are:

1.(i) All Sub-contractors that Process Authority Data. These Sub-contractors must comply with the Sub-contractor Security Requirements in Annex 2. The Authority must check that these requirements are appropriate to the full range of Sub-contractors that will Process Authority Data.

(e)(ii) Higher Risk Sub-contractors. These Sub-contractors are subject to a requirement to be certified to ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or to possess HMG's Cyber Essentials Plus certification. The Authority will need to consider the nature and quantity of Authority Data being Processed under the contract to determine the threshold for designating a Sub-contractor as a Higher Risk Sub-contractor.

(f)(iii) Medium Risk Sub-contractors. These Sub-contractors require certification under the Cyber Essentials scheme. Again, the Authority will need to determine the threshold for designation.

(g)(a) For the accreditation version, the CIMS Sub-contractor. This is defined in the Schedule as "a Sub-contractor that provides or operates the whole, or a substantial part, of the Core Information Management System". The Authority will need to consider whether it will allow the Supplier to subcontract this element of the requirement. This is an aspect it will need to consider as part of its engagement with the Supplier as part of its pre-contract engagement. If the

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Authority will not allow such subcontracting to occur, it will need to amend the Schedule accordingly.

4.(a) The “Baseline Security Requirements” set out in Annex 1 to this Schedule require review prior before issuing to bidders to ensure that all necessary security requirements are documented, and each of the requirements is clearly expressed and appropriate for the Services which are to be provided. In particular, the Authority should review the National Cyber Security Centre Cloud Security Principles to determine what implementation approach for each of those principles it will require.

5.(b) The Authority will need to check the text that is in square brackets. These relate mainly to timeframes and dates for the provision of information or reports by the Supplier or for decisions by the Authority. The Authority will need to ensure that these dates are consistent with its plans for the implementation of the services and that it has sufficient allocated resource to make the appropriate decisions within the timeframes it specifies.

6.(c) This Schedule does not deal specifically with the Processing of Personal Data but documents the Protective Measures in place to secure compliance with that requirement of the UK GDPR or EU GDPR, as applicable. The Authority will need to ensure that the relevant provisions of the contract (i.e., Clause 21 and Schedule 31: Processing Personal Data) accurately reflect the Controller and Processor relationships in the Contract.

7.(d) As the default position, this version of Schedule 5 (Security Management) Schedule 5 (Security Management) requires that all Processing of Authority Data must take place in the UK (see Part A, Annex 1, paragraph 8 and Annex 2, paragraph 3.1 and Part B paragraph 12.1.1). The Authority may depart from this position where it has considered the risks of doing so and if using the Accreditation schedule incorporated its requirements in the Statement of Information Risk Appetite. The Authority will need to ensure if it chooses to allow the Supplier to Process Authority Data outside the UK, this Processing occurs in compliance with the requirements of the Data Protection Legislation and any other relevant government policy.

Assurance version only

8.(e) One key difference between the two versions of the Schedule is that the Assurance version omits the express rights to terminate contained in the Accreditation version. The Authority should consider whether to include express termination rights in all or some of the following circumstances:

1.(i) the Authority has issued two rejection notices in respect of the Security Management Plan;

2.(ii) the Supplier fails to implement a change required by the Required Changes Risk Register in accordance with the timescales set out in the Required Changes Risk Register;

3.(iii) the Supplier fails to patch vulnerabilities in accordance with the Security Requirements; and/or

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4-(iv) the Supplier materially fails to comply with the Incident Management Process.

Accreditation version only

9-(f) *The Authority will need to agree with the Supplier what constitutes the Core Information Management System and its boundary with the Wider Information Management System. This process is essential to determining the scope of the Accreditation exercise. If the Authority will determine and map this boundary as part of the procurement exercise, then the first option in Paragraph 4.2 should be used. If the Authority chooses this approach, will need to ask the bidders to provide sufficient details of the proposed information system (e.g. a description of the system architecture, the hardware and software components, Sub-contractors and other suppliers) to enable the Authority to categorise prior to contract award what parts of the proposed information system are to be categorised as either: the “Core Information Management System” and subject to accreditation in accordance with Paragraph 6 of this Schedule, or the “Wider Information Management System” and subject to the Certification Requirements set out in Paragraph 7. This description should be in the form of a diagram setting out the components of the Information Management System and the linkages and data flows between them. This diagram should then be included as Annex 3 to this Schedule.*

10-(g) *If the Authority will agree the boundary as part of the implementation process, then the second option in Paragraph 4.2 (with any necessary modifications to reflect the actual implementation process adopted) should be used.*

11-(h) *This version allows the Authority to play an active role in assessing the Core Information Management System. The Authority must satisfy itself that the Core information Management System, as implemented by the Supplier, will adequately meet the requirements of the Baseline Security Requirements (set out in Annex 1 to this Schedule) and the Statement of Information Risk Appetite prepared by the Authority as part of the procurement process. If the Authority lacks the technical capability to perform this task, it should consider whether to use the Assurance version of the Schedule.*

12-(i) *The key document that the Authority must prepare to use this Schedule is the Statement of Information Risk Appetite. This sets out the overall amount of risk an organisation is prepared to accept, tolerate or be exposed to at any point in time. The Authority will need to prepare this document as part of the documentation provided to bidders along with other documents describing the Authority’s system requirements for them to bid against.]*

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Part A: Security Assurance

401. Definitions

40.11.1 In this Schedule:

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

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(iii) any information relating to children and/or vulnerable persons;

(iv) any information relating to social care;

(v) any information relating to a person's current or past employment; or

(vi) Special Category Personal Data; or

(c) the Authority in its discretion, designates a Sub-contractor as a Higher Risk Sub-Contractor in any procurement document related to this Contract; or

(d) the Authority considers in its discretion, that any actual or potential Processing carried out by the Sub-contractor is high risk]

[Guidance note: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Contract.]

“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Incident Management Process”	means the process which the Supplier shall implement immediately after it becomes aware of a Breach of Security which is intended to restore normal operations as quickly as possible, minimising any adverse impact on the Authority Data, the Authority, the Services and/or users of the Services and which shall be prepared by the Supplier in accordance with Paragraph 4 using the template set out in Annex 3;
“Information Assurance Assessment”	means the set of policies, procedures, systems and processes which the Supplier shall implement, maintain and update in accordance with Paragraph 4 in order to manage, mitigate and, where possible, avoid information security risks including cyber-attacks, hacks, data leaks, Personal Data Breaches <u>Loss Events</u> and/or theft and which shall be prepared by the Supplier using the template set out in Annex 3 <u>Annex 3</u> ;
“Information Management System”	means (a) those parts of the Supplier System, and those of the Sites, that the Supplier or its Sub-contractors will use to

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provide the parts of the Services that require Processing Authority Data; and

- (b) the associated information assets and systems (including organisational structure, controls, policies, practices, procedures, processes and resources);

“Information Security Approval Statement”

means a notice issued by the Authority which sets out the information risks which the Supplier has identified as being associated with using the Information Management System and confirms that:

- (a) the Authority is satisfied that the identified risks have been adequately and appropriately addressed;
- (b) the Authority has accepted the residual risks; and
- (c) the Supplier may use the Information Management System to Process Authority Data;

“IT Health Check”

has the meaning given in Paragraph 7.1.1;

“Medium Risk Sub-contractor”

means a Sub-contractor that Processes Authority Data, **[where that data**

- (a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); and**

- (b) does not include Special Category Personal Data];**

[Guidance *note*: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Contract.]

“Process”

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

“Remediation Action Plan”

has the meaning given in Paragraph 7.3.3(a);

“Required Changes Register”

mean the register within the Security Management Plan which is to be maintained and updated by the Supplier and which shall record each of the changes that the Supplier shall make to the Information Management System and/or the Security Management Plan as a consequence of the occurrence of any

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of the events set out in Paragraph 5.2 together with the date by which such change shall be implemented and the date on which such change was implemented;

“Risk Register”

is the risk register within the Information Assurance Assessment which is to be prepared and submitted to the Authority for approval in accordance with Paragraph 4;

“Security Management Plan”

means the document prepared by the Supplier using the template in Annex 3, comprising:

- (a) the Information Assurance Assessment;
- (b) the Required Changes Register; and
- (c) the Incident Management Process;

“Special Category Personal Data”

means the categories of Personal Data set out in article 9(1) and article 10 of the UK GDPR;

412. Introduction

41.12.1 This Part A of this Schedule sets out:

41.1.12.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Authority Data and the Information Management System;

41.1.22.1.2 the Certification Requirements applicable to the Supplier and each of those Sub-contractors which Processes Authority Data;

41.1.32.1.3 the security requirements in Annex 1, with which the Supplier must comply;

41.1.42.1.4 the tests which the Supplier shall conduct on the Information Management System during the Term; and

41.1.52.1.5 the Supplier’s obligations to:

~~5-~~(a) return or destroy Authority Data on the expiry or earlier termination of this Contract; and

~~(#)~~(b) prevent the introduction of Malicious Software into the Supplier System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Supplier System in Paragraph 9; and

~~(#)~~(c) report Breaches of Security to the Authority.

423. Principles of Security

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

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~~12.1.13.1.1~~ the Sites;

~~12.1.23.1.2~~ the IT Environment;

~~12.1.33.1.3~~ the Information Management System; and

~~12.1.43.1.4~~ the Services.

~~12.23.2~~ Notwithstanding the involvement of the Authority in assessing the arrangements which the Supplier implements to ensure the security of the Authority Data and the Information Management System, the Supplier shall be, and shall remain, responsible for:

~~12.2.13.2.1~~ the security, confidentiality, integrity and availability of the Authority Data whilst that Authority Data is under the control of the Supplier or any of its Sub-contractors; and

~~12.2.23.2.2~~ the security of the Information Management System.

~~12.33.3~~ The Supplier shall:

~~12.3.13.3.1~~ comply with the security requirements in Annex 1; and

~~12.3.23.3.2~~ ensure that each Sub-contractor that Processes Authority Data complies with the Sub-contractor Security Requirements.

~~12.43.4~~ The Supplier shall provide the Authority with access to Supplier Personnel responsible for information assurance to facilitate the Authority's assessment of the Supplier's compliance with its obligations set out in this Schedule at reasonable times on reasonable notice.

134. Information Security Approval Statement

~~13.14.1~~ The Supplier must ensure that its Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this Schedule, including any requirements imposed on Sub-contractors by Annex 2, from the first Operational ~~Services~~Service Commencement Date.

~~13.24.2~~ The Supplier may not use the Information Management System to Process Authority Data unless and until:

~~13.2.14.2.1~~ the Supplier has procured the conduct of an IT Health Check of the Supplier System by a CHECK Service Provider or a CREST Service Provider in accordance with Paragraph 7.1; and

~~13.2.24.2.2~~ the Authority has issued the Supplier with an Information Security Approval Statement in accordance with the process set out in this Paragraph 4.

~~13.34.3~~ The Supplier shall document in the Security Management Plan how the Supplier and its Sub-contractors shall comply with the requirements set out in this Schedule and the Contract in order to ensure the security of the Authority Data and the Information Management System.

~~13.44.4~~ The Supplier shall prepare and submit to the Authority within **[20]** Working Days of the date of this Contract, the Security Management Plan, which comprises:

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[13.4.14.4.1](#) an Information Assurance Assessment;

[13.4.24.4.2](#) the Required Changes Register; and

[13.4.34.4.3](#) the Incident Management Process.

[13.54.5](#) The Authority shall review the Supplier's proposed Security Management Plan as soon as possible and, in any event within **[20]** Working Days of receipt and shall either issue the Supplier with:

[13.5.14.5.1](#) an Information Security Approval Statement, which shall confirm that the Supplier may use the Information Management System to Process Authority Data; or

[13.5.24.5.2](#) a rejection notice, which shall set out the Authority's reasons for rejecting the Security Management Plan.

[13.64.6](#) If the Authority rejects the Supplier's proposed Security Management Plan, the Supplier shall take the Authority's reasons into account in the preparation of a revised Security Management Plan, which the Supplier shall submit to the Authority for review within **[10]** Working Days or such other timescale as agreed with the Authority.

[13.74.7](#) The Authority may require, and the Supplier shall provide the Authority and its authorised representatives with:

[13.7.14.7.1](#) access to the Supplier Personnel;

[13.7.24.7.2](#) access to the Information Management System to audit the Supplier and its Sub-contractors' compliance with this Contract; and

[13.7.34.7.3](#) such other information and/or documentation that the Authority or its authorised representatives may reasonably require,

to assist the Authority to establish whether the arrangements which the Supplier and its Sub-contractors have implemented in order to ensure the security of the Authority Data and the Information Management System are consistent with the representations in the Security Management Plan. The Supplier shall provide the access required by the Authority in accordance with this Paragraph within **[10]** Working Days of receipt of such request, except in the case of a Breach of Security in which case the Supplier shall provide the Authority with the access that it requires within **[24 hours]** of receipt of such request.

145. Compliance Reviews

[14.15.1](#) The Supplier shall regularly review and update the Security Management Plan, and provide such to the Authority, at least once each year and as required by this Paragraph.

[14.25.2](#) The Supplier shall notify the Authority within **[2]** Working Days after becoming aware of:

[14.2.15.2.1](#) a significant change to the components or architecture of the Information Management System;

[14.2.25.2.2](#) a new risk to the components or architecture of the Information Management System;

[14.2.35.2.3](#) a vulnerability to the components or architecture of the Service which is classified

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'Medium', 'High', 'Critical' or 'Important' in accordance with the classification methodology set out in Paragraph 9.2 of Annex 1 to this Schedule;

[14.2.45.2.4](#) a change in the threat profile;

[14.2.55.2.5](#) a significant change to any risk component;

[14.2.65.2.6](#) a significant change in the quantity of Personal Data held within the Service;

[14.2.75.2.7](#) a proposal to change any of the Sites from which any part of the Services are provided; and/or

[14.2.85.2.8](#) an ISO/IEC 27001 (at least ISO/IEC 27001:2013) audit report produced in connection with the Certification Requirements indicates significant concerns.

[14.35.3](#) Within **[10]** Working Days of such notifying the Authority or such other timescale as may be agreed with the Authority, the Supplier shall make the necessary changes to the Required Changes Register and submit the updated Required Changes Register the Authority for review and approval.

[14.45.4](#) Where the Supplier is required to implement a change, including any change to the Information Management System, the Supplier shall effect such change at its own cost and expense.

156. Certification Requirements

[15.16.1](#) The Supplier shall be certified as compliant with:

[15.1.16.1.1](#) ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); and

[15.1.26.1.2](#) Cyber Essentials PLUS,

and shall provide the Authority with a copy of each such certificate of compliance before the Supplier shall be permitted to receive, store or Process Authority Data.

[15.26.2](#) The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:

[15.2.16.2.1](#) ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); or

[15.2.26.2.2](#) Cyber Essentials PLUS,

and shall provide the Authority with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor shall be permitted to receive, store or Process Authority Data.

[15.36.3](#) The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.

[15.46.4](#) The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Authority Data:

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~~15.4.16.4.1~~ securely destroys Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);

~~15.4.26.4.2~~ should satisfy the Authority that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and

~~15.4.36.4.3~~ must maintain an asset register of all Authority supplied information, data and equipment to ensure Authority assets are returned and/or deleted.

~~15.56.5~~ The Supplier shall provide the Authority with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph 6 before the Supplier or the relevant Sub-contractor (as applicable) may carry out the secure destruction of any Authority Data.

~~15.66.6~~ The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and, on request from the Authority, shall or shall procure that the relevant Sub-contractor shall:

~~15.6.16.6.1~~ immediately ceases using the Authority Data; and

~~15.6.26.6.2~~ procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Authority Data in accordance with the requirements set out in this Paragraph.

~~15.76.7~~ The Authority may agree to exempt, in whole or part, the Supplier or any Sub-contractor from the requirements of this Paragraph 6. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

167. Security Testing

~~16.17.1~~ The Supplier shall, at its own cost and expense procure and conduct:

~~16.1.17.1.1~~ testing of the Information Management System by a CHECK Service Provider or a CREST Service Provider ("IT Health Check"); and

~~16.1.27.1.2~~ such other security tests as may be required by the Authority,

~~16.27.2~~ The Supplier shall:

~~16.2.17.2.1~~ complete all of the above security tests before:

~~1.(a)~~ the Supplier submits the Security Management Plan to the Authority for review in accordance with Paragraph 4; and

~~(b)~~ before the Supplier is given permission by the Authority to Process or manage any Authority Data; and

~~16.2.27.2.2~~ repeat the IT Health Check not less than once every 12 months during the Term and submit the results of each such test to the Authority for review in accordance with this Paragraph.

~~16.37.3~~ In relation to each IT Health Check, the Supplier shall:

~~16.3.17.3.1~~ agree with the Authority the aim and scope of the IT Health Check;

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~~16.3.27.3.2~~ promptly, and no later than ten (10) Working Days, following the receipt of each IT Health Check report, provide the Authority with a copy of the full report;

~~16.3.37.3.3~~ in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:

~~1.~~(a) prepare a remedial plan for approval by the Authority (each a “**Remediation Action Plan**”) which sets out in respect of each vulnerability identified in the IT Health Check report:

~~(k)~~(b) how the vulnerability will be remedied;

~~(l)~~(c) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:

~~(m)~~(d) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “medium”;

~~(n)~~(e) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and

~~(o)~~(f) within 7 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;

~~(p)~~(g) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Authority, include a further IT Health Check) to confirm that the vulnerability has been remedied;

~~(q)~~(h) comply with the Remediation Action Plan; and

~~(r)~~(i) conduct such further tests on the Service as are required by the Remediation Action Plan to confirm that the Remediation Action Plan has been complied with.

~~16.47.4~~ The Supplier shall ensure that any testing which could adversely affect the Supplier System shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such tests shall be agreed in advance with the Authority.

~~16.57.5~~ If any testing conducted by or on behalf of the Supplier identifies a new risk, new threat, vulnerability or exploitation technique that has the potential to affect the security of the Information Management System, the Supplier shall within **[2]** Working Days of becoming aware of such risk, threat, vulnerability or exploitation technique provide the Authority with a copy of the test report and:

~~16.5.17.5.1~~ propose interim mitigation measures to vulnerabilities in the Information Management System known to be exploitable where a security patch is not immediately available; and

~~16.5.27.5.2~~ where and to the extent applicable, remove or disable any extraneous interfaces, services or capabilities that are not needed for the provision of the Services (in

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order to reduce the attack surface of the Supplier System) within the timescales set out in the test report or such other timescales as may be agreed with the Authority.

~~16.67.6~~ The Supplier shall conduct such further tests of the Supplier System as may be required by the Authority from time to time to demonstrate compliance with its obligations set out this Schedule and the Contract.

~~16.77.7~~ The Supplier shall notify the Authority immediately if it fails to, or believes that it will not, mitigate the vulnerability within the timescales set out in Paragraph 7.3.

178. Security Monitoring and Reporting

~~17.18.1~~ The Supplier shall:

~~17.1.18.1.1~~ monitor the delivery of assurance activities;

~~17.1.28.1.2~~ maintain and update the Security Management Plan in accordance with Paragraph 5;

~~17.1.38.1.3~~ agree a document which presents the residual security risks to inform the Authority's decision to give approval to the Supplier to Process and transit the Authority Data;

~~17.1.48.1.4~~ monitor security risk impacting upon the operation of the Service;

~~17.1.58.1.5~~ report Breaches of Security in accordance with the approved Incident Management Process;

~~17.1.68.1.6~~ agree with the Authority the frequency and nature of the security reports to be prepared and submitted by the Supplier to the Authority within [20] Working Days of Effective Date.

189. Malicious Software

~~18.19.1~~ The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.

~~18.29.2~~ If Malicious Software is found, the parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

~~18.39.3~~ Any cost arising out of the actions of the parties taken in compliance with the provisions of Paragraph 9.2 shall be borne by the parties as follows:

~~18.3.19.3.1~~ by the Supplier where the Malicious Software originates from:

~~1-(a)~~ the Supplier Software;

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~~(s)~~(b) the Third Party Software supplied by the Supplier; or

~~(t)~~(c) the Authority Data whilst the Authority Data is or was under the control of the Supplier,

unless, in the case of the Authority Data only, the Supplier can demonstrate that such Malicious Software was present in the Authority Data and not quarantined or otherwise identified by the Authority when the Authority provided the Authority Data to the Supplier; and

~~18.3.29.3.2~~ by the Authority, in any other circumstance.

1910. Breach of Security

~~19.110.1~~ If either party becomes aware of a Breach of Security it shall notify the other in accordance with the Incident Management Process.

~~19.210.2~~ The Incident Management Process shall, as a minimum, require the Supplier to do the following upon it becoming aware of a Breach of Security or attempted Breach of Security:

~~19.2.110.2.1~~ Immediately take all reasonable steps necessary to:

~~1.~~(a) minimise the extent of actual or potential harm caused by such Breach of Security;

~~(u)~~(b) remedy such Breach of Security to the extent possible;

~~(v)~~(c) apply a tested mitigation against any such Breach of Security; and

~~(w)~~(d) prevent a further Breach of Security in the future which exploits the same root cause failure;

~~19.2.210.2.2~~ as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

~~19.310.3~~ In the event that any action is taken in response to a Breach of Security or attempted Breach of Security as a result of non-compliance by the Supplier, its Sub-contractors and/or all or any part of the Information Management System with this Contract, then such remedial action shall be completed at no additional cost to the Authority.

Annex 1: Security Requirements

41. Security Classification of Information

- 1.1 If the provision of the Services requires the Supplier to Process Authority Data which is classified as:
 - 1.1.1 OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards; and/or
 - 1.1.2 SECRET or TOP SECRET, the Supplier shall only do so where it has notified the Authority prior to receipt of such Authority Data and the Supplier shall implement additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

22. End User Devices

- 2.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Authority Data is Processed in accordance the following requirements:
 - 2.1.1 the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - 2.1.2 users must authenticate before gaining access;
 - 2.1.3 all Authority Data must be encrypted using an encryption tool agreed to by the Authority;
 - 2.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - 2.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Authority Data;
 - 2.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;
 - 2.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, 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 Services.
- 2.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.

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~~2.1.61.1.1 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;~~

~~2.1.71.1.1 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, 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 Services.~~

~~2.21.1 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.~~

2.3 Where there any conflict between the requirements of this **Schedule 5 (Security Management)** and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

33. Encryption

3.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Authority Data is encrypted:

3.1.1 when stored at any time when no operation is being performed on it; and

3.1.2 when transmitted.

3.2 Where the Supplier, or a Sub-contractor, cannot encrypt Authority Data the Supplier must:

3.2.1 immediately inform the Authority of the subset or subsets of Authority Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;

3.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to the Authority as encryption; and

3.2.3 provide the Authority with such information relating to the Authority Data concerned, the reasons why that Authority Data cannot be encrypted and the proposed protective measures as the Authority may require.

3.3 The Authority, the Supplier and, where the Authority requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Authority Data.

3.4 Where the Authority and Supplier reach agreement, the Supplier must update the Security Management Plan to include:

3.4.1 the subset or subsets of Authority Data not encrypted and the circumstances in which that will occur; and

3.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Authority Data.

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- 3.5 Where the Authority and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Authority that it could not encrypt certain Authority Data, either party may refer the matter to **[be determined in accordance with the Dispute Resolution Procedure]**.

44. Personnel Security

- 4.1 All Supplier Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 4.2 The Authority and the Supplier shall review the roles and responsibilities of the Supplier Personnel who will be involved in the management and/or provision of the Services in order to enable the Authority to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Authority Data or data which, if it were Authority Data, would be classified as OFFICIAL-SENSITIVE.
- 4.3 The Supplier shall not permit Supplier Personnel who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Authority has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Supplier shall ensure that Supplier Personnel are only granted such access to Authority Data as is necessary to enable the Supplier Personnel to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Personnel who no longer require access to the Authority Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Authority Data revoked within 1 Working Day.
- 4.6 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or the Authority Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Authority Data.
- 4.7 The Supplier shall ensure that the training provided to Supplier Staff under Paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Authority Data ("phishing").

55. Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:

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- 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
- 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Authority on request.

66. Data Destruction or Deletion

- 6.1 The Supplier shall:
 - 6.1.1 prior to securely sanitising any Authority Data or when requested the Supplier shall provide the Government with all Authority Data in an agreed ~~open~~ format provided it is secure and readable;
 - 6.1.2 have documented processes to ensure the availability of Authority Data in the event of the Supplier ceasing to trade;
 - 6.1.3 securely erase in a manner agreed with the Authority any or all Authority Data held by the Supplier when requested to do so by the Authority; and certify to the Authority that it has done so unless and to the extent required by Law to retain it other than in relation to Authority Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers;
 - 6.1.4 securely destroy in a manner agreed with the Authority all media that has held Authority Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as agreed by the Authority; and other than in relation to Authority Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and
 - 6.1.5 implement processes which address the CPNI and NCSC guidance on secure sanitisation.

77. Audit and Protective Monitoring

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

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7.3 The retention periods for audit records and event logs must be agreed with the Authority and documented in the Security Management Plan.

88. Location of Authority Data

8.1 The Supplier shall not and shall procure that none of its Sub-contractors Process Authority Data outside the [UK] without the prior written consent of the Authority, which may be subject to conditions.

99. Vulnerabilities and Corrective Action

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

9.2 The severity of vulnerabilities for COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:

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 at <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 Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Information Management System within:

9.3.1 seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';

9.3.2 thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and

9.3.3 sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.

9.4 The timescales for applying patches to vulnerabilities in the Information Management System set out in Paragraph 9.3 shall be extended where:

9.4.1 the Supplier can demonstrate that a vulnerability in the Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;

9.4.2 the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or

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9.4.3 the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.

9.5 The Security Management Plan shall include provisions for major version upgrades of all COTS Software to be kept up to date such that all COTS Software are always in mainstream support throughout the Term unless otherwise agreed by the Authority in writing. All COTS Software should be no more than N-1 versions behind the latest software release.

4010. Secure Architecture

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

10.1.1 the NCSC “Security Design Principles for Digital Services”, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;

10.1.2 the NCSC “Bulk Data Principles”, a copy of which can be found at <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and

10.1.3 the NSCS “Cloud Security Principles”, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and which are summarised below:

~~1.~~(a) “Cloud Security Principle 1: data in transit protection” which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;

~~(x)~~(b) “Cloud Security Principle 2: asset protection and resilience” which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;

~~(y)~~(c) “Cloud Security Principle 3: separation between users” which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;

~~(z)~~(d) “Cloud Security Principle 4: governance framework” which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;

~~(aa)~~(e) “Cloud Security Principle 5: operational security” which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;

~~(bb)~~(f) “Cloud Security Principle 6: personnel security” which, amongst other matters, requires that where Supplier Personnel have access to Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;

~~(cc)~~(g) “Cloud Security Principle 7: secure development” which, amongst other matters, requires that the Services be designed and developed to identify

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and mitigate threats to their security;

~~(dd)~~(h) _____ “Cloud Security Principle 8: supply chain security” which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;

~~(ee)~~(i) “Cloud Security Principle 9: secure user management” which, amongst other matters, requires the Supplier to make the tools available for the Authority to securely manage the Authority’s use of the Service;

~~(ff)~~(j) “Cloud Security Principle 10: identity and authentication” which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;

~~(gg)~~(k) “Cloud Security Principle 11: external interface protection” which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;

~~(hh)~~(l) “Cloud Security Principle 12: secure service administration” which, amongst other matters, requires that any ICT system which is used for administration of a cloud service will have highly privileged access to that service;

~~(ii)~~(m) “Cloud Security Principle 13: audit information for users” which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data held by the Supplier and/or its Sub-contractors; and

~~(jj)~~(n) “Cloud Security Principle 14: secure use of the service” which, amongst other matters, requires the Supplier to educate Supplier Personnel on the safe and secure use of the Information Management System.

Annex 2: Security Requirements for Sub-Contractors

41. Application of Annex 2

- 1.1 This Annex 2 applies to all Sub-contractors that Process Authority Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex 2;
 - 1.2.2 keep sufficient records to demonstrate that compliance to the Authority; and
 - 1.2.3 ensure that its Implementation Plan includes Deliverable Items, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Authority Data.

22. Designing and managing secure solutions

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

33. Data Processing, Storage, Management and Destruction

- 3.1 The Sub-contractor must not Process any Authority Data outside the [UK]. The Authority may permit the Sub-contractor to Process Authority Data outside the [UK] and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-contractor must when requested to do so by the Authority:
 - 3.2.1 securely destroy Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
 - 3.2.2 satisfy the Authority that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
 - 3.2.3 maintain an asset register of all Authority supplied information, data and equipment to ensure Authority assets are returned and/or deleted.

44. Personnel Security

- 4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security

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Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

- 4.2 The Sub-contractor must, if the Authority requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Authority Data containing Personal Data above certain volumes specified by the Authority, or containing Special Category Personal Data.
- 4.3 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

55. End User Devices

- 5.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Authority Data is Processed in accordance the following requirements:
 - 5.1.1 the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - 5.1.2 users must authenticate before gaining access;
 - 5.1.3 all Authority Data must be encrypted using an encryption tool agreed to by the Authority;
 - 5.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - 5.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Authority Data;
 - 5.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;
 - 5.1.7 all end-user devices are within the scope of any current Cyber Essentials Plus certificate held by the Supplier, 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 Services.
- 5.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.
 - ~~5.1.61.1.1 the Supplier or Sub-contractor, as applicable, can, without physical access to the end user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;~~

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~~5.1.71.1.1 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, 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 Services.~~

~~5.21.1 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.~~

5.3 Where there any conflict between the requirements of this ~~Schedule 5 (Security Management)~~ Schedule 5 (Security Management) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

66. Encryption

6.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Authority Data is encrypted:

6.1.1 when stored at any time when no operation is being performed on it; and

6.1.2 when transmitted.

6.2 Where the Supplier, or a Sub-contractor, cannot encrypt Authority Data the Supplier must:

6.2.1 immediately inform the Authority of the subset or subsets of Authority Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;

6.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to the Authority as encryption; and

6.2.3 provide the Authority with such information relating to the Authority Data concerned, the reasons why that Authority Data cannot be encrypted and the proposed protective measures as the Authority may require.

6.3 The Authority, the Supplier and, where the Authority requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Authority Data.

6.4 Where the Authority and Supplier reach agreement, the Supplier must update the Security Management Plan to include:

6.4.1 the subset or subsets of Authority Data not encrypted and the circumstances in which that will occur; and

6.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Authority Data.

6.5 Where the Authority and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Authority that it could not encrypt certain

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Authority Data, either party may refer the matter to [be determined in accordance with the Dispute Resolution Procedure].

77. Patching and Vulnerability Scanning

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

88. Third Party Sub-contractors

- 8.1 The Sub-contractor must not transmit or disseminate the Authority Data to any other person unless specifically authorised by the Authority. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process the Authority Data where the licence terms of that software purport to grant the licensor rights to Progress the Authority Data greater than those rights strictly necessary for the use of the software.

Annex 3: Security Management Plan Template for ~~Parts A~~ Part A and Part B

Security Management Plan Template

[Project/Service and Supplier Name]

41. Executive Summary

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

22. System Description

2.1 Background

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

2.2 Organisational Ownership/Structure

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

2.3 Information assets and flows

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

2.4 System Architecture

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

2.5 Users

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

2.6 Locations

[Where the data assets are stored and managed from. If any locations hold independent security certifications (e.g. ISO27001 (at least ISO/IEC 27001:2013) these should be noted. Any off-shoring considerations should be detailed.]

2.7 Test and Development Systems

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

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2.8 Key roles and responsibilities

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

33. Risk Assessment

3.1 Accreditation/Assurance Scope

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

3.2 Risk appetite

[A risk appetite should be agreed with the SRO and included here.]

3.3 Business impact assessment

[A description of the information assets and the impact of their loss or corruption (e.g. large amounts of Official Sensitive personal data the loss of which would be severely damaging to individuals, embarrassing to HMG, and make HMG liable to ICO investigations) in business terms should be included. This section should cover the impact on loss of confidentiality, integrity and availability of the assets. The format of this assessment may be dependent on the risk assessment method chosen.]

3.4 Risk assessment

[The content of this section will depend on the risk assessment methodology chosen and for Part B should contain the output of the formal information risk assessment in a prioritised list using business language. Experts on the system and business process should have been involved in the risk assessment to ensure the formal risk methodology used has not missed out any risks. The example table below should be used as the format to identify the risks and document the controls used to mitigate those risks.]

Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
R1	Internet attackers could hack the system.	Medium	The service systems are exposed to the internet via the web portal.	C1: Internet-facing firewalls C2: Internet-facing IP whitelist C3: System hardening C4: Protective monitoring C5: Application access control C16: Anti-virus for incoming files	Very low

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Risk ID	Inherent risk	Inherent risk level	Vulnerability	Controls	Residual risk level
				C54: Files deleted when processed C59: Removal of departmental identifier	
R2	Remote attackers could intercept or disrupt information crossing the internet.	Medium	File sharing with organisations across the internet.	C9: TLS communications C10: PGP file-sharing	Very low
R3	Internal users could maliciously or accidentally alter bank details.	Medium-High	Users bank details can be altered as part of the normal business function.	C12. System administrators hold SC clearance. C13. All changes to user information are logged and audited. C14. Letters are automatically sent to users' home addresses when bank details are altered. C15. Staff awareness training	Low

3.5 Controls

[The controls listed above to mitigate the risks identified should be detailed. There should be a description of each control, further information and configuration details where relevant, and an assessment of the implementation status of, and assurance in, the control. A sample layout is included below.]

ID	Control title	Control description	Further information and assurance status
C1	Internet-facing firewalls	Internet-facing firewalls are in place between the internet and the system', which restrict access from the internet to the required ports only.	Assured via ITHC firewall rule check
C2	Internet-facing IP whitelist	An IP whitelist is in place for all access from the internet.	Assured via ITHC

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ID	Control title	Control description	Further information and assurance status
C15	Staff awareness training	All staff must undertake annual security awareness training and this process is audited and monitored by line managers.	Assured as part of ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification

3.6 Residual risks and actions

[A summary of the residual risks which are likely to be above the risk appetite stated after all controls have been applied and verified should be listed with actions and timescales included.]

44. In-service controls

4.1 [This section should describe the controls relating to the information lifecycle, including development, testing, in-service, termination and on-going risk management and accreditation assurance. Details of any formal assurance requirements specified in the contract such as security CHECK testing or maintained ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification should be included. This section should include at least:

4.1.1 information risk management and timescales and triggers for a review;

4.1.2 contractual patching requirements and timescales for the different priorities of patch;

4.1.3 protective monitoring arrangements to include how anomalous behaviour is identified and acted upon as well as how logging and auditing of user activity is done;

4.1.4 configuration and change management;

4.1.5 incident management;

4.1.6 vulnerability management;

4.1.7 user access management; and

4.1.8 data sanitisation and disposal.]

55. Security Operating Procedures (SyOPs)

5.1 [If needed any SyOps requirements should be included and referenced here.]

66. Major Hardware and Software and end of support dates

6.1 [This should be a table which lists the end of support dates for hardware and software products and components. An example table is shown below.]

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Name	Version	End of mainstream Support/ Extended Support	Notes/RAG Status
Server Host	HP XXXX	Feb 2020/ March 2022	

77. Incident Management Process

7.1 [The suppliers' process, as agreed with the Authority/Customer, should be included here. It must as a minimum include the protocol for how and when incidents will be reported to the Authority/customer and the process that will be undertaken to mitigate the incidents and investigate the root cause.]

88. Security Requirements for User Organisations

8.1 [Any security requirements for connecting organisations or departments should be included or referenced here.]

99. Required Changes Register

9.1 [The table below shows the headings for the Required Changes Register which should be maintained and used to update the contents of this document at least annually.]

Ref	Section	Change	Agreed With	Date agreed	Documentation update	Status
1	6.4	A new Third Party supplier XXXX will be performing the print capability.	Authority name	11/11/2018	Jul-2019	Open

1010. Sub-contractors

10.1 [This should include a table which shows for each Sub-contractor their name, the function that they are performing, the data and data volume being processed, the location, and their certification status]

1111. Annex A. ISO/IEC 27001 (at least ISO/IEC 27001:2013) and/or Cyber Essential Plus certificates

11.1 [Any certifications relied upon should have their certificates included]

1212. Annex B. Cloud Security Principles assessment

12.1 [A spreadsheet may be attached]

1313. Annex C. Protecting Bulk Data assessment if required by the Authority/Customer

13.1 [A spreadsheet may be attached]

1414. Annex D. Latest ITHC report and Remediation Action Plan

Part B: Security Accreditation

201. Definitions

20.11.1 In this Schedule, the following definitions shall apply:

“Accreditation”	means the assessment of the Core Information Management System in accordance with Paragraph 6 by the Authority or an independent information risk manager/professional appointed by the Authority, which results in an Accreditation Decision;
“Accreditation Decision”	means is the decision of the Authority, taken in accordance with the process set out in Paragraph 6, to issue the Supplier with a Residual Risk Statement or a Risk Management Rejection Notice in respect of the Core Information Management System;
“Accreditation Plan”	means the Supplier’s plan to attain a Residual Risk Statement from the Authority, which is prepared by the Supplier and approved by the Authority in accordance with Paragraph 6.6;
“Anti-Malicious Software”	means software that scans for and identifies possible Malicious Software in the IT Environment;
“Breach of Security”	means the occurrence of: (a) any unauthorised access to or use of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System and/or any information or data (including the Confidential Information and the Authority Data) used by the Authority, the Supplier or any Sub-contractor in connection with this Contract; (b) the loss (physical or otherwise) and/or unauthorised disclosure of any information or data (including the Confidential Information and the Authority Data), including copies of such information or data, used by the Authority, the Supplier or any Sub-contractor in connection with this Contract; and/or (c) any part of the Supplier System ceasing to be compliant with the Certification Requirements, in each case as more particularly set out in the security requirements in Schedule 2 (Services Description) Schedule 2 (Services Description) and the Baseline Security Requirements;
“Certification Requirements”	means the requirements set out in Paragraphs 7.1 to 7.8, inclusive;

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“CHECK Service Provider”	means a company which has been certified by the National Cyber Security Centre, holds “Green Light” status and is authorised to provide the IT Health Check services required by the Paragraph 8.1;
“CIMS Sub-contractor”	means a Sub-contractor that provides or operates the whole, or a substantial part, of the Core Information Management System;
“Commercial off the shelf Software” or “COTS Software”	means the Supplier COTS Software and the Third Party COTS Software;
“Core Information Management System”	means those information assets, IT systems and/or Sites which will be used by the Supplier and/or its Sub-contractors to Process Authority Data, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources) which the Authority has determined in accordance with Paragraph 4.2 shall be subject to Accreditation;
“CREST Service Provider”	means a company with a SOC Accreditation from CREST International;
“Cyber Essentials”	means the Cyber Essentials certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Plus”	means the Cyber Essentials Plus certificate issued under the Cyber Essentials Scheme;
“Cyber Essentials Scheme”	means the Cyber Essentials scheme operated by the National Cyber Security Centre;
“Higher Risk Sub-contractor”	means a Sub-contractor that Processes Authority Data, where that data includes either: (a) the Personal Data of 1000 or more individuals in aggregate during the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); or (b) any part of that data includes any of the following: (i) financial information (including any tax and/or welfare information) relating to any person; (ii) any information relating to actual or alleged criminal offences (including criminal records);

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(iii) any information relating to children and/or vulnerable persons;

(iv) any information relating to social care;

(v) any information relating to a person's current or past employment; or

(vi) Special Category Personal Data; or

(c) the Authority in its discretion, designates a Sub-contractor as a Higher Risk Sub-Contractor in any procurement document related to this Contract; or

(d) the Authority considers in its discretion, that any actual or potential Processing carried out by the Sub-contractor is high risk]

[Guidance *note*: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Contract.]

“Information Management System”

means the Core Information Management System and the Wider Information Management System;

“IT Health Check”

has the meaning given Paragraph 8.1.1;

“Medium Risk Sub-contractor”

means a Sub-contractor that Processes Authority Data[, where that data

(a) includes the Personal Data of between 100 and 999 individuals (inclusive) in the period between the first Operational Service Commencement Date and the date on which this Contract terminates in accordance with Clause 4.1(b); and

(b) does not include Special Category Personal Data;]

[Guidance *note*: This definition is provided as an example only and should be modified to take into account the circumstances of the individual Contract.]

“Process”

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

“Remediation Action Plan”

has the meaning given in Paragraph 8.3.3(a);

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“Required Changes Register”	means the register forming part of the Security Management Plan which records each of the changes that the Supplier has agreed with the Authority shall be made to the Core Information Management System and/or the Security Management Plan as a consequence of the occurrence of any of the events set out in Paragraph 6.15.1 together with the date on which each such change shall be implemented and the date on which each such change was implemented;
“Residual Risk Statement”	means a notice issued by the Authority which sets out the information risks associated with using the Core Information Management System and confirms that the Authority is satisfied that the identified risks have been adequately and appropriately addressed and that the residual risks are understood and accepted by the Authority;
“Risk Management Reject Notice”	has the meaning given in Paragraph 6.8.2;
“Security Management Plan”	has the meaning given in Paragraph 6.5;
“Security Test”	has the meaning given Paragraph 8.1; and
“Special Category Personal Data”	means the categories of Personal Data set out in article 9(1) and article 10 of the UK GDPR.
“Statement of Information Risk Appetite”	has the meaning given in Paragraph 5.1;
“Sub-contractor Security Requirements”	means those requirements set out in Annex 2; and
“Wider Information Management System”	means those information assets, IT systems and/or Sites which will be used by the Supplier and/or its Sub-contractors to Process Authority Data which have not been determined by the Authority to form part of the Core Information Management System, together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources).

21.2. Introduction

21.12.1 This Part B of this Schedule sets out:

21.1.12.1.1 the arrangements the Supplier must implement before, and comply with when, providing the Services and performing its other obligations under this Contract to ensure the security of the Authority Data, the IT Environment, the Services and

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the Information Management System;

[21.1.22.1.2](#) the process which shall apply to the Accreditation of the Core Information Management System in Paragraph 6;

[21.1.32.1.3](#) the Certification Requirements applicable to the Wider Information Management System in Paragraph 7;

[21.1.42.1.4](#) the Security Tests which the Supplier shall conduct during the Contract Period in Paragraph 8;

[21.1.52.1.5](#) the Security Tests which the Authority may conduct during the Contract Period in Paragraph 8.6;

[21.1.62.1.6](#) the requirements to patch vulnerabilities in the Core Information Management System in Paragraph 9;

[21.1.72.1.7](#) the obligations on the Supplier to prevent the introduction of Malicious Software into the Information Management System and to scan for, contain the spread of, and minimise the impact of Malicious Software which is introduced into the Information Management System in Paragraph 10; and

[21.1.82.1.8](#) each Party's obligations in the event of an actual or attempted Breach of Security in Paragraph 11.

223. Principles of Security

[22.13.1](#) The Supplier acknowledges that the Authority places great emphasis on the confidentiality, integrity and availability of the Authority Data and, consequently on the security of:

[22.1.13.1.1](#) the Sites;

[22.1.23.1.2](#) the IT Environment;

[22.1.33.1.3](#) the Services; and

[22.1.43.1.4](#) the Core Information Management System.

[22.23.2](#) Notwithstanding the involvement of the Authority in the Accreditation of the Core Information Management System, the Supplier shall be and shall remain responsible for:

[22.2.13.2.1](#) the security, confidentiality, integrity and availability of the Authority Data whilst that Authority Data is under the control of the Supplier or any of its Sub-contractors; and

[22.2.23.2.2](#) the security of the Information Management System.

[22.33.3](#) The Supplier shall:

[22.3.13.3.1](#) comply with the Baseline Security Requirements; and

[22.3.23.3.2](#) ensure that each Sub-contractor that Processes Authority Data complies with the Sub-contractor Security Requirements.

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22.43.4 The [Board Name] established under Paragraph [number] of ~~Schedule 21~~ ~~(Governance)~~ Schedule 21 (Governance) shall, in addition to its responsibilities set out in that Schedule, monitor and may also provide recommendations to the Supplier on the Accreditation of the Core Information Management System.

22.53.5 To facilitate the Supplier's design, implementation, operation, management and continual improvement of the Security Management Plan and the security of the Services and Information Management System and otherwise:

22.5.13.5.1 the Supplier shall provide access to the Supplier Personnel responsible for information assurance; and

22.5.23.5.2 the Authority shall provide access to its personnel responsible for information assurance

in each case at reasonable times on reasonable notice.

234. Information Management System

23.14.1 The Information Management System comprises the Core Information Management System and the Wider Information Management System.

23.24.2 [The component parts of the Core Information Management System and its boundary with the Wider Information Management System are shown in the diagram in Annex 3: Information Management System.]

OR

23.34.3 The Authority shall be responsible for determining the boundary between the Core Information Management System and the Wider Information Management System. In order to enable the Authority to make such determination, the Supplier shall provide the Authority with such documentation and information that the Authority may reasonably require regarding any information assets, IT systems and/or Sites which will be used by the Supplier or any Sub-contractor to Process Authority Data together with the associated information management system (including organisational structure, controls, policies, practices, procedures, processes and resources). The Authority shall notify the Supplier, as soon as reasonably practical following the receipt of such documentation and information, of its decision regarding the component parts of the Core Information Management System and its boundary with the Wider Information Management System. The Supplier shall reproduce the Authority's decision as a diagram documenting the Core Information Management System, the Wider Information Management system and the boundary between the two. This diagram shall form part of the Security Management Plan.]

23.44.4 Any proposed change to the component parts of the Core Information Management System or the boundary between the Core Information Management System and the Wider Information Management System shall be notified and processed in accordance with the Change Control Procedure.

245. Statement of Information Risk Appetite and Baseline Security Requirements

24.15.1 The Supplier acknowledges that the Authority has provided and the Supplier has received a statement of information risk appetite for the Supplier System and the Services (the "Statement of Information Risk Appetite").

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24.25.2 The Authority's Baseline Security Requirements in respect of the Core Information Management System are set out in Annex 1.

256. Accreditation of the Core Information Management System

25.16.1 The Core Information Management System shall be subject to Accreditation in accordance with this Paragraph 6.

25.26.2 The Supplier acknowledges that the purpose of Accreditation is to ensure that:

25.2.16.2.1 the Security Management Plan accurately represents the Core Information Management System;

25.2.26.2.2 the Accreditation Plan, if followed, provides the Authority with sufficient confidence that the CIMS will meet the requirements of the Baseline Security Requirements and the Statement of Risk Appetite; and

25.2.36.2.3 the residual risks of the Core Information Management System are no greater than those provided for in the Statement of Risk Appetite and Baseline Security Requirements.

25.36.3 The Accreditation shall be performed by the Authority or by representatives appointed by the Authority.

25.46.4 In addition to any obligations imposed by ~~Schedule 13 (Implementation Plan) or Schedule 14 (Testing Procedures)~~ Schedule 13 (Implementation Plan) or Schedule 14 (Testing Procedures) the Supplier must ensure that its Detailed Implementation Plan sets out in sufficient detail how it will ensure compliance with the requirements of this ~~Schedule 5 (Security Management)~~, Schedule 5 (Security Management), including any requirements imposed on Sub-contractors by Annex 2, from any relevant Operational Service Commencement Date.

25.56.5 By the date specified in the Detailed Implementation Plan, the Supplier shall prepare and submit to the Authority the risk management documentation for the Core Information Management System, which shall be subject to approval by the Authority in accordance with, this Paragraph 6 (the "**Security Management Plan**").

25.66.6 The Security Management Plan shall be structured in accordance with the template as set out in Annex 3 of Part A and include:

25.6.16.6.1 the Accreditation Plan, which shall include:

4.(a) the dates on which each subsequent iteration of the Security Management Plan will be delivered to the Authority for review and staged approval; and

~~(kk)~~(b) the date by which the Supplier is required to have received a Residual Risk Statement from the Authority together with details of each of the tasks which must be completed by the Supplier, Milestones which must be Achieved and the Authority Responsibilities which must be completed in order for the Supplier to receive a Residual Risk Statement pursuant to Paragraph 6.11;

25.6.26.6.2 a formal risk assessment of the Core Information Management System and a risk treatment plan for the Core Information Management System;

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~~25-6-36.6.3~~ 25-6-36.6.3 a completed ISO/IEC 27001 (at least ISO/IEC 27001:2013) Statement of Applicability for the Core Information Management System; the process for managing any security risks from Sub-contractors and third parties authorised by the Authority with access to the Services, processes associated with the delivery of the Services, the Authority Premises, the Sites, the Supplier System, the Authority System (to extent that it is under the control of the Supplier) and any IT, Information and data (including the Confidential Information of the Authority and the Authority Data) and any system that could directly or indirectly have an impact on that Information, data and/or the Services;

~~25-6-46.6.4~~ 25-6-46.6.4 unless such requirement is waived by the Authority, proposed controls that will be implemented in respect of all aspects of the Services and all processes associated with the delivery of the Services, including the Authority Premises, the Sites, the Supplier System, the Authority System (to the extent that it is under the control of the Supplier) and any IT, Information and data (including the Confidential Information of the Authority and the Authority Data) to the extent used by the Authority or the Supplier in connection with this Contract or in connection with any system that could directly or indirectly have an impact on that Information, data and/or the Services;

~~25-6-56.6.5~~ 25-6-56.6.5 the Required Changes Register;

~~25-6-66.6.6~~ 25-6-66.6.6 evidence that the Supplier and each applicable Sub-contractor is compliant with the Certification Requirements; and

~~25-6-76.6.7~~ 25-6-76.6.7 the diagram documenting the Core Information Management System, the Wider Information Management System and the boundary between them [created under Paragraph 4.2 OR contained in Annex 3: Information Management System].

~~25-76.7~~ 25-76.7 To facilitate Accreditation of the Core Information Management System, the Supplier shall provide the Authority and its authorised representatives with:

~~25-7-16.7.1~~ 25-7-16.7.1 access to the Sites, ICT information assets and ICT systems within the Core Information Management System on request or in accordance with the Accreditation Plan; and

~~25-7-26.7.2~~ 25-7-26.7.2 such other information and/or documentation that the Authority or its authorised representatives may reasonably require, to enable the Authority to establish that the Core Information Management System is compliant with the Security Management Plan.

~~25-86.8~~ 25-86.8 The Authority shall, by the relevant date set out in the Accreditation Plan, review the Security Management Plan and issue to the Supplier either:

~~25-8-16.8.1~~ 25-8-16.8.1 a Residual Risk Statement which will then form part of the Security Management Plan, confirming that the Authority is satisfied that the identified risks to the Core Information Management System have been adequately and appropriately addressed and that the residual risks are understood and accepted by the Authority; or

~~25-8-26.8.2~~ 25-8-26.8.2 a rejection notice stating that the Authority considers that the identified risks to the Core Information Management System have not been adequately or appropriately addressed, or the residual risks to the Core Information Management System

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have not been reduced to the level anticipated by the Statement of Information Risk Appetite, and the reasons why (“Risk Management Rejection Notice”).

25-96.9 If the Authority issues a Risk Management Rejection Notice, the Supplier shall, within 20 Working Days of the date of the Risk Management Rejection Notice:

25-9-16.9.1 address all of the issues raised by the Authority in such notice;

25-9-26.9.2 update the Security Management Plan, as appropriate, and

25-9-36.9.3 notify the Authority that the Core Information Management System is ready for an Accreditation Decision.

25-106.10 If the Authority issues a two or more Risk Management Rejection Notices, the failure to receive a Residual Risk Statement shall constitute a material Default and the Authority may terminate this Contract with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 31.1(b).

25-116.11 Subject to Paragraph 6.10, the process set out in Paragraphs 6.8 to 6.10 shall be repeated until such time as the Authority issues a Residual Risk Statement to the Supplier or terminates this Contract.

25-126.12 The Supplier shall not use the Core Information Management System to Process Authority Data before receiving a Residual Risk Statement.

25-136.13 The Supplier shall keep the Core Information Management System and Security Management Plan under review and shall update the Security Management Plan annually in accordance with this Paragraph and the Authority shall review the Accreditation Decision annually and following the occurrence of any of the events set out in Paragraph 6.15.

25-146.14 The Supplier shall notify the Authority within **[2]** Working Days after becoming aware of:

25-14-16.14.1 a significant change, or a significant planned change, to the components or architecture of the Core Information Management System;

25-14-26.14.2 a new risk or vulnerability is identified to the components or architecture of the Core Information Management System;

25-14-36.14.3 a change in the threat profile;

25-14-46.14.4 a Sub-contractor failure to comply with the Core Information Management System code of connection;

25-14-56.14.5 a significant change to any risk component;

25-14-66.14.6 a significant change in the quantity of Personal Data held within the Core Information Management System;

25-14-76.14.7 where the Supplier has previously Processed Personal Data that does not include Special Category Personal Data, it starts to, or proposes to start to, Process Special Category Personal Data under this Contract;

25-14-86.14.8 a proposal to change any of the Sites from which any part of the Services are provided; and/or

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~~25.14.96.14.9~~ an ISO/IEC 27001 (at least ISO/IEC 27001:2013) audit report produced in connection with the Certification Requirements indicates significant concerns; and

~~25.14.106.14.10~~ update the Required Changes Register and provide the updated Required Changes Register to the Authority for review and approval within [10] Working Days after the initial notification or such other timescale as may be agreed with the Authority.

~~25.156.15~~ If the Supplier fails to implement a change set out in the Required Changes Register by the date agreed with the Authority, such failure shall constitute a material Default and the Supplier shall:

~~25.15.16.15.1~~ immediately cease using the Core Information Management System to Process Authority Data until the Default is remedied, unless directed otherwise by the Authority in writing and then it may only continue to Process Authority Data in accordance with the Authority's written directions; and

~~25.15.26.15.2~~ where such Default is capable of remedy, the Supplier shall remedy such Default within the timescales set by the Authority and, should the Supplier fail to remedy the Default within such timescales, the Authority may terminate this Contract with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause ~~1331~~.1(b).

~~25.166.16~~ The Supplier shall review each Change Request against the Security Management Plan to establish whether the documentation would need to be amended should such Change Request be agreed and, where a Change Request would require an amendment to the Security Management Plan, the Supplier shall set out any proposed amendments to the documentation in the Impact Assessment associated with such Change Request for consideration and approval by the Authority.

~~25.176.17~~ The Supplier shall be solely responsible for the costs associated with developing and updating the Security Management Plan and carrying out any remedial action required by the Authority as part of the Accreditation process.

267. Certification Requirements

~~26.17.1~~ The Supplier shall ensure, at all times during the Term, that it is certified as compliant with:

~~26.1.17.1.1~~ ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service (UKAS)-approved certification body or are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); and

~~26.1.27.1.2~~ Cyber Essentials Plus,

and shall provide the Authority with a copy of each such certificate of compliance before the Supplier shall be permitted to use the Core Information Management System to receive or Process Authority Data.

~~26.27.2~~ Notwithstanding anything else in this Contract, a CIMS Sub-contractor shall be treated for all purposes as a Key Sub-contractor.

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26-37.3 In addition to the obligations contained in Clause 15, the Supplier must ensure that the Key Subcontract with each CIMS Sub-contractor:

26-3-17.3.1 contains obligations no less onerous on the Key Sub-contractor than those imposed on the Supplier under this ~~Schedule 5 (Security Management)~~; Schedule 5 (Security Management); but

26-3-27.3.2 provides for the Authority to perform Accreditation of any part of the Core Information Management System that the CIMS Sub-contractor provides or operates which is not otherwise subject to Accreditation under this ~~Schedule 5 (Security Management)~~. Schedule 5 (Security Management).

26-47.4 The Supplier shall ensure that each Higher Risk Sub-contractor is certified as compliant with either:

26-4-17.4.1 ISO/IEC 27001 (at least ISO/IEC 27001:2013) by a UK Accreditation Service (UKAS)-approved certification body or is included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013); or

26-4-27.4.2 Cyber Essentials Plus,

and shall provide the Authority with a copy of each such certificate of compliance before the Higher-Risk Sub-contractor shall be permitted to receive or Process Authority Data.

26-57.5 The Supplier shall ensure that each Medium Risk Sub-contractor is certified compliant with Cyber Essentials.

26-67.6 The Supplier shall ensure that the Supplier and each Sub-contractor who is responsible for the secure destruction of Authority Data:

26-6-17.6.1 securely destroys Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);

26-6-27.6.2 should satisfy the Authority that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and

26-6-37.6.3 must maintain an asset register of all Authority supplied information, data and equipment to ensure Authority assets are returned and/or deleted.

26-77.7 The Supplier shall provide the Authority with evidence of its and its Sub-contractor's compliance with the requirements set out in this Paragraph before the Supplier or the relevant Sub-contractor (as applicable) shall be permitted to carry out the secure destruction of the Authority Data.

26-87.8 The Supplier shall notify the Authority as soon as reasonably practicable and, in any event within 2 Working Days, if the Supplier or any Sub-contractor ceases to be compliant with the Certification Requirements and shall or shall procure that the relevant Sub-contractor shall:

26-8-17.8.1 immediately ceases receiving or Processing Authority Data; and

26-8-27.8.2 procure that the relevant Sub-contractor promptly returns, destroys and/or erases the Authority Data in accordance with Baseline Security Requirements.

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~~26.97.9~~ The Authority may agree to exempt in whole or part the Supplier or any Sub-contractor from the Certification Requirements. Any exemption must be in writing to be effective. The Supplier must include the exemption in the Security Management Plan.

278. Security Testing

~~27.18.1~~ The Supplier shall, at its own cost and expense:

~~27.1.18.1.1~~ procure testing of the Core Information Management System by a CHECK Service Provider or a CREST Service Provider (an “IT Health Check”):

~~1.(a)~~ prior to it submitting the Security Management Plan to the Authority for an Accreditation Decision;

~~(#)(b)~~ before the Supplier is given permission by the Authority to Process or manage any Authority Data;

~~(mm)(c)~~ if directed to do so by the Authority; and

~~(nn)(d)~~ once every 12 months during the Term.

~~27.1.28.1.2~~ conduct vulnerability scanning and assessments of the Core Information Management System monthly;

~~27.1.38.1.3~~ conduct an assessment as soon as reasonably practicable following receipt by the Supplier or any of its Sub-contractors of a critical vulnerability alert from a supplier of any software or other component of the Core Information Management System to determine whether the vulnerability affects the Core Information Management System; and

~~27.1.48.1.4~~ conduct such other tests as are required by:

~~1.(a)~~ any Remediation Action Plans;

~~(oo)(b)~~ the ISO/IEC 27001 (at least ISO/IEC 27001:2013) certification requirements;

~~(pp)(c)~~ the Security Management Plan; and

~~(qq)(d)~~ the Authority following a Breach of Security or a significant change to the components or architecture of the Core Information Management System,

(each a “Security Test”).

~~27.28.2~~ The Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable, and in any case within 10 Working Days, after completion of each Security Test.

~~27.38.3~~ In relation to each IT Health Check, the Supplier shall:

~~27.3.18.3.1~~ agree with the Authority the aim and scope of the IT Health Check;

~~27.3.28.3.2~~ promptly, and in any case no later than [10] Working Days, following receipt of each IT Health Check report, provide the Authority with a copy of the IT Health

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Check report;

~~27.3.38.3.3~~ in the event that the IT Health Check report identifies any vulnerabilities, the Supplier shall:

~~1.~~(a) prepare a remedial plan for approval by the Authority (each a “**Remediation Action Plan**”) which sets out in respect of each vulnerability identified in the IT Health Check report:

~~(#)~~(b) how the vulnerability will be remedied;

~~(ss)~~(c) unless otherwise agreed in writing between the Parties, the date by which the vulnerability will be remedied, which must be:

~~(##)~~(d) within three months of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “medium”;

~~(uu)~~(e) within one month of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “high”; and

~~(vv)~~(f) within 7 Working Days of the date the Supplier received the IT Health Check report in the case of any vulnerability categorised with a severity of “critical”;

~~(ww)~~(g) the tests which the Supplier shall perform or procure to be performed (which may, at the discretion of the Authority, include a further IT Health Check) to confirm that the vulnerability has been remedied;

~~(xx)~~(h) comply with the Remediation Action Plan; and

~~(yy)~~(i) conduct such further Security Tests on the Core Information Management System to provide independent evidence that the Supplier has complied with the Remediation Action Plan.

~~27.48.4~~ The Security Tests shall be designed and implemented by the Supplier so as to minimise the impact on the delivery of the Services and the date, timing, content and conduct of such Security Tests shall be agreed in advance with the Authority. Subject to the Supplier complying with this Paragraph 8.4, if a Security Test causes a Performance Failure in a particular Measurement Period, the Supplier shall be granted relief in respect of such Performance Failure for that Measurement Period.

~~27.58.5~~ The Authority shall be entitled to send a representative to witness the conduct of the Security Tests. Without prejudice to the Supplier’s obligations under Paragraph 8.3, the Supplier shall provide the Authority with the results of such Security Tests (in a form approved by the Authority in advance) as soon as practicable, and in any case no later than 10 Working Days, after completion of each Security Test.

~~27.68.6~~ The Authority and/or its authorised representatives shall be entitled, at any time and without giving notice to the Supplier, to carry out such tests (including penetration tests) as it may deem necessary in relation to the Service, the Information Management System and/or the Supplier’s compliance with the Security Management Plan (“**Authority Security Tests**”). The Authority shall take reasonable steps to notify the

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Supplier prior to carrying out such Authority Security Test to the extent that it is reasonably practicable for it to do so taking into account the nature of the Authority Security Test.

27.78.7 The Authority shall notify the Supplier of the results of such Authority Security Tests after completion of each Authority Security Test.

27.88.8 The Authority Security Tests shall be designed and implemented so as to minimise their impact on the delivery of the Services. If an Authority Security Test causes Supplier Non-Performance, the Authority Security Test shall be treated as an Authority Cause, except where the root cause of the Supplier Non-Performance was a weakness or vulnerability exposed by the Authority Security Test.

27.98.9 Without prejudice to the provisions of Paragraph 8.3.3, where any Security Test carried out pursuant to this Paragraph 8 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 Authority of any changes to the Core Information Management System and/or 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 Authority's prior written approval, the Supplier shall implement such changes to the Core Information Management System and/or the Security Management Plan and repeat the relevant Security Tests in accordance with the timetable agreed with the Authority or, otherwise, as soon as reasonably possible.

27.108.10 If the Authority unreasonably withholds its approval to the implementation of any changes proposed by the Supplier to the Security Management Plan in accordance with Paragraph 8.8 above, the Supplier shall not be deemed to be in breach of this Contract to the extent it can be shown that such breach:

27.10.18.10.1 has arisen as a direct result of the Authority unreasonably withholding its approval to the implementation of such proposed changes; and

27.10.28.10.2 would have been avoided had the Authority given its approval to the implementation of such proposed changes.

27.118.11 For the avoidance of doubt, where a change to the Core Information Management System and/or the Security Management Plan is required to remedy non-compliance with the Risk Management Documentation, the Baseline Security Requirements and/or any obligation in this Contract, the Supplier shall effect such change at its own cost and expense.

27.128.12 If any repeat Security Test carried out pursuant to Paragraph 8.9 reveals an actual or potential Breach of Security or weakness exploiting the same root cause failure, such circumstance shall constitute a material Default and the Authority may by terminate this Contract with immediate effect by issuing a Termination Notice to the Supplier in accordance with Clause 31.1(b).

27.138.13 The Supplier shall, by [31 March] of each year during the Term, provide to the Authority a letter from its chief executive officer (or equivalent officer) confirming that having made due and careful enquiry:

27.13.18.13.1 the Supplier has in the previous year carried out all tests and has in place all procedures required in relation to security matters under this Contract; and

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~~27.13.28.13.2~~ the Supplier is confident that its security and risk mitigation procedures with respect to the Services remain effective.

289. Vulnerabilities and Corrective Action

~~28.19.1~~ The Authority and the Supplier acknowledge that from time to time vulnerabilities in the Information Management System will be discovered which unless mitigated will present an unacceptable risk to the Authority Data.

~~28.29.2~~ The severity of vulnerabilities for Supplier COTS Software and Third Party COTS Software shall be categorised by the Supplier as 'Critical', 'Important' and 'Other' by aligning these categories to the vulnerability scoring according to the agreed method in the Security Management Plan and using the appropriate vulnerability scoring systems including:

~~28.2.19.2.1~~ the 'National Vulnerability Database' 'Vulnerability Severity Ratings': 'High', 'Medium' and 'Low' respectively (these in turn are aligned to CVSS scores as set out by NIST at <http://nvd.nist.gov/cvss.cfm>); and

~~28.2.29.2.2~~ Microsoft's 'Security Bulletin Severity Rating System' ratings 'Critical', 'Important', and the two remaining levels ('Moderate' and 'Low') respectively.

~~28.39.3~~ Subject to Paragraph 9.4, the Supplier shall procure the application of security patches to vulnerabilities in the Core Information Management System within:

~~28.3.19.3.1~~ seven (7) days after the public release of patches for those vulnerabilities categorised as 'Critical';

~~28.3.29.3.2~~ thirty (30) days after the public release of patches for those vulnerabilities categorised as 'Important'; and

~~28.3.39.3.3~~ sixty (60) days after the public release of patches for those vulnerabilities categorised as 'Other'.

~~28.49.4~~ The timescales for applying patches to vulnerabilities in the Core Information Management System set out in Paragraph 9.3 shall be extended where:

~~28.4.19.4.1~~ the Supplier can demonstrate that a vulnerability in the Core Information Management System is not exploitable within the context of the Services (e.g. because it resides in a Software component which is not involved in running in the Services) provided such vulnerabilities shall be remedied by the Supplier within the timescales set out in Paragraph 9.3 if the vulnerability becomes exploitable within the context of the Services;

~~28.4.29.4.2~~ the application of a 'Critical' or 'Important' security patch adversely affects the Supplier's ability to deliver the Services in which case the Supplier shall be granted an extension to such timescales of five (5) days, provided the Supplier had followed and continues to follow the security patch test plan agreed with the Authority; or

~~28.4.39.4.3~~ the Authority agrees a different maximum period after a case-by-case consultation with the Supplier under the processes defined in the Security Management Plan.

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~~28-59.5~~ The Security Management Plan shall include provisions for major version upgrades of all Supplier COTS Software and Third Party COTS Software to be kept up to date such that all Supplier COTS Software and Third Party COTS Software are always with support throughout the Term unless otherwise agreed by the Authority in writing.

~~28-69.6~~ The Supplier shall:

~~28-6-19.6.1~~ implement a mechanism for receiving, analysing and acting upon threat information supplied by NCSC, or any other competent ~~Central Government~~Crown Body;

~~28-6-29.6.2~~ promptly notify NCSC of any actual or sustained attempted Breach of Security;

~~28-6-39.6.3~~ ensure that the Core Information Management System is monitored to facilitate the detection of anomalous behaviour that would be indicative of system compromise;

~~28-6-49.6.4~~ ensure it is knowledgeable about the latest trends in threat, vulnerability and exploitation that are relevant to the Core Information Management System by actively monitoring the threat landscape during the Term;

~~28-6-59.6.5~~ pro-actively scan the Core Information Management System for vulnerable components and address discovered vulnerabilities through the processes described in the Security Management Plan;

~~28-6-69.6.6~~ from the date specified in the Accreditation Plan and within 5 Working Days of the end of each subsequent month during the Term, provide the Authority with a written report which details both patched and outstanding vulnerabilities in the Core Information Management System, the 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 and any failure to comply with the timescales set out in Paragraph 9.3 for applying patches to vulnerabilities in the Core Information Management System;

~~28-6-79.6.7~~ propose interim mitigation measures to vulnerabilities in the Core Information Management System known to be exploitable where a security patch is not immediately available;

~~28-6-89.6.8~~ 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 Core Information Management System); and

~~28-6-99.6.9~~ inform the Authority when it becomes aware of any new threat, vulnerability or exploitation technique that has the potential to affect the security of the Core Information Management System and provide initial indications of possible mitigations.

~~28-79.7~~ If the Supplier is unlikely to be able to mitigate the vulnerability within the timescales under Paragraph 10, the Supplier shall immediately notify the Authority.

~~28-89.8~~ If the Supplier fails to patch vulnerabilities in the Core Information Management System in accordance with Paragraph 9.3, such failure shall constitute a material Default and the Authority may by terminate this Contract with immediate effect by issuing a Termination Notice to the Supplier. Supplier in accordance with Clause 31.1(b).

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2910. Malicious Software

~~29.1~~10.1 The Supplier shall install and maintain Anti-Malicious Software or procure that Anti-Malicious Software is installed and maintained on any part of the Information Management System which may Process Authority Data and ensure that such Anti-Malicious Software is configured to perform automatic software and definition updates as well as regular scans of the Information Management System to check for, prevent the introduction of Malicious Software or where Malicious Software has been introduced into the Information Management System, to identify, contain the spread of, and minimise the impact of Malicious Software.

~~29.2~~10.2 If Malicious Software is found, the Parties shall cooperate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Authority Data, assist each other to mitigate any Losses and to restore the Services to their desired operating efficiency.

~~29.3~~10.3 any cost arising out of the actions of the Parties taken in compliance with the provisions of Paragraph 10.2 shall be borne by the Parties as follows:

~~29.3.1~~10.3.1 by the Supplier where the Malicious Software originates from:

~~4.(a)~~ the Supplier Software;

~~(zz)(b)~~ the Third-Party Software supplied by the Supplier; or

~~(aaa)(c)~~ the Authority Data whilst the Authority Data is or was under the control of the Supplier,

unless, in the case of the Authority Data, the Supplier can demonstrate that such Malicious Software was present in the Authority Data and not quarantined or otherwise identified by the Authority when the Authority provided the Authority Data to the Supplier; and

~~29.3.2~~10.3.2 otherwise by the Authority.

3011. Breach of Security

~~30.1~~11.1 If either Party becomes aware of a Breach of Security or an attempted Breach of Security it shall notify the other in accordance with the security incident management process as set out in the Security Management Plan.

~~30.2~~11.2 The security incident management process set out in the Security Management Plan shall, as a minimum, require the Supplier upon becoming aware of a Breach of Security or an attempted Breach of Security to:

~~30.2.1~~11.2.1 immediately take all reasonable steps (which shall include any action or changes reasonably required by the Authority which shall be completed within such timescales as the Authority may reasonably require) necessary to:

~~4.(a)~~ minimise the extent of actual or potential harm caused by such Breach of Security;

~~(bbb)(b)~~ remedy such Breach of Security to the extent possible and protect the integrity of the Information Management System against any such potential or attempted Breach of Security;

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~~(ccc)~~(c) _____ apply a tested mitigation against any such Breach of Security or potential 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 deliver the Services so as to meet any Performance Indicator, the Supplier shall be granted relief against the failure to meet such affected Performance Indicator for such period as the Authority, acting reasonably, may specify by written notice to the Supplier; and

~~(ddd)~~(d) _____ prevent a further Breach of Security or attempted Breach of Security in the future exploiting the same root cause failure;

~~30.2.211.2.2~~ as soon as reasonably practicable and, in any event, within 2 Working Days, following the Breach of Security or attempted Breach of Security, provide to the Authority full details of the Breach of Security or attempted Breach of Security, including a root cause analysis where required by the Authority.

~~30.311.3~~ _____ In the event that any action is taken in response to a Breach of Security or attempted Breach of Security which occurred as a result of non-compliance of the Information Management System and/or the Security Management Plan with the Baseline Security Requirements and/or this Contract, then such action and any required change to the Information Management System and/or Security Management Plan shall be completed by the Supplier at no cost to the Authority.

~~30.411.4~~ _____ If the Supplier fails to comply with its obligations set out in this Paragraph 11, such failure shall constitute a material Default, which if not remedied to the satisfaction of the Authority, shall permit the Authority to terminate this Contract in accordance with Clause 31.1(b) with immediate effect by issuing a Termination Notice to the Supplier.

3112. Data Processing, Storage, Management and Destruction

~~31.112.1~~ _____ In addition to the obligations on the Supplier set out Clause 21 in respect of Processing Personal Data and compliance with the Data Protection Legislation, the Supplier shall:

~~31.1.112.1.1~~ Process Authority Data only in the [UK], except where the Authority has given its consent in writing to a transfer of the Authority Data to such other country;

~~31.1.212.1.2~~ on demand, provide the Authority with all Authority Data in an agreed open format;

~~31.1.312.1.3~~ have documented processes to guarantee availability of Authority Data in the event of the Supplier ceasing to trade;

~~31.1.412.1.4~~ securely erase any or all Authority Data held by the Supplier when requested to do so by the Authority other than in relation to Authority Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers; and

~~31.1.512.1.5~~ securely destroy all media that has held Authority Data at the end of life of that media in accordance with any specific requirements in this Contract and, in the absence of any such requirements, as directed by the Authority other than in relation to Authority Data which is owned or licenced by the Supplier or in respect of which the Parties are either Independent Controllers or Joint Controllers.

Annex 1: Baseline Security Requirements

41. Security Classification of Information

- 1.1 If the provision of the Services requires the Supplier to Process Authority Data which is classified as:
 - 1.1.1 OFFICIAL-SENSITIVE, the Supplier shall implement such additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards; and/or
 - 1.1.2 SECRET or TOP SECRET, the Supplier shall only do so where it has notified the Authority prior to receipt of such Authority Data and the Supplier shall implement additional measures as agreed with the Authority from time to time in order to ensure that such information is safeguarded in accordance with the applicable Standards.

22. End User Devices

- 2.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Authority Data is Processed in accordance the following requirements:
 - 2.1.1 the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - 2.1.2 users must authenticate before gaining access;
 - 2.1.3 all Authority Data must be encrypted using an encryption tool agreed to by the Authority;
 - 2.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - 2.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Authority Data;
 - 2.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;
 - 2.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, 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 Services.
- 2.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.

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~~2.1.61.1.1 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;~~

~~2.1.71.1.1 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, 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 Services.~~

~~2.21.1 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.~~

2.3 Where there any conflict between the requirements of this ~~Schedule 5 (Security Management)~~ Schedule 5 ~~(Security Management)~~ and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

33. Encryption

3.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Authority Data is encrypted:

3.1.1 when stored at any time when no operation is being performed on it; and

3.1.2 when transmitted.

3.2 Where the Supplier, or a Sub-contractor, cannot encrypt Authority Data the Supplier must:

3.2.1 immediately inform the Authority of the subset or subsets of Authority Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;

3.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to the Authority as encryption; and

3.2.3 provide the Authority with such information relating to the Authority Data concerned, the reasons why that Authority Data cannot be encrypted and the proposed protective measures as the Authority may require.

3.3 The Authority, the Supplier and, where the Authority requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Authority Data.

3.4 Where the Authority and Supplier reach agreement, the Supplier must update the Security Management Plan to include:

3.4.1 the subset or subsets of Authority Data not encrypted and the circumstances in which that will occur; and

3.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Authority Data.

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- 3.5 Where the Authority and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Authority that it could not encrypt certain Authority Data, either party may refer the matter to **[be determined in accordance with the Dispute Resolution Procedure]**.

44. Personnel Security

- 4.1 All Supplier Staff shall be subject to a pre-employment check before they may participate in the provision and or management of the Services. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record.
- 4.2 The Authority and the Supplier shall review the roles and responsibilities of the Supplier Staff who will be involved in the management and/or provision of the Services in order to enable the Authority to determine which roles require additional vetting and a specific national security vetting clearance (e.g. a Counter Terrorist Check; a Security Check). Roles which are likely to require additional vetting and a specific national security vetting clearance include system administrators whose role would provide those individuals with privileged access to IT systems which Process Authority Data or data which, if it were Authority Data, would be classified as OFFICIAL-SENSITIVE.
- 4.3 The Supplier shall not permit Supplier Staff who fail the security checks required by Paragraphs 4.1 and 4.2 to be involved in the management and/or provision of the Services except where the Authority has expressly agreed in writing to the involvement of the named individual in the management and/or provision of the Services.
- 4.4 The Supplier shall ensure that Supplier Staff are only granted such access to Authority Data as is necessary to enable the Supplier Staff to perform their role and to fulfil their responsibilities.
- 4.5 The Supplier shall ensure that Supplier Staff who no longer require access to the Authority Data (e.g. they cease to be employed by the Supplier or any of its Sub-contractors), have their rights to access the Authority Data revoked within 1 Working Day.
- 4.6 The Supplier shall ensure that Supplier Staff that have access to the Sites, the IT Environment or the Authority Data receive regular training on security awareness that reflects the degree of access those individuals have to the Sites, the IT Environment or the Authority Data.
- 4.7 The Supplier shall ensure that the training provided to Supplier Staff under Paragraph 4.6 includes training on the identification and reporting fraudulent communications intended to induce individuals to disclose Personal Data or any other information that could be used, including in combination with other Personal Data or information, or with other techniques, to facilitate unauthorised access to the Sites, the IT Environment or the Authority Data ("phishing").

55. Identity, Authentication and Access Control

- 5.1 The Supplier shall operate an access control regime to ensure:

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- 5.1.1 all users and administrators of the Supplier System are uniquely identified and authenticated when accessing or administering the Services; and
- 5.1.2 all persons who access the Sites are identified and authenticated before they are allowed access to the Sites.
- 5.2 The Supplier shall apply the 'principle of least privilege' when allowing persons access to the Supplier System and Sites so that such persons are allowed access only to those parts of the Sites and the Supplier System they require.
- 5.3 The Supplier shall retain records of access to the Sites and to the Supplier System and shall make such record available to the Authority on request.

66. Audit and Protective Monitoring

- 6.1 The Supplier shall collect audit records which relate to security events in Core Information Management System or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Supplier audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the Core Information Management System, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Authority Data.
- 6.2 In addition to any requirement in Clause 37.3, the Supplier shall
 - 6.2.1 Implement audit and monitoring of the Core Information Management System sufficient to comply with any applicable Relevant Requirements and to prevent or detect any Prohibited Act;
 - 6.2.2 Keep sufficient records to demonstrate compliance with the requirements of Paragraph 6.2.1 to the Authority; and
 - 6.2.3 Make those records and any documents describing the audit and monitoring undertaken to the Authority on request.
- 6.3 The Supplier and the Authority shall work together to establish any additional audit and monitoring requirements for the Core Information Management System.
- 6.4 The retention periods for audit records and event logs must be agreed with the Authority and documented in the Security Management Plan.

77. Secure Architecture

- 7.1 The Supplier shall design the Core Information Management System in accordance with:
 - 7.1.1 the NCSC "Security Design Principles for Digital Services", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/security-design-principles-digital-services-main>;
 - 7.1.2 the NCSC "Bulk Data Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/protecting-bulk-personal-data-main>; and
 - 7.1.3 the NSCS "Cloud Security Principles", a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/implementing-cloud-security-principles> and

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which are summarised below:

- ~~4~~(a) “Cloud Security Principle 1: data in transit protection” which, amongst other matters, requires that user data transiting networks should be adequately protected against tampering and eavesdropping;
- ~~(eee)~~(b) “Cloud Security Principle 2: asset protection and resilience” which, amongst other matters, requires that user data, and the assets storing or processing it, should be protected against physical tampering, loss, damage or seizure;
- ~~(fff)~~(c) “Cloud Security Principle 3: separation between users” which, amongst other matters, requires that a malicious or compromised user of the service should not be able to affect the service or data of another;
- ~~(ggg)~~(d) “Cloud Security Principle 4: governance framework” which, amongst other matters, requires that the Supplier should have a security governance framework which coordinates and directs its management of the Services and information within it;
- ~~(hhh)~~(e) “Cloud Security Principle 5: operational security” which, amongst other matters, requires that the Services need to be operated and managed securely in order to impede, detect or prevent a Breach of Security;
- ~~(iii)~~(f) “Cloud Security Principle 6: personnel security” which, amongst other matters, requires that where Supplier Staff have access to Authority Data and/or the Authority System that those personnel be subject to appropriate security screening and regular security training;
- ~~(jjj)~~(g) “Cloud Security Principle 7: secure development” which, amongst other matters, requires that the Services be designed and developed to identify and mitigate threats to their security;
- ~~(kkk)~~(h) “Cloud Security Principle 8: supply chain security” which, amongst other matters, requires the Supplier to ensure that appropriate security controls are in place with its Sub-contractors and other suppliers;
- ~~(lll)~~(i) “Cloud Security Principle 9: secure user management” which, amongst other matters, requires the Supplier to make the tools available for the Authority to securely manage the Authority’s use of the Service;
- ~~(mmm)~~(j) “Cloud Security Principle 10: identity and authentication” which, amongst other matters, requires the Supplier to implement appropriate controls in order to ensure that access to Service interfaces is constrained to authenticated and authorised individuals;
- ~~(nnn)~~(k) “Cloud Security Principle 11: external interface protection” which, amongst other matters, requires that all external or less trusted interfaces with the Services should be identified and appropriately defended;
- ~~(ooo)~~(l) “Cloud Security Principle 12: secure service administration” which, amongst other matters, requires that any IT system which is used for administration of a cloud service will have highly privileged access to that service;

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~~(ppp)~~(m) “Cloud Security Principle 13: audit information for users” which, amongst other matters, requires the Supplier to be able to provide the Authority with the audit records it needs to monitor access to the Service and the Authority Data held by the Supplier and/or its Sub-contractors;

~~(qqq)~~(n) “Cloud Security Principle 14: secure use of the service” which, amongst other matters, requires the Supplier to educate Supplier Staff on the safe and secure use of the Information Management System.

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Annex 2: Security Requirements for Sub-Contractors

41. Application of Annex 2

- 1.1 This Annex 2 applies to all Sub-contractors that Process Authority Data.
- 1.2 The Supplier must:
 - 1.2.1 ensure that those Sub-contractors comply with the provisions of this Annex 2;
 - 1.2.2 keep sufficient records to demonstrate that compliance to the Authority; and
 - 1.2.3 ensure that its Detailed Implementation Plan includes Deliverables, Milestones and Milestone Dates that relate to the design, implementation and management of any systems used by Sub-contractors to Process Authority Data.

22. Designing and managing secure solutions

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

33. Data Processing, Storage, Management and Destruction

- 3.1 The Sub-contractor must not Process any Authority Data outside the [UK]. The Authority may permit the Sub-contractor to Process Authority Data outside the [UK] and may impose conditions on that permission, with which the Sub-contractor must comply. Any permission must be in writing to be effective.
- 3.2 The Sub-contractor must when requested to do so by the Authority:
 - 3.2.1 securely destroy Authority Data only on Sites which are included within the scope of an existing certification of compliance with ISO/IEC 27001 (at least ISO/IEC 27001:2013);
 - 3.2.2 satisfy the Authority that their data destruction/deletion practices comply with UK GDPR requirements and follows all relevant NCSC guidance; and
 - 3.2.3 maintain an asset register of all Authority supplied information, data and equipment to ensure Authority assets are returned and/or deleted.

44. Personnel Security

- 4.1 The Sub-contractor must perform appropriate checks on their staff before they may participate in the provision and or management of the Services. Those checks must include all pre-employment checks required by the HMG Baseline Personnel Security

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Standard including: verification of the individual's identity; verification of the individual's nationality and immigration status; verification of the individual's employment history; and verification of the individual's criminal record. The HMG Baseline Personnel Security Standard is at <https://www.gov.uk/government/publications/government-baseline-personnel-security-standard>.

- 4.2 The Sub-contractor must, if the Authority requires, at any time, ensure that one or more of the Sub-contractor's staff obtains Security Check clearance in order to Process Authority Data containing Personal Data above certain volumes specified by the Authority, or containing Special Category Personal Data.
- 4.3 Any Sub-contractor staff who will, when performing the Services, have access to a person under the age of 18 years must undergo Disclosure and Barring Service checks.

55. End User Devices

- 5.1 The Supplier must manage, and must ensure that all Sub-contractors manage, all end-user devices used by the Supplier on which Authority Data is Processed in accordance the following requirements:
 - 5.1.1 the operating system and any applications that Process or have access to Authority Data must be in current support by the vendor, or the relevant community in the case of Open Source operating systems or applications;
 - 5.1.2 users must authenticate before gaining access;
 - 5.1.3 all Authority Data must be encrypted using an encryption tool agreed to by the Authority;
 - 5.1.4 the end-user device must lock and require any user to re-authenticate after a period of time that is proportionate to the risk environment, during which the end-user device is inactive;
 - 5.1.5 the end-user device must be managed in a way that allows for the application of technical policies and controls over applications that have access to Authority Data;
 - 5.1.6 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;
 - 5.1.7 all end-user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, 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 Services.
- 5.2 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.
 - ~~5.1.6.1.1 the Supplier or Sub-contractor, as applicable, can, without physical access to the end-user device, remove or make inaccessible all Authority Data on the device and prevent any user or group of users from accessing the device;~~

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~~5.1.71.1.1 all end user devices are within in the scope of any current Cyber Essentials Plus certificate held by the Supplier, 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 Services.~~

~~5.21.1 The Supplier must comply, and ensure that all Sub-contractors comply, with the recommendations in NCSC Device Guidance, as updated, amended or replaced from time to time, as if those recommendations were incorporated as specific obligations under this Agreement.~~

5.3 Where there any conflict between the requirements of this ~~Schedule 5 (Security Management)~~ Schedule 5 (Security Management) and the requirements of the NCSC Device Guidance, the requirements of this Schedule will take precedence.

66. Encryption

6.1 The Supplier must ensure, and must ensure that all Sub-contractors ensure, that Authority Data is encrypted:

6.1.1 when stored at any time when no operation is being performed on it; and

6.1.2 when transmitted.

6.2 Where the Supplier, or a Sub-contractor, cannot encrypt Authority Data the Supplier must:

6.2.1 immediately inform the Authority of the subset or subsets of Authority Data it cannot encrypt and the circumstances in which and the reasons why it cannot do so;

6.2.2 provide details of the protective measures the Supplier or Sub-contractor (as applicable) proposes to take to provide equivalent protection to the Authority as encryption; and

6.2.3 provide the Authority with such information relating to the Authority Data concerned, the reasons why that Authority Data cannot be encrypted and the proposed protective measures as the Authority may require.

6.3 The Authority, the Supplier and, where the Authority requires, any relevant Sub-contractor shall meet to agree appropriate protective measures for the unencrypted Authority Data.

6.4 Where the Authority and Supplier reach agreement, the Supplier must update the Security Management Plan to include:

6.4.1 the subset or subsets of Authority Data not encrypted and the circumstances in which that will occur; and

6.4.2 the protective measure that the Supplier and/or Sub-contractor will put in place in respect of the unencrypted Authority Data.

6.5 Where the Authority and Supplier do not reach agreement within 40 Working Days of the date on which the Supplier first notified the Authority that it could not encrypt certain

Schedule 5:- (Security Management)

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Authority Data, either party may refer the matter to [be determined in accordance with the Dispute Resolution Procedure].

77. Patching and Vulnerability Scanning

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

88. Third Party Sub-contractors

- 8.1 The Sub-contractor must not transmit or disseminate the Authority Data to any other person unless specifically authorised by the Authority. Such authorisation must be in writing to be effective and may be subject to conditions.
- 8.2 The Sub-contractor must not, when performing any part of the Services, use any software to Process Authority Data where the licence terms of that software purport to grant the licensor rights to Process the Authority Data greater than those rights strictly necessary for the use of the software.

Schedule 5:- (Security Management)

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Annex 3: Information Management System

[Guidance *note*: If the Authority and Supplier have agreed the Information Management System and the boundary between the Core Information Management System and Wider Information Management System during the procurement process, then include diagram setting out the elements of the Information Management System, the linkages and data flows between those elements, and the boundary here.]

Schedule 6

Insurance Requirements

Schedule 6: Insurance Requirements

321. Obligation to Maintain Insurances

32.11.1 Without prejudice to its obligations to the Authority under this Contract, including its indemnity and liability obligations, the Supplier shall for the periods specified in this Schedule take out and maintain, or procure the taking out and maintenance of the insurances as set out in Annex 1 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 date on which the relevant risk commences.

32.21.2 The Insurances shall be maintained in accordance with Good Industry Practice and (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.

32.31.3 The Insurances shall be taken out and maintained with insurers who are:

32.3.11.3.1 of good financial standing;

32.3.21.3.2 appropriately regulated;

32.3.31.3.3 regulated by the applicable regulatory body and is in good standing with that regulator; and

32.3.41.3.4 except in the case of any Insurances provided by an Affiliate of the Supplier, of good repute in the international insurance market.

32.41.4 The Supplier shall ensure that the public and products liability policy shall contain an indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Supplier is legally liable.

332. General Obligations

33.12.1 Without limiting the other provisions of this Contract, the Supplier shall:

33.1.12.1.1 take or procure the taking of all reasonable risk management and risk control measures in relation to the Services 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;

33.1.22.1.2 promptly notify the insurers in writing of any relevant material fact under any Insurances of which the Supplier is or becomes aware; and

33.1.32.1.3 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.

343. Failure to Insure

34.13.1 The Supplier shall not take any action or fail to take any action or (insofar as is

Schedule 6:- (Insurance Requirements)

[Subject to Contract]

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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.

34.23.2 Where the Supplier has failed to purchase any of the Insurances or maintain any of the Insurances in full force and effect, the Authority may elect (but shall not be obliged) following written notice to the Supplier to purchase the relevant Insurances, and the Authority shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Supplier.

354. Evidence of Insurances

35.14.1 The Supplier shall upon the Effective Date and within 15 Working Days after the renewal or replacement of each of the Insurances, provide evidence, in a form satisfactory to the Authority, that the Insurances are in force and effect and meet in full the requirements of this Schedule. Receipt of such evidence by the Authority shall not in itself constitute acceptance by the Authority or relieve the Supplier of any of its liabilities and obligations under this Contract.

5. Insurance for 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 for the minimum limit of indemnity for the periods specified in this Schedule.

5.2 Where the Supplier intends to claim under any of the Insurances for an amount or amounts that are significant in the opinion of the Authority for any matters that are not related to the Services and/or the Contract, 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, the Supplier shall promptly notify the Authority and provide details of its proposed solution for maintaining the minimum limit of indemnity specified in this Schedule.

366. Cancellation

36.16.1 Subject to Paragraph 7.2, the Supplier shall notify the Authority in writing at least 5 Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Insurances.

36.26.2 Without prejudice to the Supplier's obligations under Paragraph 4, Paragraph 7.1 shall not apply where the termination of any Insurances occurs purely as a result of a change of insurer in respect of any of the Insurances required to be taken out and maintained in accordance with this Schedule.

377. Insurance Claims, Premiums and Deductibles

37.17.1 The Supplier shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract for which it may be entitled to claim under any of the Insurances. In the event that the Authority receives a claim relating to or arising out of the Services and/or this Contract, the Supplier shall co-operate with the Authority and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.

37.27.2 The Supplier shall maintain a register of all claims under the Insurances in connection with this Contract and shall allow the Authority to review such register at any time.

Schedule 6:- (Insurance Requirements)

[Subject to Contract]

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37.37.3 Where any Insurance requires payment of a premium, the Supplier shall be liable for and shall promptly pay such premium.

37.47.4 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 Authority any sum paid by way of excess or deductible under the Insurances whether under the terms of this Contract or otherwise.

Schedule 6: (Insurance Requirements)

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Annex 1: Required Insurances

Part A: Insurance Claim Notification

Except where the Authority is the claimant party, the Supplier shall give the Authority notice within 20 Working Days after any insurance claim in excess of [£100,000] relating to or arising out of the provision of the Services 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 Authority) full details of the incident giving rise to the claim.

[Guidance note: 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 Authority that it has knowledge of claims that might impact on the Authority.]

Part B: Third Party Public and Products Liability Insurance

381. Insured

38.11.1 The Supplier

392. Interest

39.12.1 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:

39.1.12.1.1 death or bodily injury to or sickness, illness or disease contracted by any person; and

39.1.22.1.2 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 Services and in connection with this Contract.

403. Limit of indemnity

40.13.1 Not less than £[to be determined by the Authority] in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, but £[to be determined by the Authority] in the aggregate per annum in respect of products and pollution liability.

[Guidance note: The Contracting Authority should set the Limit of Indemnity by way of an insurable risk review (see MSC Guidance document). The level specified in the limit of indemnity above should be predicated upon:

The risk profile represented by the Contracting Authority 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.]

414. Territorial limits

[United Kingdom]

[Guidance note: The Authority should populate any additional territories relative to the service delivery. Annex 1 reflects United Kingdom insurance market conditions and availability only. Where there is an overseas insurance requirement consider obtaining professional insurance advice to set the appropriate requirement in Annex 1.]

Schedule 6:- (Insurance Requirements)

[Subject to Contract]

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425. Period of insurance

42.15.1 From the date of this Contract for the Term and renewable on an annual basis unless agreed otherwise by the Authority in writing.

[Guidance note: The Authority 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.]

436. Cover features and extensions

43.16.1 Indemnity to principals clause under which the Authority shall be indemnified in respect of claims made against the Authority in respect of death or bodily injury or third party property damage arising out of or in connection with the **Contract and for which the Supplier is legally liable.**

[Guidance note: As part of the insurance review (see MSC Guidance document) the Authority 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 Authority may need to seek professional subject matter insurance advice in this regard.]

447. Principal exclusions

44.17.1 War and related perils.

44.27.2 Nuclear and radioactive risks.

44.37.3 Liability for death, illness, disease or bodily injury sustained by employees of the Insured arising out of the course of their employment.

44.47.4 Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.

44.57.5 Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.

44.67.6 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.

44.77.7 Liability arising from the ownership, possession or use of any aircraft or marine vessel.

44.87.8 Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

[Guidance note: This list of exclusions represent 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 in Part D.]included in Part D.]

458. Maximum deductible threshold

45.18.1 Not to exceed £[Insert:insert figure on contract award based on the Supplier's acceptable response to the ITT] for each and every third party property damage claim

Schedule 6: (Insurance Requirements)

[Subject to Contract]

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(personal injury claims to be paid in full).

Schedule 6: (Insurance Requirements)

[Subject to Contract]

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Part C: United Kingdom Compulsory Insurances

The Supplier shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

Schedule 6- (Insurance Requirements)

[Subject to Contract]

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Part D: Additional Insurances

[Guidance note: You may wish to consider including the following additional required insurances such as:

Professional Indemnity Insurance	Where the Authority requirement includes a potential breach of professional duty by the Supplier in connection with professional advice and /or professional services.
Property Damage Insurance / Goods in Transit Insurance	Where the Authority requirement necessitates primary perils insurance for relevant physical property (e.g. Authority physical property in the care, custody and control of the Supplier in delivering the Service).
Cyber Liability Insurance	Where the Authority requirement includes specific cyber risk exposures.
Environmental Liability Insurance or Contractors Pollution Liability Insurance	Where the Authority requirement includes exposure to significant pollution / contamination risks.
Aviation Insurances	Where the Authority requirement includes use of aircraft or activity airside.
Marine Insurances	Where the Authority requirement includes use of vessels or activity on water / sea.
Rail Insurances	Where the Authority requirement needs to adhere to the Office of Road and Rail insurance requirements.

The Authority should seek professional subject matter insurance advice to determine the scope, levels and drafting of any Additional Insurances.]

Schedule 7

Authority Responsibilities

Schedule 7: (Authority Responsibilities)

[Subject to Contract]

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Schedule 7: Authority Responsibilities

41. Introduction

- 1.1 The responsibilities of the Authority set out in this Schedule shall constitute the Authority Responsibilities under this Contract. Any obligations of the Authority in ~~Schedule 2 (Services Description) and Schedule 8 (Supplier Solution)~~ Schedule 2 (Services Description) and Schedule 8 (Supplier Solution) shall not be Authority Responsibilities and the Authority shall have no obligation to perform any such obligations unless they are specifically stated to be “Authority Responsibilities” and cross referenced in the table in Paragraph 3.
- 1.2 The responsibilities specified within this Schedule shall be provided to the Supplier free of charge, unless otherwise agreed between the Parties.

22. General Obligations

2.1 The Authority shall:

- 2.1.1 perform those obligations of the Authority which are set out in the Clauses of this Contract and the Paragraphs of the Schedules (except ~~Schedule 2 (Services Description) and Schedule 8 (Supplier Solution)~~; Schedule 2 (Services Description) and Schedule 8 (Supplier Solution));
- 2.1.2 use its reasonable endeavours to provide the Supplier with access to appropriate members of the Authority’s staff, as such access is reasonably requested by the Supplier in order for the Supplier to discharge its obligations throughout the Term and the Termination Assistance Period;
- 2.1.3 provide sufficient and suitably qualified staff to fulfil the Authority’s roles and duties under this Contract as defined in the Implementation Plan;
- 2.1.4 use its reasonable endeavours to provide such documentation, data and/or other information that the Supplier reasonably requests that is necessary to perform its obligations under the terms of this Contract provided that such documentation, data and/or information is available to the Authority and is authorised for release by the Authority; and
- 2.1.5 procure for the Supplier such agreed access and use of the Authority Premises (as a licensee only) and facilities (including relevant IT systems) as is reasonably required for the Supplier to comply with its obligations under this Contract, such access to be provided during the Authority’s normal working hours on each Working Day or as otherwise agreed by the Authority (such agreement not to be unreasonably withheld or delayed).

33. Specific Obligations

- 3.1 The Authority shall, in relation to this Contract perform the Authority’s responsibilities identified as such in this Contract the details of which are set out below:

Schedule 7:- (Authority Responsibilities)

[Subject to Contract]

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Document	Location (Paragraph)
[Insert insert Schedule details here]	[Refer to specific Paragraphs here]

Schedule 8

Supplier Solution

Schedule 8: (Supplier Solution)

[Subject to Contract]

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Schedule 8: Supplier Solution

[Guidance note: Insert Supplier Solution here]

Schedule 9

Commercially Sensitive Information

Schedule 9: (Commercially Sensitive Information)

[Subject to Contract]

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Schedule 9: Commercially Sensitive Information

- 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.
- 2. Where possible, the Parties have sought to identify when any relevant Information will cease to fall into the category of Information to which this Schedule applies in the table below (please see the column “Duration of Confidentiality”).
- 3. Without prejudice to the Authority’s obligation to disclose Information in accordance with FOIA or Clause 19 (*Confidentiality*), the Authority will, in its sole discretion, acting reasonably, seek to apply the relevant exemption set out in the FOIA to the following Information:

Commercially Sensitive Information

No.	Date	Item(s)	Duration of Confidentiality
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

Schedule_10

Notified Key Sub-Contractors

Schedule 10:- (Notified Key Sub-contractors)

[Subject to Contract]

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Schedule 10: Notified Key Sub-Contractors

41. In accordance with Clause 15.11 (*Appointment of Key Sub-contractors*), the Supplier is entitled to sub-contract its obligations under this Contract to the Key Sub-contractors listed in the table below.

21. The Parties agree that they will update this Schedule periodically to record any Key Sub-contractors appointed by the Supplier with the consent of the Authority after the Effective Date for the purposes of the delivery of the Services.

Key Sub-contractor name and address (if not the same as the registered office)	Registered office and company number	Related product/Service description	Key Sub-contract price expressed as a percentage of total projected Charges over the Term	Key role in delivery of the Services	Credit Rating Threshold
					[Level 1]

Schedule 11

Third Party Contracts

Schedule 11: (Third Party Contracts)

[Subject to Contract]

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Schedule 11: Third Party Contracts

11. The contracts listed in the table below constitute Third Party Contracts entered into exclusively for the purposes of delivering the Services.

21. The Supplier shall be entitled to update this Schedule in accordance with Clause 15.5 (*Appointment of Sub-contractors*).

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

Schedule 12

Software

Schedule 12:- (Software)

[Subject to Contract]

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Schedule 12: Software

41. The Software

- 1.1 The Software below is licensed to the Authority in accordance with Clause 16 (*Intellectual Property Rights*) and ~~Schedule 32~~ (~~Intellectual Property Rights~~). Schedule 32 (*Intellectual Property Rights*).
- 1.2 The Parties agree that they will update this Schedule regularly, and in any event no less than every 6 (six) Months from the Effective Date, to record any Supplier Software or Third Party Software subsequently licensed by the Supplier or third parties for the purposes of the delivery of the Services.

22. Supplier Software

2.1 The Supplier Software includes the following items:

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

Schedule 12:- (Software)

[Subject to Contract]

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33. Third Party Software

3.1 The Third Party Software shall include the following items:

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

Annex 1: Form of Letter re Sub-licensing of Supplier COTS Software and Supplier COTS Background IPRs

[Supplier letterhead]

[insert Authority
name and address]

[Date]

Dear Sirs

~~LICENCES FOR SUPPLIER COTS SOFTWARE AND SUPPLIER COTS BACKGROUND IPRs~~

We refer to the agreement between us dated [insert date] in respect of [brief summary of subject of the Agreement] (the “**Contract**”). Capitalised expressions used in this letter have the same meanings as in the Agreement.

In accordance with Paragraph [2.4(b) [use this if Options 1 or 2 in Schedule 32 (*Intellectual Property Rights*) are chosen]] [2.5(b) [use this if Options 3 or 4 in Schedule 32 (*Intellectual Property Rights*) are used]] of Schedule 32 (*Intellectual Property Rights*) of the Contract we confirm that:

- 1 — the Authority is licensed by the Supplier to use the Supplier COTS Software and Supplier COTS Background IPRs identified in the first column of the Appendix to this letter (the “**Appendix**”) on the terms of the licences identified in the second column of the Appendix (the “**Licences**”); and
- 2 — notwithstanding any provision to the contrary in the Licences, it is agreed that the Authority may sub-license, assign and novate the Supplier COTS Software and Supplier COTS Background IPRs as referred to in Paragraph [2.4(b) [use this if Options 1 or 2 in Schedule 32 (*Intellectual Property Rights*) are chosen]] [2.5(b) [use this if Options 3 or 4 in Schedule 32 (*Intellectual Property Rights*) are used]] of Schedule 32 (*Intellectual Property Rights*) of the Contract.

Yours faithfully,

Signed:

On behalf of [name of the Supplier]

~~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 Authority] (the “Authority”) 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 Authority.
- (B) The Authority wishes to grant a sub-licence to the Sub-licensee in respect of certain software and intellectual property rights licensed to the Authority pursuant to the Contract (the “Sub-licence”).
- (C) It is a requirement of the Contract that, before the Authority 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 Supplier.

IT IS AGREED as follows:

~~41.~~ Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Authority to the Sub-licensee pursuant to or in connection with the Sub-licence that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;
- ~~(b)~~(a) 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 Authority pursuant to or in connection with the Sub-licence;

~~(e)~~(a) other Information provided by the Authority 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)~~(a) Information derived from any of the above, but not including any Information that:

~~(e)~~(a) was in the possession of the Sub- licensee without obligation of confidentiality prior to its disclosure by the Authority;

~~(f)~~(a) 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

~~(g)~~(a) was independently developed without access to the Information;

“Information”

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Sub-licence”

has the meaning given to that expression in recital 0 to this Agreement.

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;

Schedule 12: ~~(Software)~~

[Subject to Contract]

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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.

22. Confidentiality Obligations

2.1 In consideration of the Authority 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 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:

~~4.(a)~~ destroy or return to the Supplier all documents and other tangible materials that contain any of the Confidential Information;

~~(rrr)~~(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

~~(sss)~~(c) make no further use of any Confidential Information.

33. 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.

Schedule 12:- (Software)

[Subject to Contract]

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- 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.

44. 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.

Schedule 12:- (Software)

[Subject to Contract]

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- 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.

55. 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: []

66. 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:

Schedule 12:- (Software)

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For and on behalf of **[name of Sub-licensee]**

Signature:

Date:

Name:

Position:

Schedule 13

Implementation Plan

Schedule 13- (Implementation Plan)

[Subject to Contract]

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Schedule 13: Implementation Plan

41. Introduction

1.1 This Schedule:

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

22. Outline Implementation Plan

2.1 The Outline Implementation Plan is set out in Annex A.

2.2 All changes to the Outline Implementation Plan shall be subject to the Change Control Procedure provided that the Supplier shall not attempt to postpone any of the Milestones using the Change Control Procedure or otherwise (except in accordance with Clause 29 (*Authority Cause*)).

33. Approval of the Detailed Implementation Plan

3.1 The Supplier shall submit a draft of the Detailed Implementation Plan to the Authority for approval within 20 Working Days of the Effective Date.

3.2 The Supplier shall ensure that the draft Detailed Implementation Plan:

- 3.2.1 incorporates all of the Milestones and Milestone Dates set out in the Outline Implementation Plan;
- 3.2.2 includes (as a minimum) the Supplier's proposed timescales in respect of the following for each of the Milestones:

~~4.(a)~~ the completion of each design document;

~~(ttt)(b)~~ the completion of the build phase;

~~(uuu)(c)~~ the completion of any Testing to be undertaken in accordance with ~~Schedule 14 (Testing Procedures)~~; ~~Schedule 14 (Testing Procedures)~~; and

~~(vvv)(d)~~ training and roll-out activities;

- 3.2.3 clearly outlines all the steps required to implement the Milestones to be achieved in the next 15 months, together with a high level plan for the rest of the programme, in conformity with the Authority Requirements;
- 3.2.4 clearly outlines the required roles and responsibilities of both Parties, including staffing requirements; and
- 3.2.5 is produced using a software tool as specified, or agreed by the Authority.

Schedule 13:- (Implementation Plan)

[Subject to Contract]

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- 3.3 Prior to the submission of the draft Detailed Implementation Plan to the Authority in accordance with Paragraph 3.1, the Authority shall have the right:
- 3.3.1 to review any documentation produced by the Supplier in relation to the development of the Detailed Implementation Plan, including:
- ~~1.~~(a) details of the Supplier's intended approach to the Detailed Implementation Plan and its development;
 - ~~(www)~~(b) copies of any drafts of the Detailed Implementation Plan produced by the Supplier; and
 - ~~(xxx)~~(c) any other work in progress in relation to the Detailed Implementation Plan; and
- 3.3.2 to require the Supplier to include any reasonable changes or provisions in the Detailed Implementation Plan.
- 3.4 Following receipt of the draft Detailed Implementation Plan from the Supplier, the Authority shall:
- 3.4.1 review and comment on the draft Detailed Implementation Plan as soon as reasonably practicable; and
- 3.4.2 notify the Supplier in writing that it approves or rejects the draft Detailed Implementation Plan no later than 20 Working Days after the date on which the draft Detailed Implementation Plan is first delivered to the Authority.
- 3.5 If the Authority rejects the draft Detailed Implementation Plan:
- 3.5.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
- 3.5.2 the Supplier shall then revise the draft Detailed Implementation Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Detailed Implementation Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 3.4 and this Paragraph 3.5 shall apply again to any resubmitted draft Detailed Implementation Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 3.6 If the Authority approves the draft Detailed Implementation Plan, it shall replace the Outline Implementation Plan from the date of the Authority's notice of approval.

44. Updates to And Maintenance of the Detailed Implementation Plan

- 4.1 Following the approval of the Detailed Implementation Plan by the Authority:
- 4.1.1 the Supplier shall submit a revised Detailed Implementation Plan to the Authority every 3 months starting 3 months from the Effective Date;
- 4.1.2 without prejudice to Paragraph 4.1.1, the Authority shall be entitled to request a revised Detailed Implementation Plan at any time by giving written notice to the Supplier and the Supplier shall submit a draft revised Detailed

Schedule 13: (Implementation Plan)

[Subject to Contract]

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Implementation Plan to the Authority within 20 Working Days of receiving such a request from the Authority (or such longer period as the Parties may agree provided that any failure to agree such longer period shall be referred to the Dispute Resolution Procedure);

- 4.1.3 any revised Detailed Implementation Plan shall (subject to Paragraph 4.2) be submitted by the Supplier for approval in accordance with the procedure set out in Paragraph 3; and
 - 4.1.4 the Supplier's performance against the Implementation Plan shall be monitored at meetings of the Service Management Board (as defined in ~~Schedule 21 (Governance)~~. Schedule 21 (Governance)). In preparation for such meetings, the current Detailed Implementation Plan shall be provided by the Supplier to the Authority not less than 5 Working Days in advance of each meeting of the Service Management Board.
- 4.2 Save for any amendments which are of a type identified and notified by the Authority (at the Authority's discretion) to the Supplier in writing as not requiring approval, any material amendments to the Detailed Implementation Plan shall be subject to the Change Control Procedure provided that:
- 4.2.1 any amendments to elements of the Detailed Implementation Plan which are based on the contents of the Outline Implementation Plan shall be deemed to be material amendments; and
 - 4.2.2 in no circumstances shall the Supplier be entitled to alter or request an alteration to any Milestone Date except in accordance with Clause 29 (*Authority Cause*).
- 4.3 Any proposed amendments to the Detailed Implementation Plan shall not come into force until they have been approved in writing by the Authority.

55. Government Reviews

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

Schedule 13- (Implementation Plan)

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Annex A: Outline Implementation Plan

Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Authority Responsibilities (if applicable)	Link to ATP/CPP
Concept Design	<ul style="list-style-type: none"> [Statement of Requirements System/Application Specifications Interface Specifications Systems Testing Strategy Implementation Strategy and Plan Risk and Issues Management Plan Outline Disaster Recovery Plan Project Schedule Service Management Plan] 				
Full Development	<ul style="list-style-type: none"> [Design Verification Reports Design Validation Reports Change Management Plan System/Application Implementation Plan Risk and Issues Management Project Schedule Service Management Plan] 				
System User Testing	<ul style="list-style-type: none"> System Test Report Risk and Issues Management Plan Project Schedule Service Management Plan Defects Log Final Inspection and Testing Report 				
User Readiness for Service	<ul style="list-style-type: none"> Training Plan Risk and Issues Log Implementation Plan Operations Plan Data Conversion & Cutover Plan Project Schedule Service Management Plan 				

Schedule 13:- (Implementation Plan)

[Subject to Contract]

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Milestone	Deliverables (bulleted list showing all Deliverables (and associated tasks) required for each Milestone)	Duration (Working Days)	Milestone Date	Authority Responsibilities (if applicable)	Link to ATP/CPP
Implement ation	Implementation Plan Training Scripts				
In Service Support	Post Implementation Report Data Conversion and Cut- Over Plan Service Delivery Reports Risk and Issues Log Service Management Plan Defects Log				

Schedule 14

Testing Procedures

Schedule 14: Testing Procedures

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Component”	any constituent parts of the infrastructure for a Service, hardware or Software;
“Material Test Issue”	a Test Issue of Severity Level 1 or Severity Level 2;
“Severity Level”	the level of severity of a Test Issue, the criteria for which are described in Annex 1;
“Test Certificate”	a certificate materially in the form of the document contained in Annex 2 issued by the Authority when a Deliverable has satisfied its relevant Test Success Criteria;
“Test Issue”	any variance or non-conformity of a Deliverable from its requirements (such requirements being set out in the relevant Test Success Criteria);
“Test Issue Threshold”	in relation to the Tests applicable to a Milestone, a maximum number of Severity Level 3, Severity Level 4 and Severity Level 5 Test Issues as set out in the relevant Test Plan;
“Test Issue Management Log”	a log for the recording of Test Issues as described further in Paragraph 9.1;
“Test Plan”	a plan: (a) for the Testing of Deliverables; and (b) setting out other agreed criteria related to the achievement of Milestones, as described further in Paragraph 5;
“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 7;
“Test Strategy”	a strategy for the conduct of Testing as described further in Paragraph 4;

Schedule 14: ~~(Testing Procedures)~~

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- “Test Success Criteria”** in relation to a Test, the test success criteria for that Test as referred to in Paragraph 6;
- “Test Witness”** any person appointed by the Authority pursuant to Paragraph 10.1; and
- “Testing Procedures”** the applicable testing procedures and Test Success Criteria set out in this Schedule.

22. Risk

- 2.1 The issue of a Test Certificate, a Milestone Achievement Certificate and/or a conditional Milestone Achievement Certificate shall not:
- 2.1.1 operate to transfer any risk that the relevant Deliverable or Milestone is complete or will meet and/or satisfy the Authority’s requirements for that Deliverable or Milestone; or
 - 2.1.2 affect the Authority’s right subsequently to reject:
 - ~~4.(a)~~ all or any element of the Deliverables to which a Test Certificate relates; or
 - ~~(yyy)(b)~~ any Milestone to which the Milestone Achievement Certificate relates.
- 2.2 Notwithstanding the issuing of any Milestone Achievement Certificate (including the Milestone Achievement Certificate in respect of Authority to Proceed), the Supplier shall remain solely responsible for ensuring that:
- 2.2.1 the Supplier Solution as designed and developed is suitable for the delivery of the Services and meets the Authority Requirements;
 - 2.2.2 the Services are implemented in accordance with this Contract; and
 - 2.2.3 each Target Performance Level is met from the relevant Operational Service Commencement Date.

33. Testing Overview

- 3.1 All Tests conducted by the Supplier shall be conducted in accordance with the Test Strategy, the Test Plans and the Test Specifications.
- 3.2 The Supplier shall not submit any Deliverable for Testing:
- 3.2.1 unless the Supplier is reasonably confident that it will satisfy the relevant Test Success Criteria;
 - 3.2.2 until the Authority has issued a Test Certificate in respect of any prior, dependant Deliverable(s); and
 - 3.2.3 until the Parties have agreed the Test Plan and the Test Specification relating to the relevant Deliverable(s).

Schedule 14: (Testing Procedures)

[Subject to Contract]

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- 3.3 The Supplier shall use reasonable endeavours to submit each Deliverable for Testing or re-Testing by or before the date set out in the Implementation Plan for the commencement of Testing in respect of the relevant Deliverable.
- 3.4 Prior to the issue of a Test Certificate, the Authority shall be entitled to review the relevant Test Reports and the Test Issue Management Log.
- 3.5 Any Disputes between the Authority and the Supplier regarding Testing shall be referred to the Dispute Resolution Procedure using the Expedited Dispute Timetable.

44. Test Strategy

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

55. Test Plans

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

Schedule 14: ~~(Testing Procedures)~~

[Subject to Contract]

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5.2 Each Test Plan shall include as a minimum:

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

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

~~1.~~(a) the timetable for the Tests, including start and end dates;

~~(zzz)~~(b) the Testing mechanism;

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

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

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

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

~~(eeee)~~(g) the Test Schedule;

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

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

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

66. Test Success Criteria

6.1 The Test Success Criteria for:

6.1.1 each Test that must be Achieved for the Supplier to Achieve either the ATP Milestone or a CPP Milestone are set out in Annex 4; and

6.1.2 all other Tests shall be agreed between the Parties as part of the relevant Test Plan pursuant to Paragraph 5.

77. Test Specification

7.1 Following approval of a Test Plan, the Supplier shall develop the Test Specification for the relevant Deliverables as soon as reasonably practicable and in any event at least 10 Working Days (or such other period as the Parties may agree in the Test Strategy or otherwise agree in writing) prior to the start of the relevant Testing (as specified in the Implementation Plan).

Schedule 14: (Testing Procedures)

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- 7.2 Each Test Specification shall include as a minimum:
- 7.2.1 the specification of the Test data, including its source, scope, volume and management, a request (if applicable) for relevant Test data to be provided by the Authority and the extent to which it is equivalent to live operational data;
 - 7.2.2 a plan to make the resources available for Testing;
 - 7.2.3 Test scripts;
 - 7.2.4 Test pre-requisites and the mechanism for measuring them; and
 - 7.2.5 expected Test results, including:
 - ~~1.~~(a) a mechanism to be used to capture and record Test results; and
 - (~~gggg~~)(b) a method to process the Test results to establish their content.

88. Testing

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

Schedule 14: (Testing Procedures)

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- 8.6.5 the Test Success Criteria that were satisfied, not satisfied or which were not tested, and any other relevant categories, in each case grouped by Severity Level in accordance with Paragraph 9.1; and
- 8.6.6 the specification for any hardware and software used throughout Testing and any changes that were applied to that hardware and/or software during Testing.

99. Test Issues

- 9.1 Where a Test Report identifies a Test Issue, the Parties shall agree the classification of the Test Issue using the criteria specified in Annex 1 and the Test Issue Management Log maintained by the Supplier shall log Test Issues reflecting the Severity Level allocated to each Test Issue.
- 9.2 The Supplier shall be responsible for maintaining the Test Issue Management Log and for ensuring that its contents accurately represent the current status of each Test Issue at all relevant times. The Supplier shall make the Test Issue Management Log available to the Authority upon request.
- 9.3 The Authority 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.

10.10. Test Witnessing

- 10.1 The Authority may, in its sole discretion, require the attendance at any Test of one or more Test Witnesses selected by the Authority, each of whom shall have appropriate skills to fulfil the role of a Test Witness.
- 10.2 The Supplier shall give the Test Witnesses access to any documentation and Testing environments reasonably necessary and requested by the Test Witnesses to perform their role as a Test Witness in respect of the relevant Tests.
- 10.3 The Test Witnesses:
 - 10.3.1 shall actively review the Test documentation;
 - 10.3.2 will attend and engage in the performance of the Tests on behalf of the Authority so as to enable the Authority to gain an informed view of whether a Test Issue may be closed or whether the relevant element of the Test should be re-Tested;
 - 10.3.3 shall not be involved in the execution of any Test;
 - 10.3.4 shall be required to verify that the Supplier conducted the Tests in accordance with the Test Success Criteria and the relevant Test Plan and Test Specification;
 - 10.3.5 may produce and deliver their own, independent reports on Testing, which may be used by the Authority to assess whether the Tests have been Achieved;
 - 10.3.6 may raise Test Issues on the Test Issue Management Log in respect of any

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Testing; and

- 10.3.7 may require the Supplier to demonstrate the modifications made to any defective Deliverable before a Test Issue is closed.

4411. Test Quality Audit

- 11.1 Without prejudice to its rights pursuant to Clause 12.2(b) (*Records, Reports, Audits & Open Book Data*), the Authority may perform on-going quality audits in respect of any part of the Testing (each a “**Testing Quality Audit**”) subject to the provisions set out in the agreed Quality Plan.
- 11.2 The focus of the Testing Quality Audits shall be on:
- 11.2.1 adherence to an agreed methodology;
 - 11.2.2 adherence to the agreed Testing process;
 - 11.2.3 adherence to the Quality Plan;
 - 11.2.4 review of status and key development issues; and
 - 11.2.5 identification of key risk areas.
- 11.3 The Supplier shall allow sufficient time in the Test Plan to ensure that adequate responses to a Testing Quality Audit can be provided.
- 11.4 The Authority will give the Supplier at least 5 Working Days’ written notice of the Authority’s intention to undertake a Testing Quality Audit and the Supplier may request, following receipt of that notice, that any Testing Quality Audit be delayed by a reasonable time period if in the Supplier’s reasonable opinion, the carrying out of a Testing Quality Audit at the time specified by the Authority will materially and adversely impact the Implementation Plan.
- 11.5 A Testing Quality Audit may involve document reviews, interviews with the Supplier Personnel involved in or monitoring the activities being undertaken pursuant to this Schedule, the Authority witnessing Tests and demonstrations of the Deliverables to the Authority. Any Testing Quality Audit shall be limited in duration to a maximum time to be agreed between the Supplier and the Authority on a case by case basis (such agreement not to be unreasonably withheld or delayed). The Supplier shall provide all reasonable necessary assistance and access to all relevant documentation required by the Authority to enable it to carry out the Testing Quality Audit.
- 11.6 If the Testing Quality Audit gives the Authority concern in respect of the Testing Procedures or any Test, the Authority shall:
- 11.6.1 discuss the outcome of the Testing Quality Audit with the Supplier, giving the Supplier the opportunity to provide feedback in relation to specific activities; and
 - 11.6.2 subsequently prepare a written report for the Supplier detailing its concerns, and the Supplier shall, within a reasonable timeframe, respond in writing to the Authority’s report.

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11.7 In the event of an inadequate response to the Authority's report from the Supplier, the Authority (acting reasonably) may withhold a Test Certificate (and consequently delay the grant of a Milestone Achievement Certificate) until the issues in the report have been addressed to the reasonable satisfaction of the Authority.

4212. Outcome of Testing

12.1 The Authority shall issue a Test Certificate as soon as reasonably practicable when the Deliverables satisfy the Test Success Criteria in respect of that Test without any Test Issues.

12.2 If the Deliverables (or any relevant part) do not satisfy the Test Success Criteria then the Authority shall notify the Supplier and:

12.2.1 the Authority may issue a Test Certificate conditional upon the remediation of the Test Issues;

12.2.2 where the Parties agree that there is sufficient time prior to the relevant Milestone Date, the Authority may extend the Test Plan by such reasonable period or periods as the Parties may reasonably agree and require the Supplier to rectify the cause of the Test Issue and re-submit the Deliverables (or the relevant part) to Testing; or

12.2.3 where the failure to satisfy the Test Success Criteria results, or is likely to result, in the failure (in whole or in part) by the Supplier to meet a Milestone, then without prejudice to the Authority's other rights and remedies, such failure shall constitute a Notifiable Default for the purposes of Clause 25.1 (*Rectification Plan Process*).

12.3 The Authority 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.

4313. Issue of Milestone Achievement Certificate

13.1 The Authority shall issue a Milestone Achievement Certificate in respect of a given Milestone as soon as is reasonably practicable following:

13.1.1 the issuing by the Authority of Test Certificates and/or conditional Test Certificates in respect of all Deliverables related to that Milestone which are due to be Tested; and

13.1.2 performance by the Supplier to the reasonable satisfaction of the Authority of any other tasks identified in the Implementation Plan as associated with that Milestone (which may include the submission of a Deliverable that is not due to be Tested, such as the production of Documentation).

13.2 The grant of a Milestone Achievement Certificate shall entitle the Supplier to the receipt of a payment in respect of that Milestone in accordance with the provisions of ~~Schedule 15 (Charges and Invoicing)~~. Schedule 15 (*Charges and Invoicing*).

13.3 If a Milestone is not Achieved, the Authority shall promptly issue a report to the Supplier

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setting out:

- 13.3.1 the applicable Test Issues ; and
 - 13.3.2 any other reasons for the relevant Milestone not being Achieved.
- 13.4 If there are Test Issues but these do not exceed the Test Issues Threshold, then provided there are no Material Test Issues, the Authority shall issue a Milestone Achievement Certificate.
- 13.5 Without prejudice to the Authority's other remedies the following shall constitute a Notifiable Default for the purposes of Clause 25.1 (*Rectification Plan Process*) and the Authority shall refuse to issue a Milestone Achievement Certificate where:
- 13.5.1 there is one or more Material Test Issue(s); or
 - 13.5.2 the information required under ~~Schedule 24 (Reports and Records Provisions)~~ *Schedule 24 (Reports and Records Provisions)* (Annex 3: *Records To Upload To Virtual Library*) has not been uploaded to the Virtual Library in accordance with Paragraph 3 of that Schedule.
- 13.6 If there are Test Issues which exceed the Test Issues Threshold but there are no Material Test Issues, the Authority may at its discretion (without waiving any rights in relation to the other options) choose to issue a Milestone Achievement Certificate conditional on the remediation of the Test Issues in accordance with an agreed Rectification Plan provided that:
- 13.6.1 any Rectification Plan shall be agreed before the issue of a conditional Milestone Achievement Certificate unless the Authority agrees otherwise (in which case the Supplier shall submit a Rectification Plan for approval by the Authority within 10 Working Days of receipt of the Authority's report pursuant to Paragraph 13.3); and
 - 13.6.2 where the Authority issues a conditional Milestone Achievement Certificate, it may (but shall not be obliged to) revise the failed Milestone Date and any subsequent Milestone Date.

Annex 1: Test Issues – Severity Levels

41. Severity Levels

- 1.1 **Severity Level 1 Test Issue:** a Test Issue that causes non-recoverable conditions, e.g. it is not possible to continue using a Component, a Component crashes, there is database or file corruption, or data loss;
- 1.2 **Severity Level 2 Test Issue:** a Test Issue for which, as reasonably determined by the Authority, there is no practicable workaround available, and which:
 - 1.2.1 causes a Component to become unusable;
 - 1.2.2 causes a lack of functionality, or unexpected functionality, that has an impact on the current Test; or
 - 1.2.3 has an adverse impact on any other Component(s) or any other area of the Services;
- 1.3 **Severity Level 3 Test Issue:** a Test Issue which:
 - 1.3.1 causes a Component to become unusable;
 - 1.3.2 causes a lack of functionality, or unexpected functionality, but which does not impact on the current Test; or
 - 1.3.3 has an impact on any other Component(s) or any other area of the Services;but for which, as reasonably determined by the Authority, there is a practicable workaround available;
- 1.4 **Severity Level 4 Test Issue:** a Test Issue which causes incorrect functionality of a Component or process, but for which there is a simple, Component based, workaround, and which has no impact on the current Test, or other areas of the Services; and
- 1.5 **Severity Level 5 Test Issue:** a Test Issue that causes a minor problem, for which no workaround is required, and which has no impact on the current Test, or other areas of the Services.

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Annex 2: Test Certificate

To: [Name of Supplier]

From: [Name of Authority]

[Date]

Dear Sirs,

TEST CERTIFICATE

Deliverables: [insert description of Deliverables]

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

Capitalised terms used in this certificate have the meanings given to them in ~~Schedule 1 (Definitions)~~Schedule_1_(Definitions) or ~~Schedule 14 (Testing Procedures)~~Schedule_14_(Testing Procedures) of the Contract.

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

OR

[This Test Certificate is issued pursuant to Paragraph 12.1 of ~~Schedule 14 (Testing Procedures)~~Schedule_14_(Testing Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [name of Authority]

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Annex 3: Milestone Achievement Certificate

To: [Name of Supplier]

From: [Name of Authority]

[Date]

Dear Sirs,

MILESTONE ACHIEVEMENT CERTIFICATE

Milestone: [insert description of Milestone]

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

Capitalised terms used in this certificate have the meanings given to them in ~~Schedule 1 (Definitions)~~ or ~~Schedule 14 (Testing Procedures)~~ Schedule_1_(Definitions)_or_Schedule_14_(Testing_Procedures) of the Contract.

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

OR

[This Milestone Achievement Certificate is granted pursuant to Paragraph 13.1 of ~~Schedule 14 (Testing Procedures)~~ Schedule_14_(Testing_Procedures) of the Contract on the condition that any Test Issues are remedied in accordance with the Rectification Plan attached to this certificate.]*

[You may now issue an invoice in respect of the Milestone Payment associated with this Milestone in accordance with the provisions of ~~Schedule 15 (Charges and Invoicing)~~]*Schedule_15_(Charges_and_Invoicing)]*

**delete as appropriate*

Yours faithfully

[Name]

[Position]

acting on behalf of [Authority]

Annex 4: Test Success Criteria

41. Tests to be Achieved in order to Achieve the ATP Milestone

Test	Pre-conditions*	Test Success Criteria
[List all Tests relating to ATP Milestone]		

* Note: _____ The Pre-Conditions are that e.g. the Success Criteria for the previous Tests must be satisfied before the ATP Milestone tests are commenced

22. Tests to be Achieved in order to Achieve a CPP Milestone

CPP Milestone Charge No.	Test	Test Success Criteria
	[List all Tests relating to CPP Milestone Charge No.]	

Schedule 15

Charges and Invoicing

Schedule 15: Charges and Invoicing

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Achieved Profit Margin”	the cumulative Supplier Profit Margin calculated from (and including) the Effective Date (or, if applicable, the date of the last adjustment to the Charges made pursuant to Paragraph 2.2 of Part D) to (and including) the last day of the previous Contract Year;
“Anticipated Contract Life Profit Margin”	the anticipated Supplier Profit Margin over the Term as reflected in the Financial Model;
“Capped ADR”	in relation to a Milestone Payment or Service Charge means a capped average day rate calculated by reference to a Time and Materials pricing mechanism, £[insert amount];
“Certificate of Costs”	a certificate of costs signed by the Supplier’s Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant certificate) and substantially in the format set out in Annex 3;
“Costs”	<p>the following costs (without double recovery) to the extent that they are reasonably and properly incurred by the Supplier in providing the Services:</p> <p>(a) the cost to the Supplier or the Key Sub-contractor (as the context requires), calculated per Work Day, of engaging the Supplier Personnel, including:</p> <ul style="list-style-type: none">(i) base salary paid to the Supplier Personnel;(ii) employer’s national insurance contributions;(iii) Employer 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 perform the Services (but not including items included within limb (b) below); and

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- (ix) reasonable recruitment costs, as agreed with the Authority;
- (b) costs incurred in respect of those Assets which are detailed on the Registers and 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 Assets by the Supplier to the Authority or (to the extent that risk and title in any Asset is not held by the Supplier) any cost actually incurred by the Supplier in respect of those 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 delivery of the Services;
- (d) Forecast Contingency Costs;
- (e) Reimbursable Expenses to the extent these are incurred in delivering any Services where the Charges for those Services are to be calculated on a Fixed Price or Firm Price pricing mechanism;

but excluding:

- (i) Overhead;
- (ii) financing or similar costs;
- (iii) maintenance and support costs to the extent that these relate to maintenance and/or support services provided beyond the Term, whether in relation to Assets or otherwise;
- (iv) taxation;
- (v) fines and penalties;
- (vi) amounts payable under ~~Schedule 17 (Benchmarking); and~~ Schedule 17 ~~(Benchmarking); and~~
- (vii) non-cash items (including depreciation, amortisation, impairments and movements in provisions);

“Delay Payment Rate” has the meaning given in Paragraph 1.1.1 of Part C;

“The Employer Pension Contributions” means:

- (a) in respect of CSPS Eligible Employees those sums set out at Clauses 7.1.1 (*annual administration charges*)

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covering core services), 7.1.5 (employer contributions), 7.1.7 (the ASLC) and 7.1.8 (flat charges applicable to the Partnership Pension Account) of the Admission Agreement;

- (b) in respect of NHSPS Eligible Employees, the standard employer contribution rate applicable to NHS Pension Scheme employers during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the NHS Pension Scheme or in respect of any NHS Premature Retirement Rights, unless otherwise agreed in writing by the Authority);
- (c) in respect of LGPS Eligible Employees the standard employer contribution rate applicable to LGPS Eligible Employees during the Term and payable by the Supplier (but no other costs, contributions, charges or surcharges payable by the Supplier to or in respect of the LGPS or in respect of any Beckmann Liabilities, unless otherwise agreed in writing by the Authority); and

such other employer pension contributions, charges or costs incurred by the Supplier which have been expressly agreed by the Authority in writing to constitute 'Employer Pension Contributions';

“European Standard”	in relation to an electronic invoice means the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.
“Forecast Contingency Costs”	the costs which the Supplier forecasts may be incurred in relation to the risks and contingencies that are identified in the Risk Register, such costs being those set out in the column headed 'Forecast Contingency Costs' in the Risk Register (as such costs are updated from time to time);
“Guaranteed Maximum Price”	in relation to a Milestone, 110% of the Target Price for the relevant Milestone;
“Incurred Costs”	in relation to a Milestone, the sum of: <ul style="list-style-type: none">(a) the fixed day costs set out in Table 3 of Annex 1 multiplied by the number of Work Days that have been expended by the Supplier Personnel in Achieving the relevant Milestone; and(b) any amount that would fall within limbs (b) or (c) of the definition of “Costs” (but subject to exceptions (i) to (vii) in that definition), to the extent that such amount has been incurred in Achieving the relevant Milestone;

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“Indexation” and “Index”	the adjustment of an amount or sum in accordance with Paragraph 5 of Part C;
“Maximum Permitted Profit Margin”	the Anticipated Contract Life Profit Margin plus 5%;
“Milestone Group”	has the meaning given in Paragraph 1.4.3 of Part B;
“Milestone Retention”	has the meaning given in Paragraph 1.3 of Part B;
“Overhead”	those amounts which are intended to recover a proportion of the Supplier’s or the Key Sub-contractor’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 Personnel and accordingly included within limb (a) of the definition of “Costs” or the day cost set out in Table 3 of Annex 1;
“Reimbursable Expenses”	reasonable out of pocket travel and subsistence (for example, hotel and food) expenses, properly and necessarily incurred in the performance of the Services, calculated at the rates and in accordance with the Authority’s expenses policy current from time to time, but not including: (a) travel expenses incurred as a result of Supplier Personnel travelling to and from their usual place of work, or to and from the premises at which the Services are principally to be performed, unless the Authority otherwise agrees in advance in writing; and (b) subsistence expenses incurred by Supplier Personnel whilst performing the Services at their usual place of work, or to and from the premises at which the Services are principally to be performed;
“Supplier Profit”	in relation to a period or a Milestone (as the context requires), the difference between the total Charges (in nominal cash flow terms but excluding any Deductions) and total Costs (in nominal cash flow terms) for the relevant period or in relation to the relevant Milestone;
“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;

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“Supporting Documentation”	sufficient information in writing to enable the Authority reasonably to assess whether the Charges, Reimbursable Expenses and other sums due from the Authority detailed in the information are properly payable, including copies of any applicable Milestone Achievement Certificates or receipts;
“Target Cost”	has the meaning given in Paragraph 3.1 of Part A;
“Target Price”	has the meaning given in Paragraph 3.1 of Part A;
“Verification Period”	in relation to an Allowable Assumption, the period from (and including) the Effective Date to (and including) the date at which the relevant Allowable Assumption expires, as set out against the relevant Allowable Assumption in column 11 in the table in Annex 5;
“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; <u>and</u>
“Work Hours”	the hours spent by the Supplier Personnel properly working on the Services including time spent travelling (other than to and from the Supplier’s offices, or to and from the Sites) but excluding lunch breaks;

Part A: Pricing

41. Applicable Pricing Mechanism

- 1.1 Milestone Payments and Service Charges shall be calculated using the pricing mechanism specified in Annex 2 and on the basis of the rates and prices specified in Annex 1 as more particularly set out in this Schedule.
- 1.2 Table 1 of Annex 2 sets out which pricing mechanism shall be used to calculate each Milestone Payment, which shall be one or more of the following:
 - 1.2.1 “**Time and Materials**”, in which case the provisions of Paragraph 2 shall apply;
 - 1.2.2 “**Guaranteed Maximum Price with Target Cost**”, in which case the provisions of Paragraph 3 shall apply;
 - 1.2.3 “**Fixed Price**”, in which case the provisions of Paragraph 4 shall apply; or
 - 1.2.4 “**Firm Price**”, in which case the provisions of Paragraph 5 shall apply.
- 1.3 Table 2 of Annex 2 sets out which pricing mechanism shall be used to calculate each Service Charge, which shall be one or more of the following:
 - 1.3.1 “**Time and Materials**”, in which case the provisions of Paragraph 2 shall apply;
 - 1.3.2 “**Volume Based**” pricing, in which case the provisions of Paragraph 6 shall apply; or
 - 1.3.3 “**Fixed Price**” in which case the provisions of Paragraph 4 shall apply.

22. Time and Materials Milestone Payments or Service Charges

- 2.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge (as applicable) is to be calculated by reference to a Time and Materials pricing mechanism:
 - 2.1.1 the day rates set out in Table 1 of Annex 1 shall be used to calculate the relevant Charges, provided that the Supplier (or its Sub-contractor) shall:
 - ~~1.(a)~~ not be entitled to include any uplift for risks or contingencies within its day rates;
 - ~~(b)~~ not be paid any Charges to the extent that they would otherwise exceed the cap specified against the relevant Charge in Table 2 of Annex 1 unless the Supplier has obtained the Authority’s prior written consent. The Supplier shall monitor the amount of each Charge incurred in relation to the relevant cap and notify the Authority immediately in the event of any risk that the cap may be exceeded and the Authority shall instruct the Supplier on how to proceed;
 - ~~(c)~~ unless otherwise agreed by the Authority in relation to the relevant Milestone Payment or Service Charge (as the case may be), not be paid any Charges to the extent that they would otherwise exceed the amount

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calculated by multiplying:

- (i) the total number of days expended by the Supplier in relation to the relevant Milestone; or
- (ii) the total number of days expended by the Supplier during the relevant Service Period in relation to the relevant Service,

by the Capped ADR; and

~~(jjjj)~~(d) only be entitled to be paid Charges that have been properly and reasonably incurred, taking into account the Supplier's obligation to deliver the Services in a proportionate and efficient manner; and

2.1.2 the Supplier shall keep records of hours properly worked by Supplier Personnel (in the form of timesheets) and expenses incurred and submit a summary of the relevant records with each invoice. If the Authority requests copies of such records, the Supplier shall make them available to the Authority within 10 Working Days of the Authority's request.

2.2 The Supplier shall be entitled to Index the rates set out in Table 1 of Annex 1 and the Capped ADR in accordance with Paragraph 5 of Part C, but any caps set out in Table 2 of Annex 1 shall not be subject to Indexation.

33. Guaranteed Maximum Price with Target Cost Incentive Milestone Payments

3.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, the target Costs (the "**Target Cost**") and the target Charge (the "**Target Price**") for the relevant Milestone shall be as set out in Table 4 of Annex 1.

3.2 If the Incurred Costs relating to a Milestone are lower than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be shared equally between the Authority and the Supplier (resulting in the Supplier receiving a higher Supplier Profit Margin in relation to that Milestone), and the Milestone Payment shall be calculated as follows:

$$\text{Milestone Payment} = \text{TP} - ((\text{TC} - \text{IC})/2)$$

where:

TP is the Target Price for the relevant Milestone;

TC is the Target Cost for the relevant Milestone; and

IC is the Incurred Costs relating to the relevant Milestone.

3.3 If the Incurred Costs relating to a Milestone are greater than the Target Cost for that Milestone, the difference between the Incurred Costs and the Target Cost shall be borne equally between the Authority and the Supplier (resulting in the Supplier receiving a lower Supplier Profit Margin in relation to that Milestone), provided that the maximum Milestone Payment payable by the Authority for the relevant Milestone shall not exceed an amount equal to the guaranteed maximum price for that Milestone as set out in Table 4 of

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Annex 1 (the “Guaranteed Maximum Price”) Represented numerically:

3.3.1 if:

~~4.(a)~~ IC > TC; and

~~(b)~~ TP + ((IC - TC)/2) < GMP,

then Milestone Payment = TP + ((IC - TC)/2); or

3.3.2 if:

~~4.(a)~~ IC > TC; and

~~(b)~~ TP + ((IC - TC)/2) ≥ GMP,

then Milestone Payment = GMP

where:

IC is the Incurred Costs relating to the relevant Milestone;

TC is the Target Cost for the relevant Milestone;

TP is the Target Price for the relevant Milestone; and

GMP is TP * 1.1, being the Guaranteed Maximum Price for the relevant Milestone.

3.4 The Supplier shall be entitled to Index the day costs set out in Table 3 of Annex 1 annually, but the Target Cost, Target Price and Guaranteed Maximum Price shall not be subject to Indexation.

44. Fixed Price Milestone Payments or Service Charges

4.1 Where Table 1 or Table 2 of Annex 2 indicates that a Milestone Payment or Service Charge is to be calculated by reference to a Fixed Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 5 of Annex 1.

4.2 Charges calculated by reference to a Fixed Price pricing mechanism shall be subject to increaseadjustment by way of Indexation.

55. Firm Price Milestone Payments

5.1 Where Table 1 of Annex 2 indicates that a Milestone Payment is to be calculated by reference to a Firm Price pricing mechanism, the relevant Charge shall be the amount set out against that Charge in Table 6 of Annex 1.

5.2 Charges calculated by reference to a Firm Price pricing mechanism shall not be subject to increaseadjustment by way of Indexation.

66. Volume Based Service Charges

6.1 Where Table 2 of Annex 2 indicates that a Service Charge is to be calculated by reference to a Volume Based pricing mechanism, the relevant Charges shall be

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calculated on the basis of the unit costs set out against that Service Charge in Table 7 of Annex 1.

- 6.2 In the event that the volume of any Services that are to be calculated by reference to a Volume Based pricing mechanism fall outside the relevant volume bands set out against that Service Charge in Table 7 of Annex 1, the relevant Service Charges shall be calculated in accordance with the Change Control Procedure and Paragraph 4 of Part C.
- 6.3 The Charge per unit set out in Table 7 of Annex 1 shall be subject to annual Indexation.

7.7. Reimbursable Expenses

7.1 Where:

7.1.1 Services are to be charged using the Time and Materials or Guaranteed Maximum Price with Target Cost pricing mechanism; and

7.1.2 the Authority so agrees in writing,

the Supplier shall be entitled to be reimbursed by the Authority for Reimbursable Expenses (in addition to being paid the relevant Charges), provided that such Reimbursable Expenses are supported by Supporting Documentation.

7.2 The Authority shall provide a copy of its current expenses policy to the Supplier upon request.

7.3 Except as expressly set out in Paragraph 7.1, the Charges shall include all costs and expenses relating to the Deliverables, the Services and/or the Supplier's performance of its obligations under this Contract and no further amounts shall be payable by the Authority to the Supplier in respect of such performance, including in respect of matters such as:

7.3.1 any incidental expenses that the Supplier incurs, including travel, subsistence and lodging, document and report reproduction, shipping, desktop and office equipment costs required by the Supplier Personnel, including network or data interchange costs or other telecommunications charges; or

7.3.2 any amount for any services provided or costs incurred by the Supplier prior to the Effective Date.

Part B: Charging Mechanisms

41. Milestone Payments

- 1.1 Subject to the provisions of Paragraph 1.3 of Part C in relation to the deduction of Delay Payments, on the Achievement of a Milestone the Supplier shall be entitled to invoice the Authority for the Milestone Payment associated with that Milestone less the applicable Milestone Retention in accordance with this Part B.
- 1.2 Each invoice relating to a Milestone Payment shall be supported by:
 - 1.2.1 a Milestone Achievement Certificate; and
 - 1.2.2 where the Milestone Payment is to be calculated by reference to a Guaranteed Maximum Price with Target Cost or Time and Materials pricing mechanism, a Certificate of Costs with Supporting Documentation.
- 1.3 The “**Milestone Retention**” for each Milestone shall be calculated as follows:
 - 1.3.1 where the Milestone Payment for the relevant Milestone is determined by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, 10% of the Target Price for the Milestone;
 - 1.3.2 where the Milestone Payment for the relevant Milestone is determined by reference to a Time and Materials, Fixed Price or Firm Price pricing mechanism, 10% of the Charges for that Milestone,

and, in the case of a Key Milestone, prior to deduction from the Milestone Payment of any Delay Payment attributable to that Key Milestone and without taking account of any amount payable by the Supplier pursuant to Paragraph 1.3 of Part C.

Guaranteed Maximum Price with Target Cost pricing mechanism

- 1.4 Where a Milestone Payment relating to a single Milestone is to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:
 - 1.4.1 upon the issue of a Milestone Achievement Certificate for the Milestone, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price; and
 - 1.4.2 no later than 60 Working Days after the invoice referred to in Paragraph 1.3.1 has been issued, the Supplier shall:
 - ~~4.(a)~~ submit to the Authority a report setting out the Incurred Costs and actual Milestone Payment for the Milestone;
 - ~~(mmmm)~~(b) issue to the Authority an invoice or credit note for the difference between the actual Milestone Payment payable and the Target Price invoiced for the Milestone (in each case, after deducting the applicable Milestone Retention);
 - ~~(nnnn)~~(c) where a credit note is to be issued to the Authority pursuant to

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Paragraph 1.4.2(b), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and

~~(e)~~(d) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.4.3 Where Milestones are stated in Table 4 of Annex 1 to constitute a group of Milestones (a “**Milestone Group**”) and the Milestone Payments relating to the Milestones in that Milestone Group are each to be calculated by reference to a Guaranteed Maximum Price with Target Cost pricing mechanism, then the following payment process shall apply:

1.4.4 in respect of each Milestone within the Milestone Group, the Supplier may invoice the Authority for the Target Price for the relevant Milestone, less the Milestone Retention calculated using such Target Price, upon the issue of the associated Milestone Achievement Certificate; and

1.4.5 no later than 60 Working Days after the issue of the invoice for the final Milestone Payment relating to the Milestone Group, the Supplier shall:

~~1.(a)~~ submit to the Authority a report setting out the Incurred Costs and actual Milestone Payments for the Milestone Group;

~~(p)~~(b) issue to the Authority an invoice or credit note for the difference between the aggregate of the actual Milestone Payments payable and Target Prices invoiced for Milestones in the Milestone Group (in each case, after deducting all Milestone Retentions relating to that Milestone Group);

~~(q)~~(c) where a credit note is to be issued to the Authority pursuant to Paragraph 1.4.5(b), repay to the Authority a sum equal to such difference as a debt within 10 Working Days of issue of the credit note; and

~~(r)~~(d) issue a Certificate of Costs with Supporting Documentation, which shall exclude any accruals, prepayments and provisions.

1.5 If the Supplier does not repay any such sum as is referred to in Paragraph 1.4.2(b) or 1.4.5(b) within 10 Working Days of issue of the relevant credit note, it shall repay such sum together with interest on such sum at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

1.6 Following the issue of a Certificate of Costs in accordance with Paragraph 1.2, 1.4.2(c) or 1.4.5(c), the Supplier shall not be entitled to invoice the Authority for any additional Charges relating to the Milestone or Milestone Group (as applicable) save as provided in Paragraph 1.7.

Release of Milestone Retentions

1.7 On Achievement of a CPP Milestone relating to the Supplier Solution or one or more Services (as the case may be), the Supplier shall be entitled to invoice the Authority for

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an amount equal to all Milestone Retentions that relate to Milestones identified in the “*CPP Milestone Charge Number*” column of Table 1 (or, in relation to Milestone Retentions in respect of Optional Services, Table 4) of Annex 2 and corresponding CPP Milestone Charge Number identified in Table 2 of Annex 4 of ~~Schedule 14 (Testing Procedures)~~ Schedule 14 (*Testing Procedures*) as being payable in respect of that CPP Milestone and have not been paid before such CPP Milestone.

22. Service Charges

- 2.1 Each Service to which a Service Charge relates shall commence on the Achievement of the Milestone set out against that Service in the “*Service Charge Trigger Event*” column of Table 2 of Annex 2.
- 2.2 Service Charges shall be invoiced by the Supplier for each Service Period in arrear in accordance with the requirements of Part E.
- 2.3 If a Service Charge is to be calculated by reference to a Fixed Price pricing mechanism and the relevant Service:
 - 2.3.1 commences on a day other than the first day of a month; and/or
 - 2.3.2 ends on a day other than the last day of a month,the Service Charge for the relevant Service Period shall be pro-rated based on the proportion which the number of days in the month for which the Service is provided bears to the total number of days in that month.
- 2.4 Any Service Credits that accrue during a Service Period shall be deducted from the Service Charges payable for the next following Service Period. An invoice for a Service Charge shall not be payable by the Authority unless all adjustments (including Service Credits) relating to the Service Charges for the immediately preceding Service Period have been agreed.

33. Optional Services

- 3.1 If the Authority gives notice pursuant to Clause 5.10 (*Optional Services*) that it requires the Supplier to provide any or all of the Optional Services:
 - 3.1.1 the Milestone Payments (if any) for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 3 of Annex 2; and
 - 3.1.2 the Service Charges for the relevant Optional Services shall be calculated by reference to the pricing mechanism for those Optional Services set out in Table 4 of Annex 2,in both cases using the relevant rates and prices specified in Annex 1.

Part C: Adjustments To The Charges And Risk Register

41. Delay Payments

- 1.1 If a Key Milestone has not been Achieved on or before the relevant Milestone Date, the Supplier shall pay a Delay Payment to the Authority in respect of that Key Milestone. Delay Payments shall accrue:
 - 1.1.1 at the daily rate (the “**Delay Payment Rate**”) determined in accordance with Paragraph 1.2;
 - 1.1.2 from (but excluding) the relevant Milestone Date to (and including) the later of:
 - ~~1.(a)~~ the date on which the Key Milestone is Achieved; and
 - ~~(ssss)(b)~~ the expiry of the Delay Deduction Period; and
 - 1.1.3 on a daily basis, with any part day’s Delay counting as a day.
- 1.2 Where a Delay Payment is payable in respect of a Key Milestone, the Delay Payment Rate shall be:
 - 1.2.1 where the Supplier has given the Authority less than 3 months’ prior notice of the Delay, the amount set out in column 4 of Table 1 of Annex 2 for the Key Milestone;
 - 1.2.2 where the Supplier has given the Authority between three (3) months’ and six (6) months’ prior notice of the Delay, the amount set out in column 5 of Table 1 of Annex 2 for the Key Milestone; or
 - 1.2.3 where the Supplier has given the Authority more than 6 months’ prior notice of the Delay, the amount set out in column 6 of Table 1 of Annex 2 for the Key Milestone.
- 1.3 Where the Supplier serves a notice pursuant to Paragraph 1.2.2 or 1.2.3, the Supplier shall, within 5 Working Days of the date the notice is served:
 - 1.3.1 pay to the Authority in cleared funds on account of the relevant Delay Payment (but subject always to Paragraph 1.5) an amount equal to:
 - ~~1.(a)~~ in the case of a notice served pursuant to Paragraph 1.2.2, five (5) days of Delay Payments; or
 - ~~(tttt)(b)~~ in the case of a notice served pursuant to Paragraph 1.2.3, ten (10) days of Delay Payments in accordance with Paragraph 1.5,in each case calculated at the applicable Delay Payment Rate; and
 - 1.3.2 issue a credit note to the Authority in respect of the relevant amount.
- 1.4 Failure to make payment within 10 Working Days of the Supplier’s notice shall invalidate the notice.
- 1.5 Any amounts paid to the Authority pursuant to Paragraph 1.3 shall not be refundable to the Supplier in any circumstances, including where a Delay as referred to in the

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Supplier's notice:

- 1.5.1 does not occur; or
 - 1.5.2 does occur but continues for fewer days during the relevant Delay Deduction Period than the number of days referred to in Paragraph 1.3.1 or 1.3.2 as the case may be.
- 1.6 The Parties agree that Delay Payments calculated in accordance with the applicable Delay Payment Rates are in each case a genuine pre-estimate of the Losses which the Authority will incur as a result of any failure by the Supplier to Achieve the relevant Key Milestone by the Milestone Date. Delay Payment Rates are stated exclusive of VAT.
- 1.7 The Delay Payment in respect of a Key Milestone (net of any payment made in respect of that Key Milestone pursuant to Paragraph 1.3) shall be shown as a deduction from the amount due from the Authority to the Supplier in the next invoice due to be issued by the Supplier after the date on which the relevant Key Milestone is Achieved or the expiry of the Delay Deduction Period (as the case may be). If the relevant Key Milestone is not Achieved by the expiry of the Delay Deduction Period and no invoice is due to be issued by the Supplier within 10 Working Days of expiry of the Delay Deduction Period, then the Supplier shall within 10 Working Days of expiry of the Delay Deduction Period:
- 1.7.1 issue a credit note to the Authority in respect of the total amount of the Delay Payment in respect of the Key Milestone (net of any payment made in respect of the Key Milestone pursuant to Paragraph 1.3); and
 - 1.7.2 pay to the Authority as a debt a sum equal to the total amount of the Delay Payment in respect of the Key Milestone together with interest on such amount at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment, whether before or after judgment.

22. Payments for Delays due to Authority Cause

- 2.1 If the Supplier is entitled in accordance with Clause 29.1(iii)(D) (*Authority Cause*) to compensation for failure to Achieve a Milestone by its Milestone Date, then, subject always to Clause 23 (*Limitations on Liability*), such compensation shall be determined in accordance with the following principles:
- 2.1.1 the compensation shall reimburse the Supplier for additional Costs incurred by the Supplier that the Supplier:
 - ~~4.(a)~~ can demonstrate it has incurred solely and directly as a result of the Authority Cause; and
 - ~~(uuuu)~~(b) is, has been, or will be unable to mitigate, having complied with its obligations under Clause 29.1 (*Authority Cause*)together with an amount equal to the Anticipated Contract Life Profit Margin thereon;
 - 2.1.2 the compensation shall not operate so as to put the Supplier in a better position than it would have been in but for the occurrence of the Authority Cause;

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2.1.3 where the Milestone Payment for the relevant Milestone is to be calculated by reference to the Guaranteed Maximum Price with Target Cost pricing mechanism, then:

~~1.(a)~~ the Target Price for the Milestone shall be increased in accordance with the following formula:

$$NTP = TP + (AC \times 1.x)$$

where:

NTP is the revised Target Price for the relevant Milestone;

TP is the original Target Price for the relevant Milestone;

AC is an amount equal to any additional Costs incurred by the Supplier in Achieving the Milestone to the extent that the Supplier can demonstrate that such additional Costs were caused by the Authority Cause; and

x is the Supplier Profit Margin that the Supplier would have received in respect of the relevant Milestone on the basis of the unadjusted Target Cost and unadjusted Target Price for that Milestone, as set out in Table 4 of Annex 1, expressed as a decimal; and

~~(www)~~(b) the Guaranteed Maximum Price shall be increased to an amount equal to 110% of the Target Price as adjusted pursuant to Paragraph 2.1.3(a);

2.1.4 where the relevant Milestone Payment is to be calculated based upon a Fixed Price or a Firm Price pricing mechanism, the compensation shall include such amount as is appropriate to maintain the Supplier Profit Margin set out in respect of the relevant Milestone in Table 5 or Table 6 of Annex 1; and

2.1.5 where the Milestone Payment includes any Charges which are capped, then to the extent that the compensation agreed pursuant to this Paragraph 2 results in the Authority paying additional Time and Materials Charges for resources or effort which the Supplier demonstrates are required as a result of the Authority Cause, such additional Time and Materials Charges shall be disregarded for the purposes of calculating the relevant cap.

2.2 The Supplier shall provide the Authority with any information the Authority may require in order to assess the validity of the Supplier's claim to compensation.

33. Service Credits

3.1 Service Credits shall be calculated by reference to the number of Service Points accrued in any one Service Period pursuant to the provisions of ~~Schedule 3 (Performance Levels)~~. Schedule 3 (Performance Levels).

3.2 For each Service Period:

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- 3.2.1 the Service Points accrued shall be converted to a percentage deduction from the Service Charges for the relevant Service Period on the basis of one point equating to a **[Insertinsert percentage]**% deduction in the Service Charges; and
- 3.2.2 the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula:

$$SC = TSP \times x \times AC$$

where:

SC is the total Service Credits for the relevant Service Period;

TSP is the total Service Points that have accrued for the relevant Service Period;

X is **[Insertinsert percentage deduction per Service Point]**%; and

AC is the total Services Charges payable for the relevant Service Period (prior to deduction of applicable Service Credits).

- 3.3 The liability of the Supplier in respect of Service Credits shall be subject to Clause 23.4(c) (*Financial and other Limits*) provided that, for the avoidance of doubt, the operation of the Service Credit Cap shall not affect the continued accrual of Service Points in excess of such financial limit in accordance with the provisions of ~~Schedule 3 (Performance Levels)~~. Schedule 3 (*Performance Levels*).
- 3.4 Service Credits are a reduction of the Service Charges payable in respect of the relevant Services to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- 3.5 Service Credits shall be shown as a deduction from the amount due from the Authority to the Supplier in the invoice for the Service Period immediately succeeding the Service Period to which they relate.

44. Changes to Charges

- 4.1 Any Changes to the Charges shall be developed and agreed by the Parties in accordance with ~~Schedule 22 (Change Control Procedure)~~ Schedule 22 (*Change Control Procedure*) and on the basis that the Supplier Profit Margin on such Charges shall:
- 4.1.1 be no greater than that applying to Charges using the same pricing mechanism as at the Effective Date (as set out in the Contract Inception Report); and
- 4.1.2 in no event exceed the Maximum Permitted Profit Margin.
- 4.2 The Authority may request that any Impact Assessment presents Charges without Indexation for the purposes of comparison.

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55. Indexation

[Guidance: see Paragraph 4.4 of the MSC Guidance document for further guidance regarding indexation.]

5.1 Any amounts or sums in this Contract which are expressed to be “subject to Indexation” shall be adjusted in accordance with the provisions of this Paragraph_5 to reflect the effects of inflation.

~~5.2 Where Indexation applies, the relevant adjustment shall be:~~

~~5.2.1 applied on the first day of the second April following the Effective Date and on the first day of April in each subsequent year (each such date an “adjustment date”); and~~

~~5.2.2 determined by multiplying the relevant amount or sum by the percentage increase or changes in the [Consumer Price Index] published for the 12 months ended on the 31 January immediately preceding the relevant adjustment date.~~

~~5.2 The following costs, expenses, fees or charges included in the Charges shall not be subject to adjustment under this Paragraph 5 and shall not be included in the relevant amount or sum for the purposes of Paragraph 5.3:~~

~~5.2.1 Any costs charged by the Supplier to the Authority in respect of Assets or Authority 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.~~

~~5.3 Notwithstanding any other provisions of this Schedule, amounts or sums in this Contract shall not be subject to Indexation during the first [Insert: number] years following the Operational Service Commencement Date (the “Non-Indexation Period”).~~

~~5.4 Where any amount or sum in this Contract is stated to be “subject to Indexation” then it will be indexed on the date which is one year after the end of the Non-Indexation Period to reflect the percentage change in the [Insert: name of appropriate price index (or indices)] published by the Office of National Statistics or other reputable source] during that 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 price index since the previous change.~~

~~5.3.5~~ Except as set out in this Paragraph_5, neither the Charges nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the Supplier or Sub-contractors of the performance of their obligations.

~~5.6 Where the price index referred to in Paragraph 5.4:~~

~~5.6.1 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~~

~~5.6.2 is no longer published, the Buyer and the Supplier shall agree an appropriate~~

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replacement index which shall cover to the maximum extent possible the same economic activities as the original index.

66. Allowable Assumptions

- 6.1 The Supplier shall determine whether each Allowable Assumption is accurate within its Verification Period.
- 6.2 During each Verification Period, the Authority shall provide the Supplier with reasonable assistance and access to information within its possession or reasonable control and which the Authority deems is relevant to the Allowable Assumption being verified.
- 6.3 Within 10 Working Days of the end of each Verification Period, the Supplier shall provide the Authority with a written report setting out the results of the Supplier's verification activity for the relevant Allowable Assumption, including whether the Allowable Assumption is accurate or whether the Implementation Plan and/or the Contract Inception Report require adjustment.
- 6.4 Each Allowable Assumption shall be deemed accurate unless adjusting for the relevant Allowable Assumption has an impact:
 - 6.4.1 on the Financial Model greater than the associated trigger for invocation, as set out in column 9 of the table in Annex 5; or
 - 6.4.2 on the Implementation Plan which would require adjustment under the Change Control Procedure, as identified in column 3 of the table in Annex 5,in which case Paragraph 6.5 shall apply.
- 6.5 Where the Parties agree that an Allowable Assumption is not accurate and the Financial Model and/or Implementation Plan require adjusting:
 - 6.5.1 the Supplier shall take all reasonable steps to mitigate the impact of the Allowable Assumption on the Financial Model and/or the Implementation Plan;
 - 6.5.2 the Supplier may (subject to Paragraph 6.5.3) propose a Change to take account of the impact of the adjustment of the Allowable Assumption and such Change Request shall be considered in accordance with the Change Control Procedure; and
 - 6.5.3 where the Supplier proposes a Change to the Charges under Paragraph 6.5.2, the Change Request shall reflect the requirements of the table in Annex 5, including the requirement that any proposed adjustment to the Charges shall not exceed the maximum impact on the relevant Charges as specified in column 7 of the table in Annex 5.

77. Risk Register

- 7.1 The Parties shall review the Risk Register set out in Annex 4 from time to time and as otherwise required for the purposes of ~~Schedule 21 (Governance)~~.Schedule_21 (Governance).

Part D: Excessive Supplier Profit Margin

41. Limit on Supplier Profit Margin

- 1.1 The Supplier acknowledges that the Achieved Profit Margin applicable over the Term shall not exceed the Maximum Permitted Profit Margin.
- 1.2 The Supplier shall include in each Annual Contract Report the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up and the provisions of Paragraph 2 of Part B of Schedule 19 (Financial Reports and Audit Rights) of Schedule 19 (Financial Reports and Audit Rights) shall apply to the approval of the Annual Contract Report.

22. Adjustment to the Charges in the Event of Excess Supplier Profit

- 2.1 If an Annual Contract Report demonstrates (or it is otherwise determined pursuant to Paragraph 2 of Part B of Schedule 19 (Financial Reports and Audit Rights) of Schedule 19 (Financial Reports and Audit Rights)) that the Achieved Profit Margin as at the end of the Contract Year to which the Annual Contract Report is made up exceeds the Maximum Permitted Profit Margin:
 - 2.1.1 the Supplier shall, within 5 Working Days of delivery to the Authority of the Annual Contract Report, propose such adjustments to the Charges as will ensure that the Achieved Profit Margin both over the Contract Year to which the next Annual Contract Report will relate and over the Term will not exceed the Maximum Permitted Profit Margin;
 - 2.1.2 the Authority (acting reasonably) may agree or reject the proposed adjustments;
 - 2.1.3 if the Authority rejects the proposed adjustments it shall give reasons and the Supplier shall propose revised adjustments within 10 Working Days of receiving those reasons; and
 - 2.1.4 if the Parties cannot agree such revised adjustments and the Authority terminates this Contract by issuing a Termination Notice to the Supplier pursuant to Clause 31.1(a) (Termination by the Authority), then for the purpose of calculating any Compensation Payment due to the Supplier, the Termination Notice shall be deemed to have been served as at the date of receipt by the Authority of the relevant Annual Contract Report.
- 2.2 Pending agreement of a proposed adjustment to the Charges pursuant to this Part D, the Charges then in force shall continue to apply. Once the adjustments to the Charges are agreed in accordance with Paragraph 2.1, the Parties shall document the adjustment in a Change Authorisation Note and the adjusted Charges shall apply with effect from the first day of the Service Period that immediately follows the Service Period in which the Change Authorisation Note is executed or such other date as is specified in the Change Authorisation Note.

Part E: Invoicing and Payment Terms

41. Supplier Invoices

- 1.1 The Authority shall accept for processing any electronic invoice that complies with the European Standard, provided that it is valid and undisputed.
- 1.2 If the Supplier proposes to submit for payment an invoice that does not comply with the European standard the Supplier shall:
 - 1.2.1 comply with the requirements of the Authority's e-invoicing system;
 - 1.2.2 prepare and provide to the Authority for approval of the format a template invoice within 10 Working Days of the Effective Date which shall include, as a minimum the details set out in Paragraph 1.3 together with such other information as the Authority may reasonably require to assess whether the Charges that will be detailed therein are properly payable; and
 - 1.2.3 make such amendments as may be reasonably required by the Authority if the template invoice outlined in 1.2.2 is not approved by the Authority.
- 1.3 The Supplier shall ensure that each invoice is submitted in the correct format for the Authority's e-invoicing system, or that it contains the following information:
 - 1.3.1 the date of the invoice;
 - 1.3.2 a unique invoice number;
 - 1.3.3 the Service Period or other period(s) to which the relevant Charge(s) relate;
 - 1.3.4 the correct reference for this Contract;
 - 1.3.5 the reference number of the purchase order to which it relates (if any);
 - 1.3.6 the dates between which the Services subject of each of the Charges detailed on the invoice were performed;
 - 1.3.7 a description of the Services;
 - 1.3.8 the pricing mechanism used to calculate the Charges (such as Guaranteed Maximum Price with Target Cost, Fixed Price, Time and Materials);
 - 1.3.9 any payments due in respect of Achievement of a Milestone, including the Milestone Achievement Certificate number for each relevant Milestone;
 - 1.3.10 the total Charges gross and net of any applicable deductions and, separately, the amount of any Reimbursable Expenses properly chargeable to the Authority under the terms of this Contract, and, separately, any VAT or other sales tax payable in respect of each of the same;
 - 1.3.11 details of any Service Credits or Delay Payments or similar deductions that shall apply to the Charges detailed on the invoice;
 - 1.3.12 reference to any reports required by the Authority in respect of the Services to which the Charges detailed on the invoice relate (or in the case of reports

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issued by the Supplier for validation by the Authority, then to any such reports as are validated by the Authority in respect of the Services);

- 1.3.13 a contact name and telephone number of a responsible person in the Supplier's finance department in the event of administrative queries;
 - 1.3.14 the banking details for payment to the Supplier via electronic transfer of funds (i.e. name and address of bank, sort code, account name and number); and
 - 1.3.15 where the Services have been structured into separate Service lines, the information at 1.3.1 to 1.3.14 of this Paragraph 1.3 shall be broken down in each invoice per Service line.
- 1.4 The Supplier shall invoice the Authority in respect of Services in accordance with the requirements of Part B. The Supplier shall first submit to the Authority a draft invoice setting out the Charges payable. The Parties shall endeavour to agree the draft invoice within 5 Working Days of its receipt by the Authority, following which the Supplier shall be entitled to submit its invoice.
- 1.5 Each invoice shall at all times be accompanied by Supporting Documentation. Any assessment by the Authority as to what constitutes Supporting Documentation shall not be conclusive and the Supplier undertakes to provide to the Authority any other documentation reasonably required by the Authority from time to time to substantiate an invoice.
- 1.6 The Supplier shall submit all invoices and Supporting Documentation through the Authority's electronic system [name] or if that is not possible to:

1.7 [Insert insert address or email address]

1.8 with a copy (again including any Supporting Documentation) to such other person and at such place as the Authority may notify to the Supplier from time to time.

~~4.71.9~~ All Supplier invoices shall be expressed in sterling or such other currency as shall be permitted by the Authority in writing.

~~4.81.10~~ The Authority shall regard an invoice as valid only if it complies with the provisions of this Part E. Where any invoice does not conform to the Authority's requirements set out in this Part E, the Authority shall promptly return the disputed invoice to the Supplier and the Supplier shall promptly issue a replacement invoice which shall comply with such requirements.

~~4.91.11~~ If the Authority fails to consider and verify an invoice in accordance with Paragraphs 1.4 and 1.10, the invoice shall be regarded as valid and undisputed for the purpose of Paragraph 2.1 [Payment in 30 days] after a reasonable time has passed.

22. Payment Terms

- 2.1 Subject to the relevant provisions of this Schedule, the Authority shall make payment to the Supplier within thirty (30) days of verifying that the invoice is valid and undisputed.
- 2.2 Unless the Parties agree otherwise in writing, all Supplier invoices shall be paid in sterling by electronic transfer of funds to the bank account that the Supplier has specified on its invoice.

Annex 1: Pricing Mechanism

41. Table 1: Supplier Personnel Rate Card for Calculation of Time and Materials Charges

Staff Grade	Day Rate (£)

22. Table 2: Maximum Time and Materials Charges

Charge Number	Maximum Time and Materials Charges (the cap) (£)
[Service Line 1]	
[e.g. S1M1]	
[e.g. S2M2]	
[Service Line 2]	
[e.g. S2M1]	
[e.g. S2M2]	
[Service Line [X] - insert further rows as necessary]	
[etc.]	

33. Table 3: Day Cost for Calculation of Guaranteed Maximum Price with Target Cost Charges

Supplier Personnel Grade	Day Cost (£)

44. Table 4: Guaranteed Maximum Price with Target Costs Charges

Charge Number	Milestone Group (if applicable)	Target Cost (£)	Target Price (£)	Guaranteed Maximum Price (110% of Target Price) (£)
[Service Line 1]				
[e.g. SL1M1]	[e.g. S1MG1]			
[e.g. SL2M2]	[e.g. S1MG2]			
[Service Line 2]				
[e.g. SL2M3]	[e.g. S2MG1]			
[e.g. SL2M4]	[e.g. S2MG2]			

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Charge Number	Milestone Group (if applicable)	Target Cost (£)	Target Price (£)	Guaranteed Maximum Price (110% of Target Price) (£)
[Service Line [X] – insert further rows as necessary]				
[etc.]	...			

55. Table 5: Fixed Prices

Charge	Fixed Charge (£)
[Service Line 1]	
[e.g. SL1M3]	
[e.g. SL1SC1]	
[e.g. SL1SC3]	
[Service Line 2]	
[e.g. SL2M3]	
[e.g. SL2SC1]	
[e.g. SL2SC3]	
[Service Line [X] – insert further rows as necessary]	
[etc.]	

66. Table 6: Firm Prices

Charge	Firm Charge (£)
[Service Line 1]	
[e.g. SL1M4]	
[e.g. SL1MS3]	
[Service Line 2]	
[e.g. SL2M4]	
[e.g. SL2MS3]	
[Service Line [X] – insert further rows as necessary]	
[etc.]	...

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77. Table 7: Volume Charges

Charge Number	Unit	Number of units per Service Period	Charge per unit (£)
[Service Line 1]			
[e.g. SL1VC1]		[] - []	[]
		[] - []	[]
		[] - []	[]
[e.g. SL1VC2]		[] - []	[]
		[] - []	[]
		[] - []	[]
[e.g. SL1VC3]		[] - []	[] - []
		[] - []	[] - []
		[] - []	[] - []
[Service Line 2]			
[e.g. SL2VC1]		[] - []	[]
		[] - []	[]
		[] - []	[]
[e.g. SL2VC2]		[] - []	[]
		[] - []	[]
		[] - []	[]
[e.g. SL2VC3]		[] - []	[] - []
		[] - []	[] - []
		[] - []	[] - []
[Service Line [X] – insert further rows as necessary]			
[etc.]	[] - []	[]
		[] - []	[]
		[] - []	[]

Schedule 15:- (Charges and Invoicing)

[Subject to Contract]
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Annex 2: Charging Mechanism and Adjustments

41. Table 1: Milestone Payments and Delay Payments

Charge Number	Pricing Mechanism (FIX / FIRM / GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)		
			<3 months' notice	3-6 months' notice	>6 months' notice
[Service Line 1]					
[e.g. SL1M1]	[FIRM]	[e.g. S2M2]			
[e.g. SL1M2]	[FIRM]	[e.g. S2M2]			
[Service Line 2]					
[e.g. SL2M1]	[FIRM]	[e.g. S2M2]			
[e.g. SL2M2]	[FIRM]	[e.g. S2M2]			
[Service Line [X] – insert further rows as necessary]					
[etc.]					

22. Table 2: Service Charges

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[Service Line 1]			
[e.g. SL1C1]	[VOL]	[e.g. Achievement of Milestone 4]	
[e.g. SL1C2]	[FIX]		
[Service Line 2]			
[e.g. SL2C1]	[VOL]	[e.g. Achievement of Milestone 4]	
[e.g. SL2C2]	[FIX]		
[Service Line [X] - insert further rows as necessary]			
[e.g. SLXC1]	[VOL]	[e.g. Achievement of Milestone 4]	
[e.g. SLXC2]	[FIX]		

Schedule 15: (Charges and Invoicing)

[Subject to Contract]

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33. Table 3: Optional Services Milestone Payments

Charge Number	Pricing Mechanism (FIX / FIRM / GMPTC / T&M)	CPP Milestone Charge Number	Delay Payments (if Key Milestone) (£ per day)
[e.g. OMS1]	[FIRM]	[e.g. OMS2]	
[e.g. OMS2]	[FIRM]	[e.g. OMS2]	

44. Table 4: Optional Services Service Charges

Charge Number	Pricing Mechanism (VOL / FIX / T&M)	Service Charge Trigger Event	Service Charge Expiration Trigger Event
[e.g. OSC1]	[VOL]	[e.g. Achievement of Milestone 6]	
[e.g. OSC2]	[FIX]		

Schedule 15: (Charges and Invoicing)

[Subject to Contract]

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Annex 3: Pro-forma Certificate of Costs

I [name of CFO or Director of Finance or equivalent as agreed in advance in writing with the Authority] of [insert name of Supplier], certify that the financial information provided as part of this Certificate of Costs, incurred in relation to the [insert name/reference for the Contract] (the “Contract”) in relation to the following [Milestone/Milestone Group]:

[insert details of Milestone/Milestone Group]

1. has been reasonably and properly incurred in accordance with [name of Supplier]’s books, accounts, other documents and records;

2. is accurate and not misleading in all key respects; and

3. is in conformity with the Contract and with all generally accepted accounting principles within the United Kingdom.

Signed [Director of Finance or equivalent]

[Name of Supplier]

Annex 4: Risk Register

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12
Risk Number	Risk Name	Description of risk	Timing	Likelihood	Impact (£)	Impact (description)	Mitigation (description)	Cost of mitigation	Post-mitigation impact (£)	Forecast Contingency Costs	Owner

Schedule 15:- (Charges and Invoicing)

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Annex 5: Allowable Assumptions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Ref	Description of proposed Allowable Assumption	Impact on the Implementation Plan if the Allowable Assumption is not accurate	Cost Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Basis of Calculation of Cost Impact	Applicable Profit Margin	Charge Impact (maximum, minimum and most likely values if the Allowable Assumption is not accurate)	Verification Method (how the Supplier will verify the Allowable Assumption)	Trigger for Invocation (what will determine that the Implementation Plan and/or Financial Model may require adjustment for the Allowable Assumption)	Period of Impact (period that the updated assumption will have an impact)	Expiry Date (Date at which the Allowable Assumption expires)

Schedule 16

Payments on Termination

Schedule 16: Payments on Termination

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Applicable Supplier Personnel”

any Supplier Personnel who:

(a) at the Termination Date:

- (i) are employees of the Supplier;
- (ii) are Dedicated Supplier Personnel;
- (iii) have not transferred (and are not in scope to transfer at a later date) to the Authority or the Replacement Supplier by virtue of the Employment Regulations; and

~~(b)~~(a) are dismissed or given notice of dismissal by the Supplier within:

- (i) 40 Working Days of the Termination Date; or
- (ii) such longer period required by Law, their employment contract (as at the Termination Date) or an applicable collective agreement; and

~~(c)~~(a) have not resigned or given notice of resignation prior to the date of their dismissal by the Supplier; and

~~(d)~~(a) the Supplier can demonstrate to the satisfaction of the Authority:

- (i) are surplus to the Supplier’s requirements after the Termination Date notwithstanding its obligation to provide services to its other customers;
- (ii) are genuinely being dismissed for reasons of redundancy; and
- (iii) have been selected for redundancy by the Supplier on objective grounds other than the fact that the Supplier is entitled to reimbursement under this provision in respect of such employees;

“Breakage Costs Payment”

an amount equal to the Redundancy Costs and the Contract Breakage Costs as at the Termination Date as determined in accordance with Paragraph 3;

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“Compensation Payment”	the payment calculated in accordance with Paragraph 9;
“Contract Breakage Costs”	the amounts payable by the Supplier to its Key Sub-contractors or other third parties (as applicable) for terminating all relevant Key Sub-contracts or Third Party Contracts as a direct result of the early termination of this Contract;
“Dedicated Supplier Personnel”	all Supplier Personnel then assigned to the Services or any part of the Services. If the Supplier is unsure as to whether Supplier Personnel are or should be regarded as so assigned, it shall consult with the Authority whose view shall be determinative provided that the employee has been materially involved in the provision of the Services or any part of the Services;
“Profit Already Paid”	the Supplier Profit paid or payable to the Supplier under this Contract for the period from the Effective Date up to (and including) the Termination Date;
“Redundancy Costs”	<p>the total sum of any of the following sums paid to Applicable Supplier Personnel, each amount apportioned between the Supplier and the Authority based on the time spent by such employee on the Services as a proportion of the total Service duration:</p> <ul style="list-style-type: none">(a) any statutory redundancy payment; and(b) in respect of an employee who was a Transferring Former Supplier Employee or a Transferring Authority Employee, any contractual redundancy payment (or where such a contractual benefit on redundancy is a benefit payable from a pension scheme, the increase in cost to the Supplier as a net present value compared to the benefit payable on termination of employment without redundancy), provided that such employee was entitled to such contractual redundancy payment immediately prior to his or her transfer to the Supplier under the Employment Regulations;
“Request for Estimate”	a written request sent by the Authority to the Supplier, requiring that the Supplier provide it with an accurate estimate of the Termination Payment and Compensation Payment that would be payable if the Authority exercised its right under Clause 31.1(a) (<i>Termination by the Authority</i>) to terminate this Contract for convenience on a specified Termination Date;
“Shortfall Period”	has the meaning given in Paragraph 9.2;

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“**Termination Estimate**” has the meaning given in Paragraph 14.2;

“**Third Party Contract**” a contract with a third party entered into by the Supplier exclusively for the purpose of delivering the Services, as listed in ~~Schedule 11 (Third Party Contracts)~~; Schedule_11 (*Third Party Contracts*);

“**Total Costs Incurred**” the Costs incurred by the Supplier up to the Termination Date in the performance of this Contract and detailed in the Financial Model (but excluding Contract Breakage Costs, Redundancy Costs and any costs the Supplier would not otherwise be able to recover through the Charges) less any Deductions up to (and including) the Termination Date;

“**Unrecovered Costs**” the Costs incurred by the Supplier in the performance of this Contract (as summarised in the Financial Model) to the extent that the same remain at the Termination Date to be recovered through Charges that but for the termination of this Contract would have been payable by the Authority after the Termination Date in accordance with ~~Schedule 15 (Charges and Invoicing)~~ Schedule_15 (*Charges and Invoicing*) as such Costs and Charges are forecast in the Financial Model;

“**Unrecovered Payment**” an amount equal to the lower of:

- (a) the sum of the Unrecovered Costs and the Unrecovered Profit; and
- (b) the amount specified in Paragraph 7; and

“**Unrecovered Profit**” $(\text{Total Costs Incurred} \times \text{Anticipated Contract Life Profit Margin}) - \text{Profit Already Paid} + \text{Milestone Retentions remaining unpaid at the Termination Date.}$

22. Termination Payment

2.1 The Termination Payment payable pursuant to Clause 32.3(a) (*Payments by the Authority*) shall be an amount equal to the aggregate of the Breakage Costs Payment and the Unrecovered Payment.

33. Breakage Costs Payment

3.1 The Supplier may recover through the Breakage Costs Payment only those costs incurred by the Supplier directly as a result of the termination of this Contract which:

3.1.1 would not have been incurred had this Contract continued until expiry of the Initial Term, or in the event that the Term has been extended, the expiry of the Extension Period;

3.1.2 are unavoidable, proven, reasonable, and not capable of recovery;

3.1.3 are incurred under arrangements or agreements that are directly associated

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with this Contract;

3.1.4 are not Contract Breakage Costs relating to contracts or Sub-contracts with Affiliates of the Supplier; and

3.1.5 relate directly to the termination of the Services.

44. Limitation on Breakage Costs Payment

4.1 The Breakage Costs Payment shall not exceed the lower of:

4.1.1 the relevant limit set out in Annex 1; and

4.1.2 120% of the estimate for the Breakage Costs Payment set out in any relevant Termination Estimate.

55. Redundancy Costs

5.1 The Authority shall not be liable under this Schedule for any costs associated with Supplier Personnel (whether relating to redundancy, redeployment or otherwise) other than the Redundancy Costs.

5.2 Where the Supplier can demonstrate that a member of Supplier Personnel will be made redundant following termination of this Contract, but redeployment of such person is possible and would offer value for money to the Authority when compared with redundancy, then the Authority shall pay the Supplier the actual direct costs incurred by the Supplier or its Sub-contractor arising out of the redeployment of such person (including retraining and relocation costs) subject to a maximum amount of £30,000 per relevant member of the Supplier Personnel.

66. Contract Breakage Costs

6.1 The Supplier shall be entitled to Contract Breakage Costs only in respect of Third Party Contracts or Sub-contracts which:

6.1.1 are not assigned or novated to a Replacement Supplier at the request of the Authority in accordance with ~~Schedule 25 (Exit Management)~~; Schedule 25 (~~Exit Management~~); and

6.1.2 the Supplier can demonstrate:

~~1.(a)~~ are surplus to the Supplier's requirements after the Termination Date, whether in relation to use internally within its business or in providing services to any of its other customers; and

~~(www)(b)~~ have been entered into by it in the ordinary course of business.

6.2 The Supplier shall seek to negotiate termination of any Third Party Contracts or Sub-contracts with the relevant third party or Sub-contractor (as the case may be) using all reasonable endeavours to minimise the cancellation or termination charges.

6.3 Except with the prior written agreement of the Authority, the Authority shall not be liable for any costs (including cancellation or termination charges) that the Supplier is obliged to pay in respect of:

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6.3.1 the termination of any contractual arrangements for occupation of, support of and/or services provided for Supplier premises which may arise as a consequence of the termination of this Contract; and/or

6.3.2 Assets not yet installed at the Termination Date.

77. Unrecovered Payment

7.1 The Unrecovered Payment shall not exceed the lowest of:

7.1.1 the relevant limit set out in Annex 1;

7.1.2 120% of the estimate for the Unrecovered Payment set out in any relevant Termination Estimate; and

7.1.3 the Charges that but for the termination of this Contract would have been payable by the Authority after the Termination Date in accordance with ~~Schedule 15 (Charges and Invoicing)~~ Schedule_15_(Charges and Invoicing) as forecast in the Financial Model.

88. Mitigation of Contract Breakage Costs, Redundancy Costs and Unrecovered Costs

8.1 The Supplier agrees to use all reasonable endeavours to minimise and mitigate Contract Breakage Costs, Redundancy Costs and Unrecovered Costs by:

8.1.1 the appropriation of Assets, employees and resources for other purposes;

8.1.2 at the Authority's request, assigning any Third Party Contracts and Sub-contracts to the Authority or a third party acting on behalf of the Authority; and

8.1.3 in relation Third Party Contracts and Sub-contract that are not to be assigned to the Authority or to another third party, terminating those contracts at the earliest possible date without breach or where contractually permitted.

8.2 If Assets, employees and resources can be used by the Supplier for other purposes, then there shall be an equitable reduction in the Contract Breakage Costs, Redundancy Costs and Unrecovered Costs payable by the Authority or a third party to the Supplier. In the event of any Dispute arising over whether the Supplier can use any Assets, employees and/or resources for other purposes and/or over the amount of the relevant equitable reduction, the Dispute shall be referred to an Expert for determination in accordance with the procedure detailed in ~~Schedule 23 (Dispute Resolution Procedure)~~ Schedule_23 (Dispute Resolution Procedure).

99. Compensation Payment

9.1 The Compensation Payment payable pursuant to Clause 32.3(b) (*Payments by the Authority*) shall be an amount equal to the total forecast Charges over the Shortfall Period (as stated in the Financial Model) multiplied by the Anticipated Contract Life Profit Margin.

9.2 For the purposes of Paragraph 9.1, the "Shortfall Period" means:

9.2.1 where the Authority terminates this Contract pursuant to Clause 31.1(a) (*Termination by the Authority*), a number of days equal to the number of days by which the notice given (or deemed given pursuant to Paragraph 2.1.1 of

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Part D of ~~Schedule 15 (Charges and Invoicing)~~ Schedule 15 (Charges and Invoicing) falls short of three hundred and sixty-five (365) days; or

9.2.2 where the Supplier terminates this Contract pursuant to Clause 31.3(a) (*Termination by the Supplier*), a number of days equal to the number of days by which the period from (and including) the date of the non-payment by the Authority to (and including) the Termination Date falls short of 365 days,

but in each case subject to the limit set out in Paragraph 9.3.

9.3 The Compensation Payment shall be no greater than the lower of:

9.3.1 the relevant limit set out in Annex 1; and

9.3.2 120% of the estimate for the Compensation Payment set out in the relevant Termination Estimate.

4010. Full and Final Settlement

10.1 Any Termination Payment and/or Compensation Payment paid under this Schedule shall be in full and final settlement of any claim, demand and/or proceedings of the Supplier in relation to any termination by the Authority pursuant to Clause 31.1(a) (*Termination by the Authority*) or termination by the Supplier pursuant to Clause 31.3(a) (*Termination by the Supplier*) (as applicable), and the Supplier shall be excluded from all other rights and remedies it would otherwise have been entitled to in respect of any such termination.

4111. Invoicing for the Payments on Termination

11.1 All sums due under this Schedule shall be payable by the Authority to the Supplier in accordance with the payment terms set out in ~~Schedule 15 (Charges and Invoicing)~~ Schedule 15 (Charges and Invoicing).

4212. Set Off

12.1 The Authority shall be entitled to set off any outstanding liabilities of the Supplier against any amounts that are payable by it pursuant to this Schedule.

4313. No Double Recovery

13.1 If any amount payable under this Schedule (in whole or in part) relates to or arises from any Transferring Assets then, to the extent that the Authority makes any payments pursuant to ~~Schedule 25 (Exit Management)~~ Schedule 25 (Exit Management) in respect of such Transferring Assets, such payments shall be deducted from the amount payable pursuant to this Schedule.

13.2 The value of the Termination Payment and/or the Compensation Payment shall be reduced or extinguished to the extent that the Supplier has already received the Charges or the financial benefit of any other rights or remedy given under this Contract so that there is no double counting in calculating the relevant payment.

13.3 Any payments that are due in respect of the Transferring Assets shall be calculated in accordance with the provisions of the Exit Plan.

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14.14. Estimate of Termination Payment and Compensation Payment

- 14.1 The Authority may issue a Request for Estimate at any time during the Term provided that no more than 2 Requests for Estimate may be issued in any 6 month period.
- 14.2 The Supplier shall within 20 Working Days of receiving the Request for Estimate (or such other timescale agreed between the Parties), provide an accurate written estimate of the Termination Payment and the Compensation Payment that would be payable by the Authority based on a postulated Termination Date specified in the Request for Estimate (such estimate being the “**Termination Estimate**”). The Termination Estimate shall:
 - 14.2.1 be based on the relevant amounts set out in the Financial Model;
 - 14.2.2 include:
 - ~~1.~~(a) details of the mechanism by which the Termination Payment is calculated;
 - ~~(xxxx)~~(b) full particulars of the estimated Contract Breakage Costs in respect of each Sub-contract or Third Party Contract and appropriate supporting documentation; and
 - ~~(yyyy)~~(c) such information as the Authority may reasonably require; and
 - 14.2.3 state the period for which that Termination Estimate remains valid, which shall be not less than 20 Working Days.
- 14.3 The Supplier acknowledges that issue of a Request for Estimate shall not be construed in any way as to represent an intention by the Authority to terminate this Contract.
- 14.4 If the Authority issues a Termination Notice to the Supplier within the stated period for which a Termination Estimate remains valid, the Supplier shall use the same mechanism to calculate the Termination Payment as was detailed in the Termination Estimate unless otherwise agreed in writing between the Supplier and the Authority.

Schedule 16: (Payments on Termination)

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Annex 1: Maximum Payments on Termination

The table below sets out, by Contract Year, the maximum amount of the Unrecovered Payment, Breakage Costs Payment and Compensation Payment that the Authority shall be liable to pay to the Supplier pursuant to this Contract:

Termination Date	Maximum Unrecovered Payment	Maximum Breakage Costs Payment	Maximum Compensation Payment
Anytime in the first Contract Year			
Anytime in the second Contract Year			
Anytime in Contract Years 3 – [X]			

Schedule 17

Benchmarking

Schedule 17: Benchmarking

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Benchmarked Service”	a Service that the Authority elects to include in a Benchmark Review under Paragraph 2.3;
“Benchmarker”	the independent third party appointed under Paragraph 3.1;
“Benchmark Report”	the report produced by the Benchmarker following the Benchmark Review as further described in Paragraph 5;
“Benchmark Review”	a review of one or more of the Services carried out in accordance with Paragraph 4 to determine whether those Services represent Good Value;
“Comparable Service”	in relation to a Benchmarked Service, a service that is identical or materially similar to the Benchmarked Service (including in terms of scope, specification, volume and quality of performance);
“Comparison Group”	in relation to a Comparable Service, a sample group of organisations providing the Comparable Service identified by the Benchmarker under Paragraph 4.8 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 (in the Benchmarker’s professional opinion) fair comparators with the Supplier or which, in the professional opinion of the Benchmarker, are best practice organisations and, where there are a reasonable number of such organisations, referencing only those organisations that are carrying on at least a significant part of their business within the United Kingdom;
“Equivalent Services Data”	in relation to a Comparable Service, data derived from an analysis of the Comparable Service provided by the Comparison Group as adjusted in accordance with Paragraphs 4.8.1 and 4.9 provided that the Benchmarker shall not use any such data that relates to a period which ended more than 36 months prior to the date of the appointment of the Benchmarker;
“Good Value”	in relation to a Benchmarked Service, that: (a) having taken into account the Performance Indicators and Target Service Performance Levels, the value for money of the Charges attributable to that Benchmarked

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Service is at least as good as the value for money of the Upper Quartile; and

- (b) any Performance Indicators and Target **Service Performance** Levels applicable to that Benchmarked Service are, having taken into account the Charges, equal to or better than the median service levels for the Comparable Service using Equivalent Services Data; and

“Upper Quartile” the top 25% of instances of provision of a Comparable Service by members of the Comparison Group ranked by best value for money to the recipients of that Comparable Service.

22. Frequency, Purpose and Scope of Benchmark Review

- 2.1 The Authority may, by written notice to the Supplier, require a Benchmark Review of any or all of the Services in order to establish whether a Benchmarked Service is, and/or the Benchmarked Services as a whole are, Good Value.
- 2.2 The Authority shall not be entitled to carry out a Benchmark Review of any Services during the 12 month period from the Operational Service Commencement Date for those Services, nor at intervals of less than 12 months after any previous Benchmark Review relating to the same Services.
- 2.3 The Services that are to be the Benchmarked Services shall be identified by the Authority in the notice given under Paragraph 2.1.

33. Appointment of Benchmarking

- 3.1 The Authority shall appoint as the Benchmarking to carry out the Benchmark Review either an organisation on the list of organisations set out in Annex 1 or such other organisation as may be agreed in writing between the Parties.
- 3.2 The Authority shall, at the written request of the Supplier, require the Benchmarking to enter into a confidentiality agreement with the Supplier in, or substantially in, the form set out in Annex 2.
- 3.3 The costs and expenses of the Benchmarking and the Benchmark Review shall be shared equally between both Parties provided that each Party shall bear its own internal costs of the Benchmark Review. The Benchmarking shall not be compensated on a contingency fee or incentive basis.
- 3.4 The Authority shall be entitled to pay the Benchmarking's costs and expenses in full and to recover the Supplier's share from the Supplier.

44. Benchmark Review

- 4.1 The Authority shall require the Benchmarking to produce, and to send to each Party for approval, a draft plan for the Benchmark Review within 10 Working Days after the date of the appointment of the Benchmarking, or such longer period as the Benchmarking shall reasonably request in all the circumstances. The plan must include:

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- 4.1.1 a proposed timetable for the Benchmark Review;
 - 4.1.2 a description of the information that the Benchmarker requires each Party to provide;
 - 4.1.3 a description of the benchmarking methodology to be used;
 - 4.1.4 a description that clearly illustrates that the benchmarking methodology to be used is capable of fulfilling the benchmarking objectives under Paragraph 2.1;
 - 4.1.5 an estimate of the resources required from each Party to underpin the delivery of the plan;
 - 4.1.6 a description of how the Benchmarker will scope and identify the Comparison Group;
 - 4.1.7 details of any entities which the Benchmarker proposes to include within the Comparison Group; and
 - 4.1.8 if in the Benchmarker's professional opinion there are no Comparable Services or the number of entities carrying out Comparable Services is insufficient to create a Comparison Group, a detailed approach for meeting the relevant benchmarking objective(s) under Paragraph 2.1 using a proxy for the Comparison Services and/or Comparison Group as applicable.
- 4.2 The Parties acknowledge that the selection and or use of proxies for the Comparison Group (both in terms of number and identity of entities) and Comparable Services shall be a matter for the Benchmarker's professional judgment.
- 4.3 Each Party shall give notice in writing to the Benchmarker and to the other Party within 10 Working Days after receiving the draft plan either approving the draft plan or suggesting amendments to that plan which must be reasonable. Where a Party suggests amendments to the draft plan pursuant to this Paragraph 4.3, the Benchmarker shall, if it believes the amendments are reasonable, produce an amended draft plan. Paragraph 4.1 and this Paragraph 4.3 shall apply to any amended draft plan.
- 4.4 Failure by a Party to give notice under Paragraph 4.3 shall be treated as approval of the draft plan by that Party. If the Parties fail to approve the draft plan within 30 Working Days of its first being sent to them pursuant to Paragraph 4.1 then the Benchmarker shall prescribe the plan.
- 4.5 Once the plan is approved by both Parties or prescribed by the Benchmarker, the Benchmarker shall carry out the Benchmark Review in accordance with the plan. Each Party shall procure that all the information described in the plan, together with any additional information reasonably required by the Benchmarker is provided to the Benchmarker without undue delay. If the Supplier fails to provide any information requested from it by the Benchmarker and described in the plan, such failure shall constitute a material Default for the purposes of Clause 25.1(c) (*Rectification Plan Process*).
- 4.6 Each Party shall co-operate fully with the Benchmarker, including by providing access to records, technical documentation, premises, equipment, systems and personnel at times reasonably requested by the Benchmarker, provided that the Benchmarker shall be instructed to minimise any disruption to the Services.

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- 4.7 Either Party may provide additional material to the Benchmarker to assist the Benchmarker in conducting the Benchmark Review.
- 4.8 Once it has received the information it requires, the Benchmarker shall:
- 4.8.1 finalise the sample of entities constituting the Comparison Group and collect data relating to Comparable Services. The final selection of the Comparison Group (both in terms of number and identity of entities) and of the Comparable Services shall be a matter for the Benchmarker's professional judgment;
 - 4.8.2 derive the Equivalent Services Data by applying the adjustment factors listed in Paragraph 4.9 and from an analysis of the Comparable Services;
 - 4.8.3 derive the relative value for money of the charges payable for the Comparable Services using the Equivalent Services Data and from that derive the Upper Quartile;
 - 4.8.4 derive the median service levels relating to the Comparable Services using the Equivalent Services Data;
 - 4.8.5 compare the value for money of the Charges attributable to the Benchmarked Services (having regard in particular to the applicable Performance Indicators and Target ServicePerformance Levels) to the value for money of the Upper Quartile;
 - 4.8.6 compare the Performance Indicators and Target ServicePerformance Levels attributable to the Benchmarked Services (having regard to the Charges and Service Credits) with the median service levels using the Equivalent Services Data; and
 - 4.8.7 determine whether or not each Benchmarked Service is and/or the Benchmarked Services as a whole are, Good Value.
- 4.9 The Benchmarker shall have regard to the following matters when performing a comparative assessment of a Benchmarked Service and a Comparable Service in order to derive Equivalent Services Data:
- 4.9.1 the contractual and business environment under which the Services are being provided (including the scope, scale, complexity and geographical spread of the Services);
 - 4.9.2 any front-end investment and development costs of the Supplier;
 - 4.9.3 the Supplier's risk profile including the financial, performance or liability risks associated with the provision of the Services as a whole;
 - 4.9.4 the extent of the Supplier's management and contract governance responsibilities;
 - 4.9.5 any other reasonable factors demonstrated by the Supplier, which, if not taken into consideration, could unfairly cause the Supplier's pricing to appear non-competitive (such as erroneous costing, non-sustainable behaviour including excessive consumption of energy or over-aggressive pricing).

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55. Benchmark Report

- 5.1 The Benchmarker shall be required to prepare a Benchmark Report and deliver it simultaneously to both Parties, at the time specified in the plan approved under Paragraph 4, setting out its findings. The Benchmark Report shall:
 - 5.1.1 include a finding as to whether or not each Benchmarked Service is and/or whether the Benchmarked Services as a whole are, Good Value;
 - 5.1.2 include other findings (if any) regarding the quality and competitiveness or otherwise of those Services;
 - 5.1.3 if any Benchmarked Service is not Good Value, or the Benchmarked Services as a whole are not Good Value, specify the changes that would be required to the Charges, Performance Indicators and/or Target Performance Levels, that would be required to make that Benchmarked Service or those Benchmarked Services as a whole Good Value; and
 - 5.1.4 illustrate the method used for any normalisation of the Equivalent Services Data
- 5.2 The Benchmarker shall act as an expert and not as an arbitrator.
- 5.3 If the Benchmark Report states that any Benchmarked Service is not Good Value or that the Benchmarked Services as a whole are not Good Value, then the Supplier shall (subject to Paragraphs 5.5 and 5.6) implement the changes set out in the Benchmark Report as soon as reasonably practicable within timescales agreed with the Authority but in any event within no more than 3 months. Any associated changes to the Charges shall take effect only from the same date and shall not be retrospective.
- 5.4 The Supplier acknowledges and agrees that Benchmark Reviews shall not result in any increase to the Charges, disapplication of the Performance Indicators or any reduction in the Target Performance Levels.
- 5.5 The Supplier shall be entitled to reject any Benchmark Report if the Supplier reasonably considers that the Benchmarker has not followed the procedure for the related Benchmark Review as set out in this Schedule in any material respect.
- 5.6 The Supplier shall not be obliged to implement any Benchmark Report to the extent this would cause the Supplier to provide the Services at a loss (as determined, by reference to the Financial Model), or to the extent the Supplier cannot technically implement the recommended changes.
- 5.7 In the event of any Dispute arising over whether the Benchmarker has followed the procedure for the related Benchmark Review under Paragraph 5.5 and/or any matter referred to in Paragraph 5.6, the Dispute shall be referred to Expert Determination. For the avoidance of doubt in the event of a Dispute between the Parties, the Authority shall continue to pay the Charges to the Supplier in accordance with the terms of this Contract and the Performance Indicators and Target Performance Levels shall remain unchanged pending the conclusion of the Expert Determination.
- 5.8 On conclusion of the Expert Determination:
 - 5.8.1 if the Expert determines that all or any part of the Benchmark Report

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recommendations regarding any reduction in the Charges shall be implemented by the Supplier, the Supplier shall immediately repay to the Authority the difference between the Charges paid by the Authority up to and including the date of the Expert's determination and the date upon which the recommended reduction in Charges should have originally taken effect pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

5.8.2 if the Expert determines that all or any part of the Benchmark Report recommendations regarding any changes to the Performance Indicators and/or Target Performance Levels shall be implemented by the Supplier:

~~1.(a)~~ the Supplier shall immediately implement the relevant changes;

~~(zzzz)~~(b) the Supplier shall immediately pay an amount equal to any Service Credits which would have accrued up to and including the date of the Expert's determination if the relevant changes had taken effect on the date determined pursuant to Paragraph 5.3 together with interest thereon at the applicable rate under the Late Payment Of Commercial Debts (Interest) Act 1998; and

~~(aaaaa)~~(c) the relevant changes shall thereafter be subject to the Change Control Procedure for the purposes of formalising and documenting the relevant change or amendment for the purposes of this Contract.

5.9 Any failure by the Supplier to implement the changes as set out in the Benchmark Report in accordance with the relevant timescales determined in accordance with Paragraph 5.3 (unless the provisions of Paragraph 5.6 and/or Paragraph 5.7 apply) or in accordance with Paragraph 5.8 shall, without prejudice to any other rights or remedies of the Authority, constitute a Supplier Termination Event.

Annex 1: Approved Benchmarkers

Annex 2: Confidentiality Agreement

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on [date]

BETWEEN:

~~(1)~~1. [insert name] of [insert address] (the “Supplier”); and

~~(2)~~2. [insert name] of [insert address] (the “Benchmarker” and together with the Supplier, the “Parties”).

WHEREAS:

(A) [insert name of Authority] (the “Authority”) 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 Authority.

(B) The Benchmarker is to receive Confidential Information from the Supplier for the purpose of carrying out a benchmarking review for the Authority of one or more of such services pursuant to the terms of the Contract (the “Permitted Purpose”).

IT IS AGREED as follows:

~~4~~1. Interpretation

1.1 In this Agreement, unless the context otherwise requires:

“Confidential Information”

means:

- (a) Information, including all personal data within the meaning of the Data Protection Act 2018, and however it is conveyed, provided by the Supplier to the Benchmarker pursuant to this Agreement that relates to:
 - (i) the Supplier; or
 - (ii) the operations, business, affairs, developments, intellectual property rights, trade secrets, know-how and/or personnel of the Supplier;

~~(b)~~(a) other Information provided by the Supplier pursuant to this Agreement to the Benchmarker 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 Benchmarker’s attention or into the Benchmarker’s possession in connection with the Permitted Purpose;

~~(c)~~(a) discussions, negotiations, and correspondence between the Supplier or any of its directors, officers, employees, consultants or professional advisers and the

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Benchmarker or any of its directors, officers, employees, consultants and professional advisers in connection with the Permitted Purpose and all matters arising therefrom; and

~~(d)~~(a) Information derived from any of the above,

but not including any Information that:

~~(e)~~(a) was in the possession of the Benchmarker without obligation of confidentiality prior to its disclosure by the Supplier;

~~(f)~~(a) the Benchmarker obtained on a non-confidential basis from a third party who is not, to the Benchmarker's knowledge or belief, bound by a confidentiality agreement with the Supplier or otherwise prohibited from disclosing the information to the Benchmarker;

~~(g)~~(a) 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

~~(h)~~(a) was independently developed without access to the Confidential Information;

“Information”

means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and digital form); and

“Permitted Purpose”

has the meaning given to that expression in recital ~~(B)~~(B) to this Agreement.

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

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1.2.6 references to Clauses are to clauses of this Agreement.

22. Confidentiality Obligations

- 2.1 In consideration of the Supplier providing Confidential Information to the Benchmarker, the Benchmarker 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, if relevant, other owner 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 the Permitted Purpose;
 - 2.1.6 immediately notify the Supplier in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Confidential Information; and
 - 2.1.7 once the Permitted Purpose has been fulfilled:
 - ~~4.(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 Benchmarker) from any computer, word processor, voicemail system or any other device; and
 - ~~(c)~~ make no further use of any Confidential Information.

33. Permitted Disclosures

- 3.1 The Benchmarker 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 Permitted Purpose; and
 - 3.1.2 have been informed by the Benchmarker 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 Benchmarker shall be entitled to disclose Confidential Information to the Authority for the Permitted Purpose and to any Expert appointed in relation to a Dispute as referred to

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in Paragraph 5.7 of this ~~Schedule 17 (Benchmarking)~~ Schedule_17_(Benchmarking) to the Contract.

- 3.3 The Benchmarker 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 Benchmarker.
- 3.4 Before making a disclosure pursuant to Clause 3.3, the Benchmarker shall, if the circumstances permit:
 - 3.4.1 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
 - 3.4.2 ask the court or other public body to treat the Confidential Information as confidential.

44. General

- 4.1 The Benchmarker 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 Benchmarker any licence or rights other than as may be expressly stated in this Agreement;
 - 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 this Agreement.
- 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 Benchmarker acknowledges and agrees that damages alone may not be an adequate remedy for any breach by the Benchmarker of any of the provisions of this Agreement. Accordingly, the Benchmarker 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 Benchmarker to the Supplier for any breach of this Agreement shall be limited to ten million pounds (£10,000,000).

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- 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.

55. 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 Benchmarker shall be sent to:
[Name of Organisation]
[Address]
Attention: []

66. 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:

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Name:

Position:

For and on behalf of **[name of Benchmarker]**

Signature: _____

Date:

Name:

Position:

Schedule 18

Financial Distress

Schedule 18: Financial Distress

[Guidance note: This template Schedule provides the user with the option of using Credit Ratings and/or Financial Indicators for the purposes of the Financial Distress Provisions. 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.]

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Applicable Financial Indicators”	means the financial indicators from Paragraph 5.1 of this Schedule which are to apply to the Monitored Suppliers as set out in Paragraph 5.2 of this Schedule;
“Board”	means the Supplier’s board of directors;
“Board Confirmation”	means written confirmation from the Board in accordance with Paragraph 8 of this Schedule;
“Credit Rating Level”	a credit rating level as specified in Annex 1 of this Schedule;
“Credit Rating Threshold”	the minimum Credit Rating Level for each entity in the FDE Group as set out in Annex 2 of this Schedule;
“FDE Group”	means the [Supplier, Key Sub-contractors, [the Guarantor] and the [Monitored Suppliers]];
“Financial Indicators”	in respect of the Supplier, Key Sub-contractors and the Guarantor, means each of the financial indicators set out at Paragraph 5.1 of this Schedule; 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 Paragraph 5.1 of this Schedule;
“Monitored Suppliers”	means those entities specified at Paragraph 5.2 of this Schedule; <u>and</u>
“Rating Agencies”	the rating agencies listed in Annex 1 of this Schedule.

22. Warranties and Duty to Notify

2.1 The Supplier warrants and represents to the Authority for the benefit of the Authority that

Schedule 18: (Financial Distress)

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as at the Effective Date:

- 2.1.1 the long term credit ratings issued for each entity in the FDE Group by each of the Rating Agencies are as set out in Annex 2 of this Schedule; and
 - 2.1.2 the financial position or, as appropriate, the financial performance of each of the Supplier, Guarantor and Key Sub-contractors satisfies the Financial Target Thresholds.
- 2.2 The Supplier shall promptly notify (or shall procure that its auditors promptly notify) the Authority in writing if there is any downgrade in the credit rating issued by any Rating Agency for any entity in the FDE Group (and in any event within 5 Working Days of the occurrence of the downgrade).
- 2.3 The Supplier shall:
- 2.3.1 regularly monitor the credit ratings of each entity in the FDE Group with the Rating Agencies;
 - 2.3.2 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 Paragraph 5.1 (where specified) and in any event, on a regular basis and no less than once a year within ~~one hundred and twenty (120)~~120 days after the Accounting Reference Date; and
 - 2.3.3 promptly notify (or shall procure that its auditors promptly notify) the Authority 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).
- 2.4 For the purposes of determining whether a Financial Distress Event has occurred pursuant to the ~~provisions~~provision of ~~Paragraphs~~Paragraph 3.1.1, and for the purposes of determining relief under Paragraph 7.1, the credit rating of an FDE Group entity shall be deemed to have dropped below the applicable Credit Rating Threshold if:
- 2.4.1 any of the Rating Agencies have given a Credit Rating Level for that entity which is below the applicable Credit Rating Threshold; or
 - 2.4.2 a Rating Agency that is specified as holding a Credit Rating for an entity as set out at Annex 2 of this Schedule ceases to hold a Credit Rating for that entity.
- 2.5 Each report submitted by the Supplier pursuant to Paragraph 2.3.2 shall:
- 2.5.1 be a single report with separate sections for each of the FDE Group entities;
 - 2.5.2 contain a sufficient level of information to enable the Authority to verify the calculations that have been made in respect of the Financial Indicators;
 - 2.5.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes;

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- 2.5.4 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
- 2.5.5 include a history of the Financial Indicators reported by the Supplier in graph form to enable the Authority to easily analyse and assess the trends in financial performance.

33. Financial Distress Events

3.1 The following shall be Financial Distress Events:

- 3.1.1 the credit rating of an FDE Group entity dropping below the applicable Credit Rating Threshold;
- 3.1.2 an FDE Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- 3.1.3 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of an FDE Group entity;
- 3.1.4 an FDE Group entity committing a material breach of covenant to its lenders;
- 3.1.5 a Key Sub-contractor notifying the Authority that the Supplier has not satisfied any material sums properly due under a specified invoice and not subject to a genuine dispute;
- 3.1.6 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 9 months after its accounting reference date without an explanation to the Authority which the Authority (acting reasonably) considers to be adequate;
- 3.1.7 any FDE Group entity is late to file its annual accounts without a public notification or an explanation to the Authority which the Authority, acting reasonably, considers to be adequate;
- 3.1.8 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;
- 3.1.9 any of the following:
 - 1.(a) any FDE Group entity makes a public announcement which contains adverse 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;
 - (b) commencement of any litigation against an 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;

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~~(eeeee)~~(c) non-payment by an FDE Group entity of any financial indebtedness;

~~(fffff)~~(d) any financial indebtedness of an FDE Group entity becoming due as a result of an event of default;

~~(ggggg)~~(e) the cancellation or suspension of any financial indebtedness in respect of an FDE Group entity; or

~~(hhhhh)~~(f) the external auditor of an FDE Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that FDE entity;

in each case which the Authority reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery of the Services in accordance with this Contract; and

- 3.1.10 any **[one]** of the Financial Indicators set out at Paragraph 5 for any of the FDE Group entities failing to meet the required Financial Target Threshold.

44. Consequences of Financial Distress Events

- 4.1 Immediately upon notification by the Supplier of a Financial Distress Event (or if the Authority becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Supplier), the Supplier shall have the obligations and the Authority shall have the rights and remedies as set out in Paragraphs 4.3 to 4.5.
- 4.2 In the event of a late or non-payment of a Key Sub-contractor pursuant to Paragraph 3.1.5, the Authority shall not exercise any of its rights or remedies under Paragraph 4.3 without first giving the Supplier 10 Working Days to:
- 4.2.1 rectify such late or non-payment; or
- 4.2.2 demonstrate to the Authority's reasonable satisfaction that there is a valid reason for late or non-payment.
- 4.3 The Supplier shall (and shall procure that any Monitored Supplier, the Guarantor and/or any relevant Key Sub-contractor shall):
- 4.3.1 at the request of the Authority, meet the Authority as soon as reasonably practicable (and in any event within 3 Working Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing) to review the effect of the Financial Distress Event on the continued performance and delivery of the Services in accordance with this Contract; and
- 4.3.2 where the Authority reasonably believes (taking into account the discussions and any representations made under Paragraph 4.3.1 that the Financial Distress Event could impact on the continued performance and delivery of the Services in accordance with this Contract:
- ~~4.~~(a) submit to the Authority for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Working Days of the initial notification (or awareness) of the

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Financial Distress Event or such other period as the Authority may permit and notify to the Supplier in writing); and

~~(iiiii)~~(b) to the extent that it is legally permitted to do so and subject to Paragraph 4.7, provide such information relating to the Supplier, any Monitored Supplier, Key Sub-contractors and/or the Guarantor as the Authority may reasonably require in order to understand the risk to the Services, which may include forecasts in relation to cash flow, orders and profits and details of financial measures being considered to mitigate the impact of the Financial Distress Event.

4.4 The Authority shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Authority does not approve the draft Financial Distress Remediation 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 Remediation Plan, which shall be resubmitted to the Authority within 5 Working Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is either:

4.4.1 approved by the Authority;

4.4.2 referred, by notice sent by either Party to the other Party explaining why it thinks the Financial Distress Remediation Plan has not been approved, to commercial negotiation led by senior representatives who have authority to agree the Financial Distress Remediation Plan to be held within 28 days of the date of the notice; or

4.4.3 finally rejected by the Authority.

4.5 Following approval of the Financial Distress Remediation Plan by the Authority, the Supplier shall:

4.5.1 on a regular basis (which shall not be less than fortnightly):

~~4-(a)~~ review and make any updates to the Financial Distress Remediation Plan as the Supplier may deem reasonably necessary and/or as may be reasonably requested by the Authority, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Services in accordance with this Contract; and

~~(iiiii)~~(b) provide a written report to the Authority setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Supplier and/or the reasons why the Supplier may have decided not to make any changes;

4.5.2 where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 4.5.1, submit an updated Financial Distress Remediation Plan to the Authority for its approval, and the provisions of Paragraphs 4.4 and 4.5.1 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and

4.5.3 comply with the Financial Distress Remediation Plan (including any updated

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Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.

- 4.6 Where the Supplier reasonably believes that the relevant Financial Distress Event under Paragraph 4.1 (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the Authority and the Parties may agree that the Supplier shall be relieved of its obligations under Paragraph 4.5.
- 4.7 The Supplier shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 4.3.2(b) is available when required and on request from the Authority and within reasonable timescales. Such measures may include:
- 4.7.1 obtaining in advance written authority from Key Sub-contractors, the Guarantor and/or Monitored Suppliers authorising the disclosure of the information to the Authority and/or entering into confidentiality agreements which permit disclosure;
 - 4.7.2 agreeing in advance with the Authority, Key Sub-contractors, the Guarantor and/or Monitored Suppliers a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Authority;
 - 4.7.3 putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Authority (which may include making price sensitive information available to Authority nominated personnel through confidential arrangements, subject to their consent); and
 - 4.7.4 disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

55. Financial Indicators

[Guidance note: The Financial Indicators set out in the table at paragraph 5.1 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 Subject to the calculation methodology set out at Annex 3 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 follows:

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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 2.3.2]
<p>1 [Operating Margin] OR [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 [Free Cash Flow to Net Debt Ratio] OR [Net Debt to EBITDA Ratio]</p>	<p>[Free Cash Flow to Net Debt Ratio = Free Cash Flow / Net Debt] OR [Net Debt to EBITDA ratio = Net Debt / EBITDA]</p>	<p>[> [X%]] OR [< [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 [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>
<p>4 [Net Interest Paid Cover]</p>	<p>[Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid]</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 figures for the 12 months ending on the relevant [accounting reference date / half year end]</p>
<p>5 [Acid Ratio]</p>	<p>[Acid Ratio = (Current Assets – Inventories) / Current Liabilities]</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 figures at the relevant [accounting reference date / half year end]</p>

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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 2.3.2]
6 [Net Asset value]	[Net Asset Value = Net Assets]	[> £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]	[Group Exposure / 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
Financial Target 8 [etc.]	[etc.]	[etc.]	[etc.]

Key:-¹ – See Annex 3 of this Schedule which sets out the calculation methodology to be used in the calculation of each Financial Indicator.

5.2 Monitored Suppliers

[Guidance note: 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 Sub-contractors. Not all the Financial Indicators may be applicable to a Monitored Supplier, so indicate which of those are to apply in the table below.]

Monitored Supplier	Applicable Financial Indicators (these are the Financial Indicators from the table in Paragraph 5.1 which are to apply to the Monitored Suppliers)
[Entity 1 e.g. Group Member, Sub-contractor, Relevant Parent Company etc.]	[1 – Operating Margin] [2 – etc.] [3][4][5][6][7][8][etc..]
[Entity 2 e.g. Group Member, Sub-contractor, Relevant Parent Company etc.]	[1 – Operating Margin] [2 – etc.] [3][4][5][6][7][8][etc..]
[etc.]	[etc.]

66. Termination Rights

6.1 The Authority shall be entitled to terminate this Contract under Clause 31.1(b)

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(Termination by the Authority) if:

- 6.1.1 the Supplier fails to notify the Authority of a Financial Distress Event in accordance with Paragraph 2.3.3;
- 6.1.2 the Supplier fails to comply with any part of Paragraph 4.3;
- 6.1.3 the Authority finally rejects a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraphs 4.4 to 4.5.1; and/or
- 6.1.4 the Supplier fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 4.5.3.

77. Primacy of Credit Ratings

- 7.1 Without prejudice to the Supplier's obligations and the Authority's rights and remedies under Paragraph 2, if, following the occurrence of a Financial Distress Event pursuant to any of Paragraphs 3.1.2 to 3.1.10, the Rating Agencies review and report subsequently that the credit ratings for the FDE Group entities do not drop below the relevant Credit Rating Thresholds specified for those entities in Annex 2 of this Schedule, then:
 - 7.1.1 the Supplier shall be relieved automatically of its obligations under Paragraphs 4.3 to 4.5; and
 - 7.1.2 the Authority shall not be entitled to require the Supplier to provide financial information in accordance with Paragraph 4.3.2(b).

88. Board Confirmation

- 8.1 If this Contract has been specified as a Critical Service Contract under Paragraph 1.1 of Part B to ~~Schedule 26 (Service Continuity Plan and Corporate Resolution Planning)~~ Schedule 26 (Service Continuity Plan and Corporate Resolution Planning) then, subject to Paragraph 8.4 of this Schedule, the Supplier shall within ~~one hundred and twenty (120)~~ 120 days after each Accounting Reference Date or within 15 months of the previous Board Confirmation (whichever is the earlier) provide a Board Confirmation to the Authority in the form set out at Annex 4 of this Schedule, confirming that to the best of the Board's knowledge and belief, it is not aware of and has no knowledge:
 - 8.1.1 that a Financial Distress Event has occurred since the later of the Effective Date or the previous Board Confirmation or is subsisting; or
 - 8.1.2 of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event.
- 8.2 The Supplier shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to understand and confirm the position.
- 8.3 In respect of the first Board Confirmation to be provided under this Contract, the Supplier shall provide the Board Confirmation within 15 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 8.1 of this Schedule.

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- 8.4 Where the Supplier is unable to provide a Board Confirmation in accordance with Paragraphs 8.1 to 8.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Supplier to submit in place of the Board Confirmation, a statement from the Board of Directors to the Authority (and where the Supplier is a Strategic Supplier, the Supplier shall send a copy of the statement to the Cabinet Office Markets and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

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Annex 1: Rating Agencies and their Standard Rating System

[Guidance note: This Annex 1 sets out the standard rating scales for each of the Rating Agencies selected. The Credit Rating Threshold can be referred to in Annex 2 either by using “Credit Rating Level 1”, “Credit Rating Level 2” etc. or by reference to the Rating Agencies’ ratings “AAA”, “AA+” etc, or both.]

Note that this Schedule is based on long-term credit ratings issued by credit ratings agencies such as Standard and Poors, Moodys, etc. These are different to and should not be substituted for credit scores issued by credit scoring agencies such as Dun and Bradstreet, Company Watch, etc)]

[Rating Agency 1 (e.g. Standard and Poors)]

Credit Rating Level 1 = [AAA]

Credit Rating Level 2 = [AA+]

Credit Rating Level 3 = [AA]

Credit Rating Level 4 = [AA-]

Credit Rating Level 5 = [A+]

Credit Rating Level 6 = [A]

Credit Rating Level 7 = [A-]

Credit Rating Level 8 = [BBB+]

Credit Rating Level 9 = [BBB]

Credit Rating Level 10 = [BBB-]

Etc.

[Rating Agency 2 (e.g. Moodys)]

Credit Rating Level 1 = [Aaa]

Credit Rating Level 2 = [Aa1]

Credit Rating Level 3 = [Aa2]

Credit Rating Level 4 = [Aa3]

Credit Rating Level 5 = [A1]

Credit Rating Level 6 = [A2]

Credit Rating Level 7 = [A3]

Credit Rating Level 8 = [Baa1]

Credit Rating Level 9 = [Baa2]

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Credit Rating Level 10 = [Baa3]

Etc.

[Rating Agency 3 (etc.)]

Credit Rating Level 1 = [XXX]

Etc.

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Annex 2: Credit Ratings and Credit Rating Thresholds

[Guidance note: The Key Sub-contractors listed in Schedule 10 (Notified Key Sub-contractors) should be included in this table].

Entity	Credit Rating (long term) (insert credit rating issued for the entity at the Effective Date)	Credit Rating Threshold (insert the actual rating (e.g. AA-) or the Credit Rating Level (e.g. Credit Rating Level 3))
Supplier	[Rating Agency 1] – [insert rating for Rating Agency 1]	[Rating Agency 1] – [insert threshold for Rating Agency 1]
	[Rating Agency 2] – [insert rating for Rating Agency 2]	[Rating Agency 2] – [insert threshold for Rating Agency 2]
	[etc.]	[etc.]
[Guarantor]	[Rating Agency 1] – [insert rating for Rating Agency 1]	[Rating Agency 1] – [insert threshold for Rating Agency 1]
	[Rating Agency 2] – [insert rating for Rating Agency 2]	[Rating Agency 2] – [insert threshold for Rating Agency 2]
	[etc.]	[etc.]
[Key Sub-contractor 1]	[etc.]	[etc.]
[Key Sub-contractor 2]	[etc.]	[etc.]
[etc...]	[etc.]	[etc.]
[Monitored Supplier 1]	[etc.]	[etc.]
[Monitored Supplier 2]	[etc.]	[etc.]
[etc...]	[etc.]	[etc.]

Annex 3: Calculation Methodology for Financial Indicators

[Guidance note: Amend this section as appropriate to reflect the calculation methodology for those Financial Indicators that are selected for inclusion in Paragraph 5.1 of this Schedule].]

The Supplier shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Target Thresholds:

General methodology

- 41. Terminology:** The terms referred to in this Annex 3 are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).
- 22. Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.
- 33. Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Financial Indicator is being calculated.
- 44. Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

Specific Methodology

Financial Indicator	Specific Methodology
1 [Operating Margin]	[The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements. Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates. Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.]
2 [Free Cash Flow to Net Debt Ratio]	["Free Cash Flow" = Net Cash Flow from Operating Activities – Capital Expenditure "Capital Expenditure" = Purchase of property, plant & equipment + purchase of intangible assets "Net Debt" = Bank overdrafts + Loans and borrowings + Finance Leases + Deferred consideration payable – Cash and cash equivalents The majority of the elements used to calculate the Free Cash Flow to Net Debt Ratio should be shown on the face of the Statement of Cash Flows and the Balance Sheet in a standard set of financial statements. Net Cash Flow from Operating Activities: This should be stated after deduction of interest and tax paid. Capital expenditure: The elements of capital expenditure may be described slightly differently but will be found under 'Cash flows from investing activities' in the Statement of Cash Flows; they should be limited to the purchase of fixed assets (including intangible assets) for the

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Financial Indicator	Specific Methodology
	<p>business and exclude acquisitions. The figure should be shown gross without any deduction for any proceeds of sale of fixed assets.</p> <p>Net Debt: The elements of Net Debt may also be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be treated as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.]</p>
<p>OR [Net Debt to EBITDA Ratio]</p>	<p>OR</p> <p>["Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents "EBITDA" = Operating profit + Depreciation charge + Amortisation charge The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p>Net Debt: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Target Threshold should be treated as having been met.</p> <p>EBITDA: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Target Threshold should be treated as having been met).]</p>

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Financial Indicator	Specific Methodology
<p>3 [Net Debt + Net Pension Deficit to EBITDA ratio]</p>	<p>["Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents "Net Pension Deficit" = Retirement Benefit Obligations – Retirement Benefit Assets "EBITDA" = Operating profit + Depreciation charge + Amortisation charge The majority of the elements used to calculate the Net Debt + Net Pension Deficit to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements. Net Debt: The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members. Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing. Cash and cash equivalents should include short-term financial investments shown in current assets. Net Pension Deficit: Retirement Benefit Obligations and Retirement Benefit Assets may be shown on the face of the Balance Sheet or in the notes to the financial statements. They may also be described as pension benefits / obligations, post-employment obligations or other similar terms. Where 'Net Debt + Net Pension Deficit' is negative, the relevant Financial Target Threshold should be treated as having been met. EBITDA: Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Target Threshold should be treated as not having been met (unless 'Net Debt + Net Pension Deficit' is also negative, in which case the relevant Financial Target Threshold should be regarded as having been met).]</p>

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Financial Indicator	Specific Methodology
4 [Net Interest Paid Cover]	<p>["Earnings Before Interest and Tax" = Operating profit "Net Interest Paid" = Interest paid – Interest received Operating profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. Interest received and interest paid should be shown on the face of the Cash Flow statement. Where Net interest paid is negative (i.e. the entity has net interest received), the relevant Financial Target Threshold should be treated as having been met.]</p>
5 [Acid Ratio]	<p>[All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.]</p>
6 [Net Asset value]	<p>[Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).]</p>
7 [Group Exposure Ratio]	<p>["Group Exposure" = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings "Gross Assets" = Fixed Assets + Current Assets Group Exposure: Balances owed by (i.e. receivable from) Group Undertakings are shown within Fixed assets or Current assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group. Contingent liabilities assumed in support of Group Undertakings are shown in the Contingent Liabilities note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value. Where no cap or maximum is specified, the relevant Financial Target Threshold should automatically be regarded as not having been met. In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group. Gross Assets: Both Fixed assets and Current assets are shown on the face of the Balance Sheet]</p>
8 [Insert insert additional Financial]	<p>[Etc..]</p>

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Financial Indicator	Specific Methodology
Indicators as necessary]	

Annex 4: Board Confirmation

Supplier Name:

Contract Reference Number:

The Board of Directors acknowledge the requirements set out at paragraph 8 of ~~Schedule 18 (Financial Distress)~~ Schedule 18 (Financial Distress) and confirm that the Supplier has exercised due care and diligence and made reasonable enquiry of all relevant Supplier Personnel and other persons as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation it is not aware of and has no knowledge:

- (a) that a Financial Distress Event has occurred since the later of the previous Board Confirmation and the Effective Date or is subsisting; or
- (b) of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event

On behalf of the Board of Directors:

Chair
 Signed
 Date

Director
 Signed
 Date

Schedule 19

Financial Reports and Audit Rights

Schedule 19: Financial Reports and Audit Rights

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Annual Contract Report”	the annual contract report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Audit Agents”	(a) the Authority’s internal and external auditors; (b) the Authority’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 Authority to carry out audit or similar review functions; and (f) successors or assigns of any of the above;
“Contract Amendment Report”	the contract amendment report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Final Reconciliation Report”	the final reconciliation report to be provided by the Supplier to the Authority pursuant to Paragraph 1 of Part B;
“Financial Model”	the Contract Inception Report, the latest Annual Contract Report or the latest Contract Amendment Report, whichever has been most recently approved by the Authority in accordance with Paragraph 2 of Part B;
“Financial Reports”	the Contract Inception Report and the reports listed in the table in Paragraph 1.1 of Part B;
“Financial Representative”	a reasonably skilled and experienced member of the Supplier’s staff who has specific responsibility for preparing, maintaining, facilitating access to, discussing and explaining the Open Book Data and Financial Reports;
“Financial Transparency Objectives”	has the meaning given in Paragraph 1 of Part A;
“Material Change”	a Change which:

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- (a) materially changes the profile of the Charges; or
- (b) varies the total Charges payable during the Term (as forecast in the latest Financial Model) by:
 - (i) 5% or more; or
 - (ii) £1m or more;

“Onerous Contract”

a contract in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under it, as defined under International Accounting Standard 37;

“Onerous Contract Report”

means a report provided by the Supplier pursuant to Paragraph 3 of Part A to this Schedule;

“Open Book Data”

complete and accurate financial and non-financial information which is sufficient to enable the Authority to verify the Charges already paid or payable and Charges forecast to be paid during the remainder of the Term, including details and all assumptions relating to:

- (a) the Supplier’s Costs broken down against each Service and/or Deliverable, including actual capital expenditure (including capital replacement costs) and the unit cost and total actual costs of all hardware and software;
- (b) operating expenditure relating to the provision of the Services including an analysis showing:
 - (i) the unit costs and quantity of consumables and bought-in services;
 - (ii) manpower resources broken down into the number and grade/role of all Supplier Personnel (free of any contingency) together with a list of agreed rates against each manpower grade;
 - (iii) a list of Costs underpinning those rates for each manpower grade, being the agreed rate less the Supplier’s Profit Margin; and
 - (iv) Reimbursable Expenses;
- (c) Overheads;
- (d) all interest, expenses and any other third party financing costs incurred in relation to the provision of the Services;
- (e) the Supplier Profit achieved over the Term and on an annual basis;

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- (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 Services, including the amount of money attributed to each risk and/or contingency; and
- (h) the actual Costs profile for each Service Period.

Part A: Financial Transparency Objectives and Open Book Data

41. Financial Transparency Objectives

1.1 The Supplier acknowledges that the provisions of this Schedule are designed (inter alia) to facilitate, and the Supplier shall co-operate with the Authority in order to achieve, the following objectives:

1.1.1 Understanding the Charges

~~4-(a)~~ for the Authority to understand any payment sought from it by the Supplier including an analysis of the Costs, Overhead recoveries (where relevant), time spent by Supplier Personnel in providing the Services and the Supplier Profit Margin;

~~(kkkkk)~~(b) for both Parties to be able to understand the Financial Model and Cost forecasts and to have confidence that these are based on justifiable numbers and appropriate forecasting techniques;

~~(lllll)~~(c) to facilitate the use of Guaranteed Maximum Price with Target Cost pricing mechanisms (where relevant as referred to in ~~Schedule 15 (Charges and Invoicing)~~; Schedule 15 (Charges and Invoicing));

1.1.2 Agreeing the impact of Change

~~4-(a)~~ for both Parties to agree the quantitative impact of any Changes that affect ongoing costs and to identify how these could be mitigated and/or reflected in the Supplier's Charges;

~~(mmmmm)~~(b) for both Parties to be able to review, address issues with and re-forecast progress in relation to the provision of the Services;

1.1.3 Continuous improvement

~~4-(a)~~ for the Parties to challenge each other with ideas for efficiency and improvements; and

~~(nnnnn)~~(b) to enable the Authority to demonstrate that it is achieving value for money for the tax payer relative to current market prices,

(together the "Financial Transparency Objectives").

22. Open Book Data

2.1 The Supplier acknowledges the importance to the Authority of the Financial Transparency Objectives and the Authority's need for complete transparency in the way in which the Charges are calculated.

2.2 During the Term, and for a period of 7 years following the end of the Term, the Supplier shall:

2.2.1 maintain and retain the Open Book Data; and

2.2.2 disclose and allow the Authority and/or the Audit Agents access to the Open Book Data.

33. Onerous Contracts

- 3.1 If the Supplier publicly designates the Contract as an Onerous Contract (including where the Supplier has identified the Contract as such in any published accounts or public reports and announcements), the Supplier shall promptly notify the Authority of the designation and shall prepare and deliver to the Authority within the timescales agreed by the Parties (an in any event, no later than 2 months following the publication of the designation) a draft Onerous Contract Report which includes the following:
 - 3.1.1 An initial root cause analysis of the issues and circumstances which may have contributed to the Contract being designated as an Onerous Contract;
 - 3.1.2 An initial risk analysis and impact assessment on the provision of the Services as a result of the Supplier's designation of the Contract as an Onerous Contract;
 - 3.1.3 the measures which the Supplier intends to put in place to minimise and mitigate any adverse impact on the provision on the Services;
 - 3.1.4 details of any other options which could be put in place to remove the designation of the Contract as an Onerous Contract and/or which could minimise and mitigate any adverse impact on the provision of the Services.
- 3.2 Following receipt of the Onerous Contract Report, the Authority shall review and comment on the report as soon as reasonably practicable and the Parties shall cooperate in good faith to agree the final form of the report, which shall be submitted to the Programme Board, such final form report to be agreed no later than 1 month following the Authority's receipt of the draft Onerous Contract Report.
- 3.3 The Programme Board shall meet within 14 Working Days of the final Onerous Contract Report being agreed by the Parties to discuss the contents of the report; and the Parties shall procure the attendance at the meeting of any key participants where reasonably required (including the Cabinet Office Markets and Suppliers team where the Supplier is a Strategic Supplier; representatives from any Key Sub-contractors/Monitored Suppliers; and the project's senior responsible officers (or equivalent) for each Party).
- 3.4 The Supplier acknowledges and agrees that the report is submitted to the Authority and Programme Board on an information only basis and the Authority and Programme Board's receipt of and comments in relation to the report shall not be deemed to be an acceptance or rejection of the report nor shall it relieve the Supplier of any liability under this Contract. Any Changes to be agreed by the Parties pursuant to the report shall be subject to the Change Control Procedure.

Part B: Financial Reports

41. Provision of the Financial Reports

- 1.1 The Supplier shall provide
- 1.1.1 the Contract Inception Report on or before the Effective Date; and
 - 1.1.2 during the Term the following financial reports to the Authority, in the frequency specified below:

Financial Report	When to be provided
Contract Amendment Report	Within 1 month of a Material Change being agreed between the Supplier and the Authority
Quarterly Contract Report	Within 1 month of the end of each Quarter
Annual Contract Report	Within 1 month of the end of the Contract Year to which that report relates
Final Reconciliation Report	Within 6 months after the end of the Term

- 1.2 The Supplier shall provide to the Authority the Financial Reports in the same software package (Microsoft Excel or Microsoft Word), layout and format as the blank templates which have been issued by the Authority to the Supplier on or before the Effective Date for the purposes of this Contract. The Authority shall be entitled to modify the template for any Financial Report by giving written notice to the Supplier, including a copy of the updated template.
- 1.3 A copy of each Financial Report shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.
- 1.4 Each Financial Report shall:
- 1.4.1 be completed by the Supplier using reasonable skill and care;
 - 1.4.2 incorporate and use the same defined terms as are used in this Contract;
 - 1.4.3 quote all monetary values in pounds sterling;
 - 1.4.4 quote all Costs as exclusive of any VAT; and
 - 1.4.5 quote all Costs and Charges based on current prices.
- 1.5 Each Annual Contract Report and the Final Reconciliation Report shall be certified by the Supplier's Chief Financial Officer or Director of Finance (or equivalent as agreed in writing by the Authority in advance of issue of the relevant Financial Report), acting with express authority, as:
- 1.5.1 being accurate and not misleading;
 - 1.5.2 having been prepared in conformity with generally accepted accounting principles within the United Kingdom;

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- 1.5.3 being a true and fair reflection of the information included within the Supplier's management and statutory accounts; and
- 1.5.4 compliant with the requirements of Paragraph 1.6.
- 1.6 The Supplier shall:
 - 1.6.1 prepare each Financial Report using the same methodology as that used for the Contract Inception Report;
 - 1.6.2 to the extent permitted by Law, ensure that each Annual Contract Report and each Contract Amendment Report (if any) is a true and fair reflection of the Costs and Supplier Profit Margin forecast by the Supplier;
 - 1.6.3 to the extent permitted by Law, ensure that the Final Reconciliation Report is a true and fair reflection of the Costs; and
 - 1.6.4 not have any other internal financial model in relation to the Services inconsistent with the Financial Model.
- 1.7 During the Term, and for a period of 18 months following the end of the Term, the Supplier shall make available the Financial Representative at reasonable times and on reasonable notice to answer any queries that the Authority may have on any of the Financial Reports and/or Open Book Data.
- 1.8 If the Supplier becomes aware of the occurrence, or the likelihood of the future occurrence, of an event which will or may have a material effect on the following:
 - 1.8.1 the Costs incurred (or those forecast to be incurred) by the Supplier; and/or
 - 1.8.2 the forecast Charges for the remainder of the Term,the Supplier shall, as soon as practicable, notify the Authority in writing of the event in question detailing the actual or anticipated effect. For the avoidance of doubt, notifications provided in accordance with this Paragraph 1.8 shall not have the effect of amending any provisions of this Contract.

22. Financial Model

- 2.1 Following the delivery by the Supplier of each Annual Contract Report and any Contract Amendment Report:
 - 2.1.1 the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting;
 - 2.1.2 the Supplier shall make appropriate Supplier Personnel and advisers available to discuss any variations between the relevant Financial Report and the Contract Inception Report or immediately preceding Annual Contract Report or Contract Amendment Report (as the case may be) and to explain such variations (with reference to supporting evidence) to the satisfaction of the Authority; and
 - 2.1.3 the Authority shall either within 10 Working Days of the meeting referred to in Paragraph 2.1.1 notify the Supplier that:

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~~1-(a)~~ the relevant Financial Report contains errors or omissions or that further explanations or supporting information is required, in which event the Supplier shall make any necessary modifications to the Financial Report and/or supply the Authority with such supporting evidence as is required to address the Authority's concerns within 10 Working Days of such notification and the Authority shall following receipt of such amended Financial Report and/or supporting information, approve or reject such Financial Report; or

~~(eeeeee)~~(b) the Authority has approved the relevant Financial Report.

2.2 Following approval by the Authority of the relevant Financial Report in accordance with Paragraph 2.1.3, that version shall become, with effect from the date of such approval, the current approved version of the Financial Model for the purposes of this Contract, a version of which shall be held by both the Authority and the Supplier. If there is a Dispute regarding a Financial Report, the Authority's copy of the relevant Financial Report shall be authoritative.

2.3 If the Parties are unable to reach agreement on any Financial Report within 30 Working Days of its receipt by the Authority, the matter shall be referred for determination in accordance with ~~Schedule 23 (Dispute Resolution Procedure)~~. Schedule 23 (Dispute Resolution Procedure).

33. Discussion of Quarterly Contract Reports and Final Reconciliation Report

3.1 Following the delivery by the Supplier of each Quarterly Contract Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

3.2 Following the delivery by the Supplier of the Final Reconciliation Report, the Parties shall meet to discuss its contents within 10 Working Days of receipt (or such other period as the Parties shall agree). The Financial Representative shall attend the meeting.

44. Key Sub-contractors

4.1 The Supplier shall, if requested by the Authority, provide (or procure the provision of) a report or reports including the level of information set out in the Financial Reports in relation to the costs and expenses to be incurred by any of its Key Sub-contractors.

4.2 Without prejudice to Paragraph 1.1 of Part C, the Supplier shall:

4.2.1 be responsible for auditing the financial models/reports of its Key Sub-contractors and for any associated costs and expenses incurred or forecast to be incurred; and

4.2.2 on written request by the Authority, provide the Authority or procure that the Authority is provided with:

~~1-(a)~~ full copies of audit reports for the Key Sub-contractors. The Authority shall be entitled to rely on such audit reports; and

~~(ppppp)~~(b) further explanation of, and supporting information in relation to, any audit reports provided.

Part C: Audit Rights

41. Audit Rights

- 1.1 The Authority, acting by itself or through its Audit Agents, shall have the right during the Term and for a period of 18 months thereafter, to assess compliance by the Supplier and/or its Key Sub-contractors of the Supplier's obligations under this Contract, including for the following purposes:
 - 1.1.1 to verify the integrity and content of any Financial Report;
 - 1.1.2 to verify the accuracy of the Charges and any other amounts payable by the Authority under this Contract (and proposed or actual variations to such Charges and payments);
 - 1.1.3 to verify the Costs (including the amounts paid to all Sub-contractors and any third party suppliers);
 - 1.1.4 to verify the Certificate of Costs and/or the Open Book Data;
 - 1.1.5 to verify the Supplier's and each Key Sub-contractor's compliance with this Contract and applicable Law;
 - 1.1.6 to identify or investigate actual or suspected fraud, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - 1.1.7 to identify or investigate any circumstances which may impact upon the financial stability of the Supplier, the Guarantor and/or any Key Sub-contractors or their ability to perform the Services;
 - 1.1.8 to obtain such information as is necessary to fulfil the Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - 1.1.9 to review any books of account and the internal contract management accounts kept by the Supplier in connection with this Contract;
 - 1.1.10 to carry out the Authority's internal and statutory audits and to prepare, examine and/or certify the Authority's annual and interim reports and accounts;
 - 1.1.11 to enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;
 - 1.1.12 to verify the accuracy and completeness of any Management Information delivered or required by this Contract;
 - 1.1.13 to review any Performance Monitoring Reports and/or other records relating to the Supplier's performance of the Services and to verify that these reflect the Supplier's own internal reports and records;

Schedule 19: (Financial Reports and Audit Rights)

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- 1.1.14 to inspect the IT Environment (or any part of it) and the wider service delivery environment (or any part of it);
 - 1.1.15 to review the accuracy and completeness of the Registers;
 - 1.1.16 to review any records created during the design and development of the Supplier System and pre-operational environment such as information relating to Testing;
 - 1.1.17 to review the Supplier's quality management systems (including all relevant Quality Plans and any quality manuals and procedures);
 - 1.1.18 to review the Supplier's compliance with the Standards;
 - 1.1.19 to inspect the Authority Assets, including the Authority's IPRs, equipment and facilities, for the purposes of ensuring that the Authority Assets are secure and that any register of assets is up to date; and/or
 - 1.1.20 to review the integrity, confidentiality and security of the Authority Data.
- 1.2 Except where an audit is imposed on the Authority by a regulatory body or where the Authority has reasonable grounds for believing that the Supplier has not complied with its obligations under this Contract, the Authority may not conduct an audit of the Supplier or of the same Key Sub-contractor more than twice in any Contract Year.
- 1.3 Nothing in this Contract shall prevent or restrict the rights of the Comptroller and/or Auditor General and/or their representatives from carrying out an audit, examination or investigation of the Supplier and/or any of the Key Sub-contractors for the purposes of and pursuant to applicable Law.

22. Conduct of Audits

- 2.1 The Authority shall during each audit comply with those security, sites, systems and facilities operating procedures of the Supplier that the Authority deems reasonable and use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Supplier or delay the provision of the Services.
- 2.2 Subject to the Authority's obligations of confidentiality, the Supplier shall on demand provide the Authority and the Audit Agents with all reasonable co-operation and assistance (and shall procure such co-operation and assistance from its Sub-contractors) in relation to each audit, including:
- 2.2.1 all information requested by the Authority within the permitted scope of the audit;
 - 2.2.2 reasonable access to any Sites and to any equipment used (whether exclusively or non-exclusively) in the performance of the Services;
 - 2.2.3 access to the Supplier System; and
 - 2.2.4 access to Supplier Personnel.
- 2.3 The Supplier shall implement all measurement and monitoring tools and procedures necessary to measure and report on the Supplier's performance of the Services against the applicable Performance Indicators at a level of detail sufficient to verify compliance

Schedule 19: (Financial Reports and Audit Rights)

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with the Performance Indicators.

- 2.4 The Authority shall endeavour to (but is not obliged to) provide at least 15 Working Days' notice of its intention to conduct an audit.
- 2.5 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Paragraph 2, unless the audit identifies a material Default by the Supplier in which case the Supplier shall reimburse the Authority for all the Authority's reasonable costs incurred in connection with the audit.

33. Use of Supplier's Internal Audit Team

- 3.1 As an alternative to the Authority's right pursuant to Paragraph 1.1 to exercise an audit either itself or through its Audit Agents, the Authority may require in writing that an audit is undertaken by the Supplier's own internal audit function for any of the purposes set out in Paragraph 1.1.
- 3.2 Following the receipt of a request from the Authority under Paragraph 3.1 above, the Supplier shall procure that the relevant audit is undertaken as soon as reasonably practicable and that the Authority has unfettered access to:
 - 3.2.1 the resultant audit reports; and
 - 3.2.2 all relevant members of the Supplier's internal audit team for the purpose of understanding such audit reports.

44. Response to Audits

- 4.1 If an audit undertaken pursuant to Paragraphs 1 or 3 identifies that:
 - 4.1.1 the Supplier has committed a Default, the Authority may (without prejudice to any rights and remedies the Authority may have) require the Supplier to correct such Default as soon as reasonably practicable and, if such Default constitutes a Notifiable Default, to comply with the Rectification Plan Process;
 - 4.1.2 there is an error in a Financial Report, the Supplier shall promptly rectify the error;
 - 4.1.3 the Authority has overpaid any Charges, the Supplier shall pay to the Authority:
 - ~~1.(a)~~ the amount overpaid;
 - ~~(a)~~ interest on the amount overpaid at the applicable rate under the *Late Payment of Commercial Debts (Interest) Act 1998*, accruing on a daily basis from the date of overpayment by the Authority up to the date of repayment by the Supplier; and
 - ~~(c)~~ the reasonable costs incurred by the Authority in undertaking the audit,the Authority may exercise its right to deduct such amount from the Charges if it prefers; and
 - 4.1.4 the Authority has underpaid any Charges, the Supplier shall not be entitled to increase the Charges paid or payable by the Authority.

Schedule 20

Anticipated Savings

Schedule 20: (Anticipated Savings)

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Schedule 20: Anticipated Savings

This Schedule defines the key benefit categories in which savings are anticipated.

Ref.	Benefit Category	Indicative amount (£k)	Timescale
1	[E.g. - Reduction in Service Charges as Service delivery becomes more efficient and effective. Benefit realisation is measured against [a 2020/21 baseline.]	£[amount] per annum	Contract Years [x] to [y]
2	[E.g. - Improvements in Authority staff productivity from using more flexible and agile services that match the needs of the business. Benefits realisation is measured against a baseline of 4,000 directly employed staff in 2021/22.]	£[amount] year on year improvement ([x]% productivity increase)	Contract Years [x] to [y]
3	[E.g. - Reduced electrical power consumption arising from adoption of new low energy technology. Benefit realisation is measured against a 2020/21 baseline.]	£[amount] per annum	Contract Years [x] to [y]

Schedule 21

Governance

Schedule 21: Governance

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Board Member”	the initial persons appointed by the Authority and Supplier to the Boards as set out in Annex 1 and any replacements from time to time agreed by the Parties in accordance with Paragraph 3.3;
“Boards”	the Service Management Board, Programme Board, Change Management Board, Technical Board and Risk Management Board and “Board” shall mean any of them;
“Change Management Board”	the body described in Paragraph 6;
“Project Managers”	the individuals appointed as such by the Authority and the Supplier in accordance with Paragraph 2;
“Risk Management Board”	the body described in Paragraph 8;
“Service Management Board”	the body described in Paragraph 4; and
“Technical Board”	the body described in Paragraph 7.

22. Management of the Services

- 2.1 The Supplier and the Authority shall each appoint a project manager for the purposes of this Contract through whom the Services shall be managed at a day-to-day.
- 2.2 Both Parties shall ensure that appropriate resource is made available on a regular basis such that the aims, objectives and specific provisions of this Contract can be fully realised.

33. Boards

Establishment and structure of the Boards

- 3.1 The Boards shall be established by the Authority for the purposes of this Contract on which both the Supplier and the Authority shall be represented.
- 3.2 In relation to each Board, the:
- 3.2.1 Authority Board Members;
 - 3.2.2 Supplier Board Members;

Schedule 21: (Governance)

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- 3.2.3 frequency that the Board shall meet (unless otherwise agreed between the Parties);
 - 3.2.4 location of the Board's meetings; and
 - 3.2.5 planned start date by which the Board shall be established, shall be as set out in Annex 1.
- 3.3 In the event that either Party wishes to replace any of its appointed Board Members, that Party shall notify the other in writing of the proposed change for agreement by the other Party (such agreement not to be unreasonably withheld or delayed). Notwithstanding the foregoing it is intended that each Authority Board Member has at all times a counterpart Supplier Board Member of equivalent seniority and expertise.

Board meetings

- 3.4 Each Party shall ensure that its Board Members shall make all reasonable efforts to attend Board meetings at which that Board Member's attendance is required. If any Board Member is not able to attend a Board meeting, that person shall use all reasonable endeavours to ensure that:
- 3.4.1 a delegate attends the relevant Board meeting in his/her place who (wherever possible) is properly briefed and prepared; and
 - 3.4.2 that ~~he/she is~~they are debriefed by such delegate after the Board Meeting.
- 3.5 A chairperson shall be appointed by the Authority for each Board as identified in Annex 1. The chairperson shall be responsible for:
- 3.5.1 scheduling Board meetings;
 - 3.5.2 setting the agenda for Board meetings and circulating to all attendees in advance of such meeting;
 - 3.5.3 chairing the Board meetings;
 - 3.5.4 monitoring the progress of any follow up tasks and activities agreed to be carried out following Board meetings;
 - 3.5.5 ensuring that minutes for Board meetings are recorded and disseminated electronically to the appropriate persons and to all Board meeting participants within seven Working Days after the Board meeting; and
 - 3.5.6 facilitating the process or procedure by which any decision agreed at any Board meeting is given effect in the appropriate manner.
- 3.6 Board meetings shall be quorate as long as at least two representatives from each Party are present.
- 3.7 The Parties shall ensure, as far as reasonably practicable, that all Boards shall as soon as reasonably practicable resolve the issues and achieve the objectives placed before them. Each Party shall endeavour to ensure that Board Members are empowered to make relevant decisions or have access to empowered individuals for decisions to be made to achieve this.

Schedule 21: (Governance)

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44. Role of the Service Management Board

- 4.1 The Service Management Board shall be responsible for the executive management of the Services and shall:
- 4.1.1 be accountable to the Programme Board for comprehensive oversight of the Services and for the senior management of the operational relationship between the Parties;
 - 4.1.2 report to the Programme Board on significant issues requiring decision and resolution by the Programme Board and on progress against the high level Implementation Plan;
 - 4.1.3 receive reports from the Project Managers on matters such as issues relating to delivery of existing Services and performance against Performance Indicators, progress against the Implementation Plan and possible future developments;
 - 4.1.4 review and report to the Programme Board on service management, co-ordination of individual projects and any integration issues;
 - 4.1.5 deal with the prioritisation of resources and the appointment of Project Managers on behalf of the Parties;
 - 4.1.6 consider and resolve Disputes (including Disputes as to the cause of a Delay or the performance of the Services) in the first instance and if necessary escalate the Dispute to the Programme Board; and
 - 4.1.7 develop operational/supplier relationship and develop and propose the relationship development strategy and ensure the implementation of the same.

55. Role of the Programme Board

- 5.1 The Programme Board shall:
- 5.1.1 provide senior level guidance, leadership and strategy for the overall delivery of the Services;
 - 5.1.2 be the point of escalation from the Change Management Board, the Technical Board and the Service Management Board; and
 - 5.1.3 carry out the specific obligations attributed to it in Paragraph 5.2.
- 5.2 The Programme Board shall:
- 5.2.1 ensure that this Contract is operated throughout the Term in a manner which optimises the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
 - 5.2.2 receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving, in particular value for money;
 - 5.2.3 determine business strategy and provide guidance on policy matters which

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may impact on the implementation of the Services or on any Optional Services;

5.2.4 authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and

5.2.5 provide guidance and authorisation to the Change Management Board on relevant Changes.

66. Role of the Change Management Board

6.1 The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.

6.2 The Change Management Board shall:

6.2.1 analyse and record the impact of all Changes, specifically whether the proposed Change:

~~1.~~(a) has an impact on other areas or aspects of this Contract and/or other documentation relating to the Services;

~~(sssss)~~(b) has an impact on the ability of the Authority to meet its agreed business needs within agreed time-scales;

~~(ttttt)~~(c) will raise any risks or issues relating to the proposed Change; and

~~(uuuuu)~~(d) will provide value for money in consideration of any changes to the Financial Model, future Charges and/or Performance Indicators and Target Performance Levels;

6.2.2 provide recommendations, seek guidance and authorisation from the Programme Board as required; and

6.2.3 approve or reject (close) all proposed Changes.

77. Role of the Technical Board

7.1 The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.

7.2 The Technical Board shall:

7.2.1 ensure compliance with the Standards;

7.2.2 grant dispensations for variations from such compliance where appropriate;

7.2.3 assure the coherence and consistency of the systems architecture for the Supplier Solution;

7.2.4 monitor developments in new technology and reporting on their potential benefit to the Services;

7.2.5 provide advice, guidance and information on technical issues; and

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- 7.2.6 assure that the technical architecture of the Supplier Solution is aligned to the Service Requirements and has sufficient flexibility to cope with future requirements of the Authority.

88. Role of the Risk Management Board

- 8.1 The Risk Management Board shall identify and manage risks relating to the performance of the Services.
- 8.2 The Risk Management Board shall:
- 8.2.1 provide assurance to the Programme Board that risks are being effectively managed across the Services, including reporting the 'top 5' risks to the Programme Board on a monthly basis;
 - 8.2.2 identify the risks to be reported to the Programme Board via the regular risk reports;
 - 8.2.3 subject to the Change Control Procedure, accept or reject new risks proposed for inclusion in the Risk Register;
 - 8.2.4 ratify or refuse requests to close risks on the Risk Register; and
 - 8.2.5 identify risks relating to or arising out of the performance of the Services and provisional owners of these risks.

99. Contract Management Mechanisms

- 9.1 Both Parties shall pro-actively manage risks attributed to them under the terms of this Contract.
- 9.2 The Supplier shall develop, operate, maintain and amend, as agreed with the Authority, processes for:
- 9.2.1 the identification and management of risks;
 - 9.2.2 the identification and management of issues; and
 - 9.2.3 monitoring and controlling project plans.
- 9.3 The Risk Register shall be updated by the Supplier and submitted for review by the Risk Management Board.

1010. Annual Review

- 10.1 An annual review meeting shall be held throughout the Term on a date to be agreed between the Parties.
- 10.2 The meetings shall be attended by the [insert role] of the Supplier and the [insert role] of the Authority and any other persons considered by the Authority necessary for the review.

Schedule 21: (Governance)

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Annex 1: Representation and Structure of Boards

Service Management Board

Authority Members of Service Management Board	[] [Chairperson]
Supplier Members of Service Management Board	
Start Date for Service Management Board meetings	
Frequency of Service Management Board meetings	
Location of Service Management Board meetings	

Programme Board

Authority members of Programme Board	[] [Chairperson]
Supplier members of Programme Board	
Start date for Programme Board meetings	
Frequency of Programme Board meetings	
Location of Programme Board meetings	

Change Management Board

Authority Members of Change Management Board	[] [Chairperson]
Supplier Members of Change Management Board	
Start Date for Change Management Board meetings	
Frequency of Change Management Board meetings	
Location of Change Management Board meetings	

Technical Board

Authority Members of Technical Board	[] [Chairperson]
Supplier Members of Technical Board	
Start Date for Technical Board meetings	
Frequency of Technical Board meetings	
Location of Technical Board meetings	

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Risk Management Board

Authority Members for Risk Management Board	[] [Chairperson]
Supplier Members for Risk Management Board	
Start Date for Risk Management Board meetings	
Frequency of Risk Management Board meetings	
Location of Risk Management Board meetings	

Schedule 22

Change Control Procedure

Schedule 22: (Change Control Procedure)

[Subject to Contract]

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Schedule 22: Change Control Procedure

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Authority Change Manager”	the person appointed to that position by the Authority from time to time and notified in writing to the Supplier or, if no person is notified, the Authority Representative;
“Change Request”	a written request for a Contract Change which shall be substantially in the form of Annex 1 ;
“Change Communication”	any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;
<u>“Drafting Party”</u>	<u>the Party that will prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Receiving Party for its signature;</u>
“Fast-track Change”	any Contract Change which the Parties agree to expedite in accordance with Paragraph 8 ;
“Impact Assessment”	an assessment of a Change Request in accordance with Paragraph 5 ;
“Impact Assessment Estimate”	has the meaning given in Paragraph 4.3 ;
“Receiving Party”	the Party which receives a proposed Contract Change ; <u>Authorisation Note for signature pursuant to Paragraph 6.2</u> ; and
“Supplier Change Manager”	the person appointed to that position by the Supplier from time to time and notified in writing to the Authority or, if no person is notified, the Supplier Representative.

22. General Principles of Change Control Procedure

- 2.1 This Schedule sets out the procedure for dealing with Changes.
- 2.2 Operational Changes shall be processed in accordance with Paragraph [9](#). If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.
- 2.3 The Parties shall deal with Contract Change as follows:
- 2.3.1 either Party may request a Contract Change which they shall initiate by issuing

Schedule 22: (Change Control Procedure)

[Subject to Contract]

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- a Change Request in accordance with Paragraph 4;
- 2.3.2 unless this Contract otherwise requires, the Supplier shall assess and document the potential impact of a proposed Contract Change in accordance with Paragraph 5 before the Contract Change can be either approved or implemented;
- 2.3.3 the Authority shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in Paragraph 6;
- 2.3.4 the Supplier shall have the right to reject a Change Request solely in the manner set out in Paragraph 6.3;
- 2.3.5 save as otherwise provided in this Contract, no proposed Contract Change shall be implemented by the Supplier until a Change Authorisation Note has been signed and issued by the Authority in accordance with Paragraph 6.2; and
- 2.3.6 if a proposed Contract Change is a Fast-track Change, it shall be processed in accordance with Paragraph 8.
- 2.4 To the extent that any Contract Change requires testing and/or a programme for implementation, then the Parties shall follow the procedures set out in ~~Schedule 14 (Testing Procedures)~~, Schedule 14 (Testing Procedures), and, where appropriate, the Change Authorisation Note relating to such a Contract Change shall specify Milestones and/or a Key Milestone and Milestone Date(s) in respect of such Contract Change for the purposes of such procedures.
- 2.5 Until a Change Authorisation Note has been signed and issued ~~by the Authority~~ in accordance with Paragraph 6.2, then:
- 2.5.1 unless the Authority expressly agrees (or requires) otherwise in writing, the Supplier shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply; and
- 2.5.2 any discussions, negotiations or other communications which may take place between the Authority and the Supplier in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.6 ~~The~~ Unless the Authority directs otherwise, the Supplier shall:
- 2.6.1 within 10 Working Days of the ~~Authority's final~~ signature and issue of a Change Authorisation Note, deliver to the Authority a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes were agreed; and
- 2.6.2 thereafter provide to the Authority such further copies of the updated Contract as the Authority may from time to time request.

33. Costs

- 3.1 Subject to Paragraph 3.3:

Schedule 22: (Change Control Procedure)

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- 3.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- 3.1.2 the costs incurred by the Supplier in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Authority shall not be required to pay any such costs if:

~~4.~~(a) such costs are below £[insert figure];

~~(vvvvv)~~(b) the Supplier is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or

~~(wwwww)~~(c) such costs exceed those in the accepted Impact Assessment Estimate.

- 3.2 The cost of any Contract Change shall be calculated and charged in accordance with the principles and day rates or day costs (as applicable) set out in ~~Schedule 15 (Charges and Invoicing)~~. Schedule 15 (Charges and Invoicing). The Supplier shall be entitled to increase the Charges only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources and, in any event, any change to the Charges resulting from a Contract Change (whether the change will cause an increase or a decrease in the Charges) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Contract Change.
- 3.3 Both Parties' costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Supplier shall be paid for by the Supplier.

44. Change Request

- 4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 41 and state whether the Party issuing the Change Request considers the proposed Contract Change to be a Fast-track Change.
- 4.2 If the Supplier issues the Change Request, then it shall also provide an Impact Assessment to the Authority as soon as is reasonably practicable but in any event within 10 Working Days of the date of issuing the Change Request.
- 4.3 If the Authority issues the Change Request, then the Supplier shall provide as soon as reasonably practical and in any event within ten (10) Working Days of the date of receiving the Change Request an estimate ("Impact Assessment Estimate") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Authority within ten (10) Working Days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Authority.
- 4.4 If the Authority accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Supplier shall provide the completed Impact Assessment to the Authority as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Supplier requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Authority and provided that sufficient information is

Schedule 22: (Change Control Procedure)

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received by the Authority to fully understand:

4.4.1 The nature of the request for clarification; and

4.4.2 The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

55. Impact Assessment

5.1 Each Impact Assessment shall be completed in good faith and shall include:

5.1.1 details of the proposed Contract Change including the reason for the Contract Change; and

5.1.2 details of the impact of the proposed Contract Change on the Services, the Optional Services (if any) and the Supplier's ability to meet its other obligations under this Contract;

5.1.3 any variation to the terms of this Contract that will be required as a result of that impact, including changes to:

~~1.(a)~~ the Services Description, the Performance Indicators and/or the Target Performance Levels;

~~(xxxxx)~~(b) the format of Authority Data, as set out in the Services Description;

~~(yyyyy)~~(c) the Milestones, Implementation Plan and any other timetable previously agreed by the Parties;

~~(zzzzz)~~(d) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority's IT infrastructure;

5.1.4 details of the cost of implementing the proposed Contract Change;

5.1.5 details of the ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Charges, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party;

5.1.6 a timetable for the implementation, together with any proposals for the testing of the Contract Change;

5.1.7 details of how the proposed Contract Change will ensure compliance with any applicable Change in Law; and

5.1.8 such other information as the Authority may reasonably request in (or in response to) the Change Request.

5.2 If the Contract Change involves the processing or transfer of any Personal Data outside the ~~European Economic Area~~UK, in the event of the Personal Data being subject to UK GDPR, or the EU, in the event of the Personal Data being subject to EU GDPR, the

Schedule 22: (Change Control Procedure)

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preparation of the Impact Assessment shall also be subject to Clause 21 (*Protection of Personal Data*).

- 5.3 Subject to the provisions of Paragraph 5.4, the Authority shall review the Impact Assessment and respond to the Supplier in accordance with Paragraph 6 within 15 Working Days of receiving the Impact Assessment, it.
- 5.4 If the Authority ~~is~~receives a proposed Contract Change from the ~~Receiving Party~~Supplier and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment, then within 5 Working Days of receiving the Impact Assessment, it shall notify the Supplier of this fact and detail the further information that it requires. The Supplier shall then re-issue the relevant Impact Assessment to the Authority within 10 Working Days of receiving such notification. At the Authority's discretion, the Parties may repeat the process described in this Paragraph 5.4 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.5 The calculation of costs for the purposes of Paragraphs 5.1.4 and 5.1.5 shall:
- 5.5.1 be based on the Financial Model;
 - 5.5.2 facilitate the Financial Transparency Objectives;
 - 5.5.3 include estimated volumes of each type of resource to be employed and the applicable rate card;
 - 5.5.4 include full disclosure of any assumptions underlying such Impact Assessment;
 - 5.5.5 include evidence of the cost of any assets required for the Change; and
 - 5.5.6 include details of any new Sub-contracts necessary to accomplish the Change.

66. Authority's Right of Approval

- 6.1 Within 15 Working Days of receiving the Impact Assessment from the Supplier or within 10 Working Days of receiving the further information that it may request pursuant to Paragraph 5.4, the Authority shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
- 6.1.1 approve the proposed Contract Change, in which case the Parties shall follow the procedure set out in Paragraph 6.2;
 - 6.1.2 in its absolute discretion reject the Contract Change, in which case it shall notify the Supplier of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Supplier or the Services to comply with any Changes in Law. If the Authority does reject a Contract Change, then it shall explain its reasons in writing to the Supplier as soon as is reasonably practicable following such rejection; or
 - 6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Supplier to modify the relevant document accordingly, in which event the Supplier shall make such modifications within 5 Working Days of such request. Subject to Paragraph 5.4,

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on receiving the modified Change Request and/or Impact Assessment, the Authority shall approve or reject the proposed Contract Change within 10 Working Days.

- 6.2 If the Authority approves the proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 6.3, then it shall inform the Supplier and, unless otherwise directed by the Authority, the Supplier shall ~~prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Authority for its signature by the Drafting Party.~~ Following receipt by the AuthorityReceiving Party of the Change Authorisation Note, it shall sign both copies and return one copy to the ~~Supplier. On the Authority's Drafting Party. Unless otherwise specified, on the Receiving Party's~~ signature the Change Authorisation Note shall constitute (or, where the Authority has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract.
- 6.3 If the AuthorityReceiving Party does not sign the Change Authorisation Note within 10 Working Days of receipt, then the SupplierDrafting Party shall have the right to notify the AuthorityReceiving Party and if the AuthorityReceiving Party does not sign the Change Authorisation Note within 5 Working Days of such notification, then the SupplierDrafting Party may refer the matter to the Expedited Dispute Timetable pursuant to the Dispute Resolution Procedure.

77. Supplier's Right of Approval

7.1 Following an Impact Assessment, if:

7.1.1 the Supplier reasonably believes that any proposed Contract Change which is requested by the Authority would:

~~4.(a)~~ materially and adversely affect the risks to the health and safety of any person; and/or

~~(aaaaaa)~~(b) require the Services to be performed in a way that infringes any Law; and/or

7.1.2 the Supplier demonstrates to the Authority's reasonable satisfaction that the proposed Contract Change is technically impossible to implement and neither the Supplier Solution nor the Services Description state that the Supplier does have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Supplier shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within 5 Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to Paragraph 4.3.

88. Fast-Track Changes

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

8.2.1 the total number of Contract Changes in relation to which this Fast-track

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Change procedure has been applied does not exceed 4 in any 12 month period; and

- 8.2.2 both Parties agree the value of the proposed Contract Change over the remaining Term and any period for which Termination Services may be required does not exceed £[insert figure] and the proposed Contract Change is not significant (as determined by the Authority acting reasonably),

then the Parties shall confirm to each other in writing that they shall use the process set out in Paragraphs 4, 5, 6 and 6.3 but with reduced timescales, such that any period of 15 Working Days is reduced to 5 Working Days, any period of 10 Working Days is reduced to 2 Working Days and any period of 5 Working Days is reduced to 1 Working Day.

- 8.3 The Parties may agree in writing to revise the parameters set out in Paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change notwithstanding that the total number of Contract Changes to which such procedure is applied will then exceed 4 in a 12 month period.

99. Operational Change Procedure

- 9.1 Any Operational Changes identified by the Supplier to improve operational efficiency of the Services may be implemented by the Supplier without following the Change Control Procedure for proposed Contract Changes provided they do not:

- 9.1.1 have an impact on the business of the Authority;
- 9.1.2 require a change to this Contract;
- 9.1.3 have a direct impact on use of the Services; or
- 9.1.4 involve the Authority in paying any additional Charges or other costs.

- 9.2 The Authority may request an Operational Change by submitting a written request for Operational Change (“RFOC”) to the Supplier Representative.

- 9.3 The RFOC shall include the following details:

- 9.3.1 the proposed Operational Change; and
- 9.3.2 the time-scale for completion of the Operational Change.

- 9.4 The Supplier shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.

- 9.5 The Supplier shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Authority when the Operational Change is completed.

10. Communications

- 10.1 For any Change Communication to be valid under this Schedule, it must be sent to either the Authority Change Manager or the Supplier Change Manager, as applicable. The provisions of Clause 42 (*Notices*) shall apply to a Change Communication as if it were a notice.

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Annex-1: Change Request Form

CR No.:	Title:	Type of change:
Contract:	Required by date:	
Action:	Name:	Date:
Raised by:		
Area(s) impacted (optional field):		
Assigned for impact assessment by:		
Assigned for impact assessment to:		
Supplier reference no.:		
Full description of requested contract change (including proposed changes to the wording of the contract):		
Details of any proposed alternative scenarios:		
Reasons for and benefits and disadvantages of requested contract change:		
Signature of requesting change owner:		
Date of request:		

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Annex 2: Change Authorisation Note

CR No.:	Title:	Date raised:
Contract:	Type of change:	Required by date:
[Key milestone date: [if any]]		
Detailed description of contract change for which impact assessment is being prepared and wording of related changes to the contract:		
Proposed adjustment to the charges resulting from the contract change:		
Details of proposed one-off additional charges and means for determining these (e.g. fixed price basis):		
Signed on behalf of the authority:		Signed on behalf of the supplier:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

Schedule 23

Dispute Resolution Procedure

Schedule 23: Dispute Resolution Procedure

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“CEDR”	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre 1 Patternoster Lane, St Paul’s, London, EC4M 7BQ;
“Counter Notice”	has the meaning given in Paragraph 7.2;
“Expert”	in relation to a Dispute, a person appointed in accordance with Paragraph 6.2 to act as an expert in relation to that Dispute;
“Expert Determination”	determination by an Expert in accordance with Paragraph 6;
“Mediation Notice”	has the meaning given in Paragraph 4.2;
“Mediator”	the independent third party appointed in accordance with Paragraph 5.2 to mediate a Dispute;
“Multi-Party Dispute”	a Dispute which involves the Parties and one or more Related Third Parties;
“Multi-Party Dispute Representatives”	has the meaning given in Paragraph 9.6;
“Multi-Party Dispute Resolution Board”	has the meaning given in Paragraph 9.6;
“Related Third Party”	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Contract; or (b) a Sub-contract; and
“Supplier Request”	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

22. Dispute Notices

2.1 If a Dispute arises then:

2.1.1 the Authority Representative and the Supplier Representative shall attempt in

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good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

2.2.1 shall set out:

~~1.(a)~~ the material particulars of the Dispute;

~~(b)~~ the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

~~(c)~~ if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

2.2.2 may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Authority) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.3 shall apply.

2.3 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.2.2, then:

2.3.1 if it is served by the Authority it shall be treated as a Multi-Party Procedure Initiation Notice; and

2.3.2 if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.4 Subject to Paragraphs 2.5 and 3.2 and so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

2.4.1 first by commercial negotiation (as prescribed in Paragraph 4);

2.4.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and

2.4.3 lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 44 (*Governing Law and Jurisdiction*)).

2.5 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Contract and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.

2.6 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Contract regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice or proceedings under Paragraph 8 (~~Urgent Relief~~).

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33. Expedited Dispute Timetable

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party would be materially disadvantaged by a delay in resolving the Dispute, the Parties may agree to use the Expedited Dispute Timetable. If the Parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within 5 Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Authority.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Contract, then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
 - 3.2.1 in Paragraph 4.2.3, 10 Working Days;
 - 3.2.2 in Paragraph 5.2, 10 Working Days;
 - 3.2.3 in Paragraph 6.2, 5 Working Days; and
 - 3.2.4 in Paragraph 7.2, 10 Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Parties may (but shall be under no obligation to) agree in writing to extend the deadline. If the Parties fail to agree within 2 Working Days after the deadline has passed, the Authority may set a revised deadline provided that it is no less than 5 Working Days before the end of the period of time specified in the applicable Paragraphs (or 2 Working Days in the case of Paragraph 6.2). Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension. If the Authority fails to set such a revised deadline then the use of the Expedited Dispute Timetable shall cease and the normal time periods shall apply from that point onwards.

44. Commercial Negotiation

- 4.1 Following the service of a Dispute Notice, then, so long as the Authority has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the Authority and the Supplier shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Authority's [insert role] and the Supplier's [insert role].
- 4.2 If:
 - 4.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
 - 4.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 4; or
 - 4.2.3 the Parties have not settled the Dispute in accordance with Paragraph 4.1 within 30 Working Days of service of the Dispute Notice,

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either Party may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a “**Mediation Notice**”).

55. Mediation

- 5.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR’s Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).
- 5.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.
- 5.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 5.4 Any settlement reached in the mediation shall not be legally binding until it has been reduced to writing and signed by, or on behalf of, the Parties (in accordance with the Change Control Procedure where appropriate). The Mediator shall assist the Parties in recording the outcome of the mediation.

66. Expert Determination

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a technical matter of an IT, accounting or financing nature and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to an expert for determination.
- 6.2 The expert shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within 10 Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the expert shall be appointed:
 - 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);
 - 6.2.2 if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
 - 6.2.3 if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:
 - 4-(a) an appropriate body agreed between the Parties; or

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(b) if the Parties do not reach agreement on the relevant body within 15 Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party.

6.3 The Expert shall act on the following basis:

- 6.3.1 ~~he/she~~ they shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 6.3.4 any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the Parties;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7.7. Arbitration

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Authority may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Authority of its intentions and the Authority shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.
- 7.3 If the Authority serves a Counter Notice, then:
 - 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
 - 7.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Supplier shall not commence arbitration proceedings.
- 7.4 If the Authority does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings

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in accordance with Paragraph 7.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.

- 7.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- 7.5.1 the Dispute shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration (“**LCIA**”) (subject to Paragraphs 7.5.5, 7.5.6 and 7.5.7);
 - 7.5.2 the arbitration shall be administered by the LCIA;
 - 7.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
 - 7.5.4 if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
 - 7.5.5 the chair of the arbitral tribunal shall be British;
 - 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
 - 7.5.7 the seat of the arbitration shall be London.

88. Urgent Relief

- 8.1 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- 8.1.1 for interim or interlocutory remedies in relation to this Contract or infringement by the other Party of that Party’s Intellectual Property Rights; and/or
 - 8.1.2 where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

99. Multi-Party Disputes

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the “**Multi-Party Dispute Resolution Procedure**”).
- 9.2 If at any time following the issue of a Dispute Notice, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority’s determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice a “**Multi-Party Procedure Initiation Notice**”.
- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to

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Expert Determination or to arbitration in accordance with Paragraph 7, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

- 9.4 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- 9.4.1 a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
 - 9.4.2 not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.
- 9.6 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-Party Dispute Resolution Board**”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:
- 9.6.1 the Authority;
 - 9.6.2 the Supplier;
 - 9.6.3 each Related Third Party involved in the Multi-Party Dispute; and
 - 9.6.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,
- (together “**Multi-Party Dispute Representatives**”).
- 9.7 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
- 9.7.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 9.7.2 the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and
 - 9.7.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the

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Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

- 9.8 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then:
- 9.8.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;
 - 9.8.2 either Party may request that the Multi-Party Dispute is referred to an expert in which case Paragraph 6 shall apply; and/or
 - 9.8.3 subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute, and in each case references to the “Supplier” or the “Parties” in such provisions shall include a reference to all Related Third Parties.
- 9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub Contractor, by the Supplier.

Schedule 24

Reports and Records Provisions

Schedule 24: (Reports and Records Provisions)

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Schedule 24: Reports and Records Provisions

41. Transparency Reports

- 1.1 Within three (3) months of the Effective Date the Supplier shall provide to the Authority for its approval (such approval not to be unreasonably withheld or delayed) draft reports in accordance with Annex 1 (once approved, the “**Transparency Reports**”).
- 1.2 If the Authority rejects any draft Transparency Report, the Supplier shall submit a revised version of the relevant report for further approval by the Authority 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 Authority. If the Parties fail to agree on a draft Transparency Report the Authority shall determine what should be included.
- 1.3 The Supplier shall provide accurate and up-to-date versions of each Transparency Report to the Authority at the frequency referred to in Annex 1.
- 1.4 Any disagreement in connection with the preparation and/or approval of Transparency Reports, other than under Paragraph 1.2 above in relation to the contents of a Transparency Report, shall be treated as a Dispute.
- 1.5 The requirements for Transparency Reports are in addition to any other reporting requirements in this Contract.

22. Other Reports

- 2.1 The Authority may require any or all of the following reports:
 - 2.1.1 delay reports;
 - 2.1.2 reports relating to Testing and tests carried out under ~~Schedule 5 (Security Management) and Schedule 26 (Service Continuity Plan and Corporate Resolution Planning)~~; ~~Schedule 5 (Security Management) and Schedule 26 (Service Continuity Plan and Corporate Resolution Planning)~~;
 - 2.1.3 reports which the Supplier is required to supply as part of the Management Information;
 - 2.1.4 annual reports on the Insurances;
 - 2.1.5 security reports; and
 - 2.1.6 Force Majeure Event reports.

33. Records

- 3.1 The Supplier shall retain and maintain all the records (including superseded records) referred to in Paragraph 1 and Annex 1 (together “**Records**”):
 - 3.1.1 in accordance with the requirements of The National Archives and Good Industry Practice;
 - 3.1.2 in chronological order;

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- 3.1.3 in a form that is capable of audit; and
- 3.1.4 at its own expense.
- 3.2 The Supplier shall make the Records available for inspection to the Authority on request, subject to the Authority giving reasonable notice.
- 3.3 Where Records are retained in electronic form, the original metadata shall be preserved together with all subsequent metadata in a format reasonably accessible to the Authority.
- 3.4 The Supplier shall, during the Term and a period of at least 7 years following the expiry or termination of this Contract, maintain or cause to be maintained complete and accurate documents and records in relation to the provision of the Services including but not limited to all Records.
- 3.5 Records that contain financial information shall be retained and maintained in safe storage by the Supplier for a period of at least 7 years after the expiry or termination of this Contract.
- 3.6 Without prejudice to the foregoing, the Supplier shall provide the Authority:
 - 3.6.1 as soon as they are available, and in any event within 60 Working Days after the end of the first 6 months of each financial year of the Supplier during the Term, a copy, certified as a true copy by an authorised representative of the Supplier, of its un-audited interim accounts and, if applicable, of consolidated un-audited interim accounts of the Supplier and its Affiliates which would (if the Supplier were listed on the London Stock Exchange (whether or not it is)) be required to be sent to shareholders as at the end of and for each such 6 month period; and
 - 3.6.2 as soon as they shall have been sent to its shareholders in order to be laid before an annual general meeting of the Supplier, but not later than 130 Working Days after the end of each accounting reference period of the Supplier part or all of which falls during the Term, the Supplier's audited accounts and if applicable, of the consolidated audited accounts of the Supplier and its Affiliates in respect of that period together with copies of all related directors' and auditors' reports and all other notices/circulars to shareholders.

44. Virtual Library

- 4.1 The Supplier shall, no later than eight (8) weeks prior to the Operational ServicesService Commencement Date and without charge to the Authority, create a Virtual Library on which the Supplier shall (subject to any applicable legislation governing the use or processing of personal data) make information about this Contract available in in accordance with the requirements outlined in this Schedule.
- 4.2 The Supplier shall ensure that the Virtual Library is:
 - 4.2.1 capable of holding and allowing access to the information described in Annex 3 of this Schedule and includes full and accurate file details of all uploaded items including date and time of upload, version number and the name of the uploader;
 - 4.2.2 structured so that each document uploaded has a unique identifier which is

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automatically assigned;

- 4.2.3 readily accessible by the Authority at all times in full via a user-friendly, password protected interface to such nominated users as are notified to the Supplier by the Authority from time to time,
 - 4.2.4 structured so as to allow nominated users to download either specific documents or the complete Virtual Library (to the extent it has Access Permission) in bulk and store and view the content offline (on a regular and automated basis);
 - 4.2.5 structured and maintained in accordance with the security requirements as set out in this Contract including those set out in ~~Schedule 5 (Security Management)~~; Schedule 5 (Security Management);
 - 4.2.6 created and based on open standards in ~~Schedule 4 (Standards)~~; Schedule 4 (Standards); and
 - 4.2.7 backed up on a secure off-site system.
- 4.3 For the avoidance of doubt, the Virtual Library (excluding any Software used to host it) shall form a database which constitute Project Specific IPR which shall be assigned to the Authority pursuant to Paragraph ~~2.1 of Schedule 32 (Intellectual Property Rights) of this Contract~~. 2.1 of Schedule 32 (Intellectual Property Rights) of this Contract.
- 4.4 The Supplier shall upload complete and accurate information specified in Annex 3 by the Initial Upload Date (except where prior to the launch of the Virtual Library in which case the date at which the Virtual Library is made available in accordance with Paragraph 4.1) onto Virtual Library in the format specified.
- 4.5 Upon any document being uploaded to the Virtual Library, and where the Authority has been granted Access Permission to that document, the Supplier shall email on the same date as the upload, a copy of the document to the nominated Authority email address at:
[REDACTED]
- 4.6 Except for notices under Clause 42.4 or items covered by Clause 42.6, where the Supplier is under an obligation to provide information to the Authority in a provision under this Contract, then the Supplier's upload of that information onto the Virtual Library shall satisfy the Supplier's obligation to provide the Authority with that information provided that the Authority has access in accordance with this Paragraph 4 and the uploaded information meets the requirements more particularly specified in the relevant provision.
- 4.7 Except to the extent that the requirements provide for earlier and more regular Authority access to up-to-date information, Annex 3 shall not take precedence over any other obligation to provide information in this Contract and the Supplier shall refer to the applicable clause for further details as to the requirement.
- 4.8 The ~~Supplier~~Supplier shall provide each specified person (as set out in column 6 of the table at Annex 3) access to view and download the specified information in the Virtual Library in Annex 3 subject upon the occurrence of the event specified in the column marked Access Permission in Annex 3 to this Schedule.
- 4.9 Where Access Permission is not listed (in column 6 of the table at Annex 3) as being

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subject to the occurrence of a certain event the Supplier shall grant access to the person and information specified (in column 6 of the table at Annex 3) from the Initial Upload Date.

- 4.10 Where Access Permission is specified as being granted to the Authority's Third Party Auditor (prior to the Authority being granted access) it shall:
- 4.10.1 be entitled to access, view and download information specified in Annex 3 subject to it entering into a confidentiality agreement with the Supplier to keep the contents confidential (except to the extent disclosure of the confidential information is required under Paragraph 4.10.2 of this Schedule); and
- 4.10.2 report to the Authority (at its request) as to the completeness and accuracy of the information but not the substance of the information.
- 4.11 The Supplier shall ensure that the Virtual Library retains in an accessible form all historic or superseded records of the information specified Annex 3. In order to maintain the integrity of the historic archive of the information and documentation and for the purposes of maintaining a clear audit trail, the Supplier shall not delete or overwrite any information that has been stored in the Virtual Library, except for the purposes of maintenance (provided no information is lost during maintenance) or to enable the Supplier to comply with Data Protection Legislation.
- 4.12 The Supplier warrants that the information uploaded to the Virtual Library is accurate, complete, up-to-date and in accordance with this Contract at the date of upload.
- 4.13 Where the Supplier becomes aware that any of the information provided on the Virtual Library is materially inaccurate, incomplete or out of date (other than in respect of historic versions of documents) the Supplier shall provide an update to the information within fourteen (14) days unless already due to be updated beforehand due to an Update Requirement specified in Annex 3.
- 4.14 In the event of a conflict between any requirement in this Contract (excluding Annex 3) for the Supplier to provide information to the Authority and the requirements set out in Annex 3 of this Schedule, the requirement elsewhere in this Contract shall prevail.
- 4.15 The Supplier shall ensure that all approved users of the Virtual Library are alerted by email each time that information in the Virtual Library is uploaded or updated as it occurs.
- 4.16 No later than one (1) Month prior to the Operational ~~Services~~Service Commencement Date, the Supplier shall provide training manuals to the Authority relating to the use of the Virtual Library.
- 4.17 On request by the Authority the Supplier shall provide the Authority's nominated users with a reasonable level of training and ongoing support to enable them to make use of the Virtual Library.
- 4.18 For the avoidance of doubt, the cost of any redactions, access restrictions or compliance with the Data Protection Legislation in respect of the information hosted on the Virtual Library shall be at the Supplier's own cost and expense.

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Annex 1: Transparency Reports

Title	Content	Format	Frequency
(Performance)			
(Charges)			
(Major sub-contractors)			
(Technical)			
(Performance management)			

[Guidance note: 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.]

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Annex 2: Records to be Kept by the Supplier

The records to be kept by the Supplier are:

41. This Contract, its Schedules and all amendments to such documents.
22. All other documents which this Contract expressly requires to be prepared.
33. Records relating to the appointment and succession of the Supplier Representative and each member of the Key Personnel.
44. Notices, reports and other documentation submitted by any Expert.
55. All operation and maintenance manuals prepared by the Supplier for the purpose of maintaining the provision of the Services and the underlying IT Environment and Supplier Equipment.
66. Documents prepared by the Supplier or received by the Supplier from a third party relating to a Force Majeure Event.
77. All formal notices, reports or submissions made by the Supplier to the Authority Representative in connection with the provision of the Services.
88. All certificates, licences, registrations or warranties in each case obtained by the Supplier in relation to the provision of the Services.
99. Documents prepared by the Supplier in support of claims for the Charges.
4010. Documents submitted by the Supplier pursuant to the Change Control Procedure.
4111. Documents submitted by the Supplier pursuant to invocation by it or the Authority of the Dispute Resolution Procedure.
4212. Documents evidencing any change in ownership or any interest in any or all of the shares in the Supplier and/or the Guarantor, where such change may cause a change of Control; and including documents detailing the identity of the persons changing such ownership or interest.
4313. Invoices and records related to VAT sought to be recovered by the Supplier.
4414. Financial records, including audited and un-audited accounts of the Guarantor and the Supplier.
4515. Records required to be retained by the Supplier by Law, including in relation to health and safety matters and health and safety files and all consents.
4616. All documents relating to the insurances to be maintained under this Contract and any claims made in respect of them.
4717. All journals and audit trail data referred to in ~~Schedule 5 (Security Management)~~. Schedule 5 (Security Management).
4818. All other records, notices or certificates required to be produced and/or maintained by the Supplier pursuant to this Contract.

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Annex 3: Records to Upload to Virtual Library

[Guidance note: This Annex 3 is an example template and currently includes a list of some of the information already required under the Contract which is required to be maintained in the Virtual Library by the Supplier. You will need to update this table to reflect the requirements of your particular procurement and any changes which you have made to the drafting elsewhere in the Contract in respect of any of the information listed here and will need to consider Access Permissions and Access Events for each item of information listed, depending on the nature of the information.]

Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl.5.5 (e), (f), 5.8(b), Paragraph[s] 2.1(a) [and 2.2(a)(ii) (include only where Option 1 or 2 in Sch. 32 is chosen)]	Documentation	As appropriate and agreed by the Authority	Within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable.	-	Authority
<u>Cl 6.4</u>	<u>Detailed Implementation Plan</u>	<u>Sch 13</u>	<u>Within 20 Working Days of Effective Date</u>	<u>Every 3 months from Effective Date</u>	<u>Authority</u>
<u>Cl 33.8(h)</u>	<u>Annual slavery and human trafficking report</u>	<u>As appropriate and agreed by the Authority</u>	<u>Within twelve (12) months</u>	<u>Every twelve (12) months</u>	<u>Authority</u>
Cl 14.3	Key Personnel	Sch 29	Effective Date	On replacement of Key Personnel	Authority
<u>Cl 15.7</u>	<u>Notified Key Subcontractors</u>	<u>Sch 10</u>	<u>Effective Date</u>	<u>On replacement of key subcontractor</u>	<u>Authority</u>
<u>Cl 15.6 and 15.7</u>	<u>Notified Key Sub- Contractors</u>	<u>Sch 10</u>	<u>Effective Date</u>	<u>With each approved appointment or variation</u>	<u>Authority</u>

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
<u>CI 15.28</u>	<u>Supply chain Transparency Reports</u>	<u>Sch 24, Annex 4</u>	<u>thirty days prior to the of the end of each financial year</u>	<u>Every twelve (12) months</u>	<u>Authority</u>
Sch 3, Part B Para 2.3	Performance Monitoring Report and the Balanced Scorecard Report	Sch 3, Part B	Service Commencement	Within ten (10) Working Days of the end of each Service Period	Authority
<u>Sch 4, Annex 1, Para 4</u>	<u>Evidence of compliance with sustainability requirements</u>	-	<u>On reasonable request by Authority, provided that such requests are limited to [2] per Contract Year</u>	<u>On reasonable request by Authority, provided that such requests are limited to [2] per Contract Year</u>	<u>Authority</u>
<u>Sch 4, Annex 1, Para 4</u>	<u>Sustainability Report</u>	<u>Sch 4, Annex 1, Table C</u>	<u>As set out in Table C</u>	<u>As set out in Table C</u>	<u>Authority</u>
<u>[If using Part A][If using Part B – Security Assurance]</u> Sch 5, Para 4.4	Security Management Plan	Sch 5, Annex 3	Within [20] Working Days of the date of the Contract	Regular review and at least annually	Authority
<u>[If using Part A – Security Assurance]</u> Sch 5, Para 6.1, 6.2 and 6.3	Security certificates	As appropriate and agreed by the Authority	Prior to receiving, storing or processing any Authority Data	-	-
<u>[If using Part B – Security Accreditation]</u> Sch 5, Para 4.2	Core Information Management System diagram	Sch 5, Annex 3: Information Management System	The date specified in the Detailed Implementation Plan	Regular review and at least annually	Authority

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
[If using Part B – Security Accreditation] Sch 5, Para 7.1, 7.4, 7.6	Security certificates	Sch 5, Annex 3	Prior to receiving, storing or processing any Authority Data	-	-
Sch 6, Para 4	Evidence of Insurances	Sch 6	Effective Date	Within fifteen (15) days after policy renewal or replacement	Authority
Sch 9	Commercially Sensitive Information	Sch 9	Effective Date	Upon Agreement by the Authority to vary the information	Authority and/or Auditor
CI 15.7	Notified Key Subcontractors	Sch 10	Effective Date	On replacement of key subcontractor	Authority
Sch 11 11, Para 1	Third Party Contracts	Sch 11 Sch 11	Effective Date	On appointment of subcontract	Authority
CI 15.6 and 15.7	Notified Key Sub- Contractors	Sch 10	Effective Date	With each approved appointment or variation	Authority
CI 15.28	Supply chain Transparency Reports	Sch 24, Annex 4	thirty days prior to the of the end of each financial year	Every twelve (12) months	Authority
CI 16 and Schedule 32 (Intellectual Property Rights)	Software	Sch 12 and Annex 1 to Schedule 32 (Intellectual Property Rights)	Operational Services Commencement Date	Upon Agreement by the Authority to vary the information	Authority

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Cl 6.4 Sch 12	Detailed Implementation Plan Supplier Software and Third Party Software	Sch 13Sch 12	Within 20 Working Days of Effective Date	Every 3 months No less than every 6 (six) Months from the Effective Date	Authority
Cl 33.8(h)	Annual slavery and human trafficking report	As appropriate and agreed by the Authority	Within twelve (12) months	Every twelve (12) months	Authority
Sch 14, Para 4	Test Strategy	As appropriate and agreed by the Authority	Within 20 Working Days of Effective Date	Upon update to the test strategy	Authority
Sch 14, Para 5	Test Plan	As appropriate and agreed by the Authority	20 prior Working Days of relevant test	Upon update to the test plan	Authority
Sch 14, Para 8	Test Specification	As appropriate and agreed by the Authority	10 prior Working Days of relevant test	Upon update to the test specification	Authority
Sch 14, Para 8	Test Report	As appropriate and agreed by the Authority	2 Working Days prior to the date on which the test is planned to end for the Draft Test Report 5 days for the Final Test Report following the relevant test completion	Reissue with each retest	Authority

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 15, Part E Para 1.1	Template Invoice	As appropriate and agreed by the Authority	Within 10 Working Days of the Effective Date	Upon Agreement by the Authority to vary the template	Authority
Sch 15, Annex 4	Risk Register	Sch 15, Annex 4	Effective Date	Upon Agreement by the Authority to vary the by the Risk Management Board	Authority
Sch 17, Para 4	Benchmarking Plan	Sch 17	Upon receipt from Benchmarking	Approval of Plan	Authority and Auditor
Sch 17, Para 8	Benchmarking report	Sch 17	Upon receipt from Benchmarking	Any update	Authority and Auditor
Sch 18, Para 2.3.2	Financial Indicator Reports	Sch 18 ^{7.1} Para 2.5	As specified in Para 2.3.2 of Sch 18	As specified in Para 2.3.2 of Sch 18	Authority
Sch 18 Para 4.3.2	Financial Distress Remediation Plan	As appropriate and agreed by the Authority	As soon as reasonably practicable and in any event within 10 Working Days of initial notification or awareness of a Financial Distress Event	On a regular basis (not less than fortnightly)	Authority
<u>Sch 18, Para 8</u>	<u>Board Confirmation</u>	<u>As set out at Annex 4 of Sch 18</u>	<u>Within 120 days of the first Accounting Reference Date to occur</u>	<u>Within 15 months of the Previous Board Confirmation Provided or within 120 days after each Accounting</u>	<u>Authority</u>

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
				<u>Reference Date</u> (whichever is the earlier)	
Sch 19, Part B, Para 11.1	Contract Amendment Report	Sch 19, Part B, Para 1.2, Part B, <u>Para 1.2</u>	Within 1 month of a material change being agreed	-	Authority
Sch 19, Para 1.1	Quarterly Contract Report	Sch 19, Part B, Para 1.2, Part B, <u>Para 1.2</u>	Within 1 month of the end of each Quarter	-	Authority
Sch 19, Part B Part B, para <u>Para</u> 1.1	Annual Contract Report	Sch 19, Part B, Para 1.2, Part B, <u>Para 1.2</u>	Within 1 month of the end of the Contract Year to which that report relates	-	Authority
Sch 19, Part B Part B, para <u>Para</u> 1.1	Financial Reconciliation Report	Sch 19, Part B, Para 1.2, Part B, <u>Para 1.2</u>	Within 6 months after the end of the Term	-	Authority
Sch 21, Para 3.3	Representation and Structure of boards	Sch 21 Annex 1	Within 7 days of receipt of intention, or in the case of a non-Authority board member agreement by the Authority	-	Authority
Sch 21, Para 3.5.5	Minutes of governance meetings (all boards)	As appropriate and agreed by the Authority	Within 7 days of receipt from chairperson	-	Authority

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 22 Para 4.3	Impact Assessment Estimate	As appropriate and agreed by the Authority	Within 10 Working Days of date of receiving change request.	-	Authority
Sch 22 Para 5	Impact Assessment	As appropriate and agreed by the Authority	Within the period agreed by the Impact Assessment Estimate	Within 10 Working Days of request by the Authority to update under <u>Schedule Sch 22, Para 5.4</u>	Authority
Sch 22, Para 2.6	Update full copy of the Agreement and copy of annotated version illustrating changes <u>(unless Authority directs otherwise)</u>	PDF and MS Word (editable)	Signature of Variation Date	Any variation	Authority
Sch 22, Para 4	Change Request	Sch 22, Annex 4 1	Within 10 Working Days of Authority issuing the Change Request	-	Authority
<u>Sch 22, Para 6.2</u>	<u>Change Authorisation Note (unless Authority directs otherwise)</u>	<u>Sch 22, Annex 2</u>	<u>When Authority approves proposed Contract Change pursuant to Paragraph 6.1 and it has not been rejected by the Supplier in accordance with Paragraph 7</u>	=	<u>Authority</u>

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 23, Para 2.1	Dispute Notice	Sch 23 Para 2.2	No longer than 20 Working Days from an unresolved dispute arising	Any variation	Authority
Sch 23, Para 2.4	Mediation Notice	As appropriate	When first served	Any variation	Authority
Sch 24, Para 1	Reports and Records Provisions	Sch 24, Annex 1	Within 3 months of the Effective Date	Frequency specified in Sch 24, Annex 1	Authority
Sch 25, Para 2.1.1	Register of All Assets, Sub-contracts and Other Relevant Agreements	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 25, Para 2.1.2	Configuration Database of Technical Infrastructure and Operating Procedures	As appropriate and agreed by the Authority	Within 3 months of the Effective Date	Any variation	Authority
Sch 25, Para 3.1	Exit Information	As appropriate and agreed by the Authority	On reasonable notice given by the Authority at any point during the Term	Within 10 Working Days of Authority's written request	Authority and its potential Replacement Suppliers
Sch 25, Para 5.1	Exit Plan	Sch 25, Para 5.3	Within 3 months of the Effective Date	In the first month of each contract year; and Within 14 days if requested by the Authority following a Financial Distress Event Within 20 days after service of Termination	Authority

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
				Notice or 6 months prior to expiry of the Contract	
Sch 25, Para 6.3.5	Provide up to date Registers during the Termination Assistance Period	As appropriate	As requested by the Authority	As appropriate	
Sch 25, Para 6.7.2	Authority Data (handback)	Sch 25, Para 3 and/or as appropriate and agreed by the Authority	At the end of the Termination Assistance Period	-	Authority
Sch 25, Annex 1, Para 1.1, Para 1.2 Para 1.3 & Para 1.4	Termination Services supporting documentation and knowledge transfer material	As appropriate and agreed by the Authority	As specified in the Termination Assistance Notice and in any event prior to the end of the Termination Assistance Period	As specified in the Termination Assistance Notice or otherwise requested by the Authority	-
Sch 26 Service Continuity	Service Continuity Plan	Sch 26, Para 2.2	Within 40 Working Days from the Effective Date	Sch 26, Para 7.1	Authority
Sch 26, Para 7.2	Service Continuity Plan Review Report	Sch 26, Para 6.2	Within 20 Working Days of the conclusion of each review of the Service Continuity Plan.	-	-
Sch 26, Part B	Corporate Resolution Planning Information	Sch 26, Part B, Para 2.3	Sch 26 Part B Para 2.2	Sch 26, Para 2.8	Authority

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 18 Para 8	Board Confirmation	As set out at Annex 4 of Sch 18	Within 120 days of the first Accounting Reference Date to occur	Within 15 months of the previous Board Confirmation provided or within 120 days after each Accounting Reference Date (whichever is the earlier)	Authority
Sch 28, Part E, Para 1.1	Supplier's Provisional Supplier Personnel List and, Staffing Information	As appropriate and agreed by the Authority, <u>in a suitably anonymised format so as to comply with the DPA 2018, see Annex E2</u>	<u>Varies -</u> Sch 28, Para 1.1.1 - 1.1.4	At such intervals as are reasonably requested by the Authority	Authority
Sch 28, Part E, Para 1.2	Supplier's Final Supplier Personnel List	As appropriate and agreed by the Authority, <u>see Annex E2</u>	At least 20 Working Days prior to the Service Transfer Date	Upon any material change to the list of employees	Authority and, at the discretion of the Authority, the <u>prospective</u> Replacement Supplier and/or any <u>prospective</u> Replacement Subcontractor

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Applicable Clause/ Paragraph	Required Data	Format of Data	Initial Upload Date	Update Requirement	Access Permission and Access Event (where applicable)
Sch 28, Part E, Para 1.6	Information relating to the manner in which the services are organised	As appropriate and agreed by the Authority, <u>see Annex E2</u>	<u>Within 20 Working Days of Authority request</u> Effective Date	<u>-Within 20 Working Days of Authority request</u>	Authority
Sch 28, Part E, Para 1.7	Payroll and benefits information	As appropriate and agreed by the Authority, <u>see Annex E2</u>	Within 5 Working Days following the Service Transfer Date	-	Authority, any Replacement Supplier and/or Replacement Sub-contractor
Sch 28, Annex E1	List of Notified Sub-contractors	As appropriate and agreed by the Authority	Effective Date	Upon any change	Authority
Sch 29	Key Personnel	Sch 29	Effective Date	As amended from time to time	Authority
<u>If using Annex A Sch 31 - Joint Controller Agreement</u> , Sch 31, Annex 1 Para 2.1	Reports on Data Subject Access Requests <u>and other Personal Data related matters</u>	As appropriate and agreed by the Authority	As agreed with Authority	As agreed with Authority	Authority and Supplier
<u>Sch 32, Annex 1</u>	<u>Foreground IPR</u>	<u>Annex 1 to Sch 32 (Intellectual Property Rights)</u>	<u>As agreed with Authority</u>	<u>Regularly - As agreed with Authority</u>	<u>Authority</u>

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Annex 4: Supply Chain Transparency Information Template

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

Schedule 25

Exit Management

Schedule 25: Exit Management

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Emergency Exit”	any termination of this Contract which is a: <ul style="list-style-type: none">(a) termination of the whole or part of this Contract in accordance with Clause 31 (<i>Termination Rights</i>), except where the period of notice given under that Clause is greater than or equal to 6 months;(b) termination of the provision of the Services for any reason prior to the expiry of any period of notice of termination served pursuant to Clause 31 (<i>Termination Rights</i>); or(c) wrongful termination or repudiation of this Contract by either Party;
“Ethical Wall Agreement”	an ethical wall agreement in a form similar to the draft ethical wall agreement set out at Annex 2;
“Exclusive Assets”	those Assets used by the Supplier or a Key Sub-contractor which are used exclusively in the provision of the Services;
“Exit Information”	has the meaning given in Paragraph 3.1;
“Exit Manager”	the person appointed by each Party pursuant to Paragraph 2.3 for managing the Parties’ respective obligations under this Schedule;
“Net Book Value”	the net book value of the relevant Asset(s) calculated in accordance with the depreciation policy of the Supplier set out in the letter in the agreed form from the Supplier to the Authority of the same date as this Contract;
“Non-Exclusive Assets”	those Assets (if any) which are used by the Supplier or a Key Sub-contractor in connection with the Services but which are also used by the Supplier or Key Sub-contractor for other purposes of material value;
“Ordinary Exit”	any termination of the whole or any part of this Contract which occurs: <ul style="list-style-type: none">(a) pursuant to Clause 31 (<i>Termination Rights</i>) where the period of notice given by the Party serving notice to

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terminate pursuant to such Clause is greater than or equal to 6 months; or

- (b) as a result of the expiry of the Initial Term or any Extension Period;

“Transferable Assets” those of the Exclusive Assets which are capable of legal transfer to the Authority;

“Transferable Contracts” the Sub-contracts, licences for Supplier’s Software, licences for Third Party Software or other agreements which are necessary to enable the Authority or any Replacement Supplier to perform the Services or the Replacement Services, including in relation to licences all relevant Documentation; and

“Transferring Contracts has the meaning given in Paragraph 7.2.3.

22. Obligations During the Term to Facilitate Exit

2.1 During the Term, the Supplier shall:

2.1.1 create and maintain a register of all:

~~1.(a)~~ Assets, detailing their:

~~(e)~~(b) make, model and asset number;

~~(f)~~(c) ownership and status as either Exclusive Assets or Non-Exclusive Assets;

~~(g)~~(d) Net Book Value;

~~(h)~~(e) condition and physical location; and

~~(i)~~(f) use (including technical specifications); and

~~(j)~~(g) Sub-contracts and other relevant agreements (including relevant software licences, maintenance and support agreements and equipment rental and lease agreements) required for the performance of the Services;

2.1.2 create and maintain a configuration database detailing the technical infrastructure and operating procedures through which the Supplier provides the Services, which shall contain sufficient detail to permit the Authority and/or Replacement Supplier to understand how the Supplier provides the Services and to enable the smooth transition of the Services with the minimum of disruption;

2.1.3 agree the format of the Registers with the Authority as part of the process of agreeing the Exit Plan; and

2.1.4 at all times keep the Registers up to date, in particular in the event that Assets,

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Sub-contracts or other relevant agreements are added to or removed from the Services.

- 2.2 The Supplier shall procure that all Exclusive Assets listed in the Registers are clearly marked to identify that they are exclusively used for the provision of the Services under this Contract.
- 2.3 Each Party shall appoint a person for the purposes of managing the Parties' respective obligations under this Schedule and provide written notification of such appointment to the other Party within 3 months of the Effective Date. The Supplier's Exit Manager shall be responsible for ensuring that the Supplier and its employees, agents and Sub-contractors comply with this Schedule. The Supplier shall ensure that its Exit Manager has the requisite authority to arrange and procure any resources of the Supplier as are reasonably necessary to enable the Supplier to comply with the requirements set out in this Schedule. The Parties' Exit Managers will liaise with one another in relation to all issues relevant to the termination of this Contract and all matters connected with this Schedule and each Party's compliance with it.

33. Obligations to Assist on Re-tendering of Services

- 3.1 On reasonable notice at any point during the Term, the Supplier shall provide to the Authority and/or its potential Replacement Suppliers (subject to the potential Replacement Suppliers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the Authority of any invitation to tender and/or to facilitate any potential Replacement Suppliers undertaking due diligence:
 - 3.1.1 details of the Service(s);
 - 3.1.2 a copy of the Registers, updated by the Supplier up to the date of delivery of such Registers;
 - 3.1.3 an inventory of Authority Data in the Supplier's possession or control;
 - 3.1.4 details of any key terms of any third party contracts and licences, particularly as regards charges, termination, assignment and novation;
 - 3.1.5 a list of on-going and/or threatened disputes in relation to the provision of the Services;
 - 3.1.6 to the extent permitted by applicable Law, all information relating to Transferring Supplier Employees required to be provided by the Supplier under this Contract; and
 - 3.1.7 such other material and information as the Authority shall reasonably require, (together, the "**Exit Information**").
- 3.2 The Supplier acknowledges that the Authority may disclose the Supplier's Confidential Information to an actual or prospective Replacement Supplier or any third party whom the Authority is considering engaging to the extent that such disclosure is necessary in connection with such engagement (except that the Authority may not under this Paragraph 3.2 disclose any Supplier's Confidential Information which is information relating to the Supplier's or its Sub-contractors' prices or costs).

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- 3.3 The Supplier shall:
- 3.3.1 notify the Authority within 5 Working Days of any material change to the Exit Information which may adversely impact upon the potential transfer and/or continuance of any Services and shall consult with the Authority regarding such proposed material changes; and
 - 3.3.2 provide complete updates of the Exit Information on an as-requested basis as soon as reasonably practicable and in any event within 10 Working Days of a request in writing from the Authority.
- 3.4 The Supplier may charge the Authority for its reasonable additional costs to the extent the Authority requests more than 4 updates in any 6 month period.
- 3.5 The Exit Information shall be accurate and complete in all material respects and the level of detail to be provided by the Supplier shall be such as would be reasonably necessary to enable a third party to:
- 3.5.1 prepare an informed offer for those Services; and
 - 3.5.2 not be disadvantaged in any subsequent procurement process compared to the Supplier (if the Supplier is invited to participate).

44. Obligation to enter into an Ethical Wall Agreement on Re-tendering of Services

- 4.1 The Authority may require the Supplier to enter into the Ethical Wall Agreement at any point during a re-tendering or contemplated re-tendering of the Services or any part of the Services.
- 4.2 If required to enter into the Ethical Wall Agreement, the Supplier will return a signed copy of the Ethical Wall Agreement within 10 Working Days of receipt. The Supplier's costs of entering into the Ethical Wall Agreement will be borne solely by the Supplier.

55. Exit Plan

- 5.1 The Supplier shall, within 3 months after the Effective Date, deliver to the Authority an Exit Plan which:
- 5.1.1 sets out the Supplier's proposed methodology for achieving an orderly transition of the relevant Services from the Supplier to the Authority and/or its Replacement Supplier on the Partial Termination, expiry or termination of this Contract;
 - 5.1.2 complies with the requirements set out in Paragraph 5.2; and
 - 5.1.3 is otherwise reasonably satisfactory to the Authority.
- 5.2 The Parties shall use reasonable endeavours to agree the contents of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days of its submission, then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- 5.3 The Exit Plan shall set out, as a minimum:
- 5.3.1 how the Exit Information is obtained;

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- 5.3.2 separate mechanisms for dealing with Ordinary Exit and Emergency Exit, the provisions relating to Emergency Exit being prepared on the assumption that the Supplier may be unable to provide the full level of assistance which is required by the provisions relating to Ordinary Exit, and in the case of Emergency Exit, provision for the supply by the Supplier of all such reasonable assistance as the Authority shall require to enable the Authority or its sub-contractors to provide the Services;
 - 5.3.3 a mechanism for dealing with Partial Termination on the assumption that the Supplier will continue to provide the remaining Services under this Contract;
 - 5.3.4 the management structure to be employed during both transfer and cessation of the Services in an Ordinary Exit and an Emergency Exit;
 - 5.3.5 the management structure to be employed during the Termination Assistance Period;
 - 5.3.6 a detailed description of both the transfer and cessation processes, including a timetable, applicable in the case of an Ordinary Exit and an Emergency Exit;
 - 5.3.7 how the Services will transfer to the Replacement Supplier and/or the Authority, including details of the processes, documentation, data transfer, systems migration, security and the segregation of the Authority's technology components from any technology components operated by the Supplier or its Sub-contractors (where applicable);
 - 5.3.8 the scope of the Termination Services that may be required for the benefit of the Authority (including such of the services set out in Annex 1 as are applicable);
 - 5.3.9 a timetable and critical issues for providing the Termination Services;
 - 5.3.10 any charges that would be payable for the provision of the Termination Services (calculated in accordance with the methodology that would apply if such Services were being treated as a Contract Change), together with a capped estimate of such charges;
 - 5.3.11 how the Termination Services would be provided (if required) during the Termination Assistance Period;
 - 5.3.12 procedures to deal with requests made by the Authority and/or a Replacement Supplier for Staffing Information pursuant to ~~Schedule 28 (Staff Transfer)~~; ~~Schedule 28 (Staff Transfer)~~; and
 - 5.3.13 how each of the issues set out in this Schedule will be addressed to facilitate the transition of the Services from the Supplier to the Replacement Supplier and/or the Authority with the aim of ensuring that there is no disruption to or degradation of the Services during the Termination Assistance Period.
- 5.4 The Parties acknowledge that the migration of the Services from the Supplier to the Authority and/or its Replacement Supplier may be phased, such that certain of the Services are handed over before others.
- 5.5 The Supplier shall review and (if appropriate) update the Exit Plan on a basis consistent

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with the principles set out in this Schedule in the first month of each Contract Year (commencing with the second Contract Year) and if requested by the Authority following the occurrence of a Financial Distress Event, within 14 days of such request, to reflect any changes in the Services that have occurred since the Exit Plan was last agreed. Following such update, the Supplier shall submit the revised Exit Plan to the Authority for review. Within 20 Working Days following submission of the revised Exit Plan, the Parties shall meet and use reasonable endeavours to agree the contents of the revised Exit Plan. If the Parties are unable to agree the contents of the revised Exit Plan within that 20 Working Day period, such dispute shall be resolved in accordance with the Dispute Resolution Procedure.

Finalisation of the Exit Plan

- 5.6 Within 20 Working Days after service of a Termination Notice by either Party or 6 months prior to the expiry of this Contract, the Supplier will submit for the Authority's approval the Exit Plan in a final form that could be implemented immediately. The final form of the Exit Plan shall be prepared on a basis consistent with the principles set out in this Schedule and shall reflect any changes in the Services that have occurred since the Exit Plan was last agreed.
- 5.7 The Parties will meet and use their respective reasonable endeavours to agree the contents of the final form of the Exit Plan. If the Parties are unable to agree the contents of the Exit Plan within 20 Working Days following its delivery to the Authority then such Dispute shall be resolved in accordance with the Dispute Resolution Procedure. Until the agreement of the final form of the Exit Plan, the Supplier shall provide the Termination Services in accordance with the principles set out in this Schedule and the last approved version of the Exit Plan (insofar as relevant).

66. Termination Services

Notification of Requirements for Termination Services

- 6.1 The Authority shall be entitled to require the provision of Termination Services at any time during the Term by giving written notice to the Supplier (a "**Termination Assistance Notice**") at least 4 months prior to the date of termination or expiry of this Contract or as soon as reasonably practicable (but in any event, not later than 1 month) following the service by either Party of a Termination Notice. The Termination Assistance Notice shall specify:
- 6.1.1 the date from which Termination Services are required;
 - 6.1.2 the nature of the Termination Services required; and
 - 6.1.3 the period during which it is anticipated that Termination Services will be required, which shall continue no longer than 24 months after the expiry of the Initial Term or any Extension Period or earlier termination of this Contract;
- 6.2 The Authority shall have:
- 6.2.1 an option to extend the period of assistance beyond the period specified in the Termination Assistance Notice provided that such extension shall not extend the Termination Assistance period beyond the date which is 30 months after expiry of the Initial Term or any Extension Period or earlier termination of this

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Contract ;and provided that it shall notify the Supplier to such effect no later than 20 Working Days prior to the date on which the provision of Termination Services is otherwise due to expire; and

- 6.2.2 the right to terminate its requirement for Termination Services by serving not less than 20 Working Days' written notice upon the Supplier to such effect.

Termination Assistance Period

- 6.3 Throughout the Termination Assistance Period, or such shorter period as the Authority may require, the Supplier shall:
- 6.3.1 continue to provide the Services (as applicable) and, if required by the Authority pursuant to Paragraph 6.1, provide the Termination Services;
 - 6.3.2 in addition to providing the Services and the Termination Services, provide to the Authority any reasonable assistance requested by the Authority to allow the Services to continue without interruption following the Partial Termination, termination or expiry of this Contract and to facilitate the orderly transfer of responsibility for and conduct of the Services to the Authority and/or its Replacement Supplier;
 - 6.3.3 use all reasonable endeavours to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority;
 - 6.3.4 provide the Services and the Termination Services at no detriment to the Target Performance Levels, save to the extent that the Parties agree otherwise in accordance with Paragraph 6.5; and
 - 6.3.5 at the Authority's request and on reasonable notice, deliver up-to-date Registers to the Authority.
- 6.4 Without prejudice to the Supplier's obligations under Paragraph 6.3.3, if it is not possible for the Supplier to reallocate resources to provide such assistance as is referred to in Paragraph 6.3.2 without additional costs to the Authority, any additional costs incurred by the Supplier in providing such reasonable assistance which is not already in the scope of the Termination Services or the Exit Plan shall be subject to the Change Control Procedure.
- 6.5 If the Supplier demonstrates to the Authority's reasonable satisfaction that transition of the Services and provision of the Termination Services during the Termination Assistance Period will have a material, unavoidable adverse effect on the Supplier's ability to meet one or more particular Target Performance Level(s), the Parties shall vary the relevant Target Performance Level(s) and/or the applicable Service Credits to take account of such adverse effect.

Termination Obligations

- 6.6 The Supplier shall comply with all of its obligations contained in the Exit Plan in respect of any Partial Termination or termination.
- 6.7 Upon termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance

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of the Services and the Termination Services and its compliance with the other provisions of this Schedule) in respect of the Services that have been terminated, the Supplier shall:

- 6.7.1 cease to use the Authority Data;
- 6.7.2 provide the Authority and/or the Replacement Supplier with a complete and uncorrupted version of the Authority Data in electronic form (or such other format as reasonably required by the Authority);
- 6.7.3 erase from any computers, storage devices and storage media that are to be retained by the Supplier after the end of the Termination Assistance Period all Authority Data and promptly certify to the Authority that it has completed such deletion;
- 6.7.4 return to the Authority such of the following as is in the Supplier's possession or control:
 - ~~(a)~~ all copies of the Authority Software and any other software licensed by the Authority to the Supplier under this Contract;
 - ~~(b)~~ all materials created by the Supplier under this Contract in which the IPRs are owned by the Authority;
 - ~~(c)~~(a) any parts of the IT Environment and any other equipment which belongs to the Authority; and
 - ~~(d)~~(b) any items that have been on-charged to the Authority, such as consumables;
- 6.7.5 vacate any Authority Premises unless access is required to continue to deliver the Services;
- 6.7.6 provide access during normal working hours to the Authority and/or the Replacement Supplier for up to 12 months after the Partial Termination, expiry or termination of this Contract to:
 - ~~4-(a)~~ such information relating to the Services as remains in the possession or control of the Supplier; and
 - ~~(e)~~(b) such members of the Supplier Personnel as have been involved in the design, development and provision of the Services and who are still employed by the Supplier, provided that the Authority and/or the Replacement Supplier shall pay the reasonable costs of the Supplier actually incurred in responding to requests for access under this Paragraph 6.7.6(b).
- 6.8 Upon Partial Termination, termination or expiry (as the case may be) or at the end of the Termination Assistance Period (or earlier if this does not adversely affect the Supplier's performance of the Services and the Termination Services and its compliance with the other provisions of this Schedule), each Party shall return to the other Party (or if requested, destroy or delete) all Confidential Information of the other Party in respect of the terminated Services and shall certify that it does not retain the other Party's Confidential Information save to the extent (and for the limited period) that such

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information needs to be retained by the Party in question for the purposes of providing or receiving any Services or Termination Services or for statutory compliance purposes.

~~6.9 Except where this Contract provides otherwise, all licences, leases and authorisations granted by the Authority to the Supplier in relation to the terminated Services shall be terminated with effect from the end of the Termination Assistance Period.~~

77. Assets, Sub-contracts and Software

- 7.1 Following notice of termination or Partial Termination of this Contract and during the Termination Assistance Period, the Supplier shall not, in respect of the terminated Services, without the Authority's prior written consent:
- 7.1.1 terminate, enter into or vary any Sub-contract except to the extent that such change does not or will not affect the provision of Services or the Charges;
 - 7.1.2 (subject to normal maintenance requirements) make material modifications to, or dispose of, any existing Assets or acquire any new Assets; or
 - 7.1.3 terminate, enter into or vary any licence for software in connection with the Services.
- 7.2 Within 20 Working Days of receipt of the up-to-date Registers provided by the Supplier pursuant to Paragraph 6.3.5, the Authority shall provide written notice to the Supplier setting out:
- 7.2.1 which, if any, of the Transferable Assets the Authority requires to be transferred to the Authority and/or the Replacement Supplier in respect of the terminated Services ("**Transferring Assets**");
 - 7.2.2 which, if any, of:
 - (a) the Exclusive Assets that are not Transferable Assets; and
 - (b) the Non-Exclusive Assets,the Authority and/or the Replacement Supplier requires the continued use of; and
 - 7.2.3 which, if any, of Transferable Contracts the Authority requires to be assigned or novated to the Authority and/or the Replacement Supplier (the "**Transferring Contracts**"),

in order for the Authority and/or its Replacement Supplier to provide the Services from the expiry of the Termination Assistance Period. Where requested by the Authority and/or its Replacement Supplier, the Supplier shall provide all reasonable assistance to the Authority and/or its Replacement Supplier to enable it to determine which Transferable Assets and Transferable Contracts the Authority and/or its Replacement Supplier requires to provide the Services or Replacement Services. Where requested by the Supplier, the Authority 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.

- 7.3 With effect from the expiry of the Termination Assistance Period, the Supplier shall sell

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the Transferring Assets to the Authority and/or its nominated Replacement Supplier for a consideration equal to their Net Book Value, except where:

- 7.3.1 a Termination Payment is payable by the Authority to the Supplier, in which case, payment for such Assets shall be included within the Termination Payment; or
 - 7.3.2 the cost of the Transferring Asset has been partially or fully paid for through the Charges at the time of expiry or termination of this Contract, in which case the Authority shall pay the Supplier the Net Book Value of the Transferring Asset less the amount already paid through the Charges.
- 7.4 Risk in the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) at the end of the Termination Assistance Period and title to the Transferring Assets shall pass to the Authority or the Replacement Supplier (as appropriate) on payment for the same.
- 7.5 Where the Supplier is notified in accordance with Paragraph 7.2.3 that the Authority 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:
- 7.5.1 procure a non-exclusive, perpetual, royalty-free licence (or licence on such other terms that have been agreed by the Authority) for the Authority and/or the Replacement Supplier to use such assets (with a right of sub-licence or assignment on the same terms); or failing which
 - 7.5.2 procure a suitable alternative to such assets and the Authority or the Replacement Supplier shall bear the reasonable proven costs of procuring the same.
- 7.6 The Supplier shall as soon as reasonably practicable assign or procure the novation to the Authority and/or the Replacement Supplier of the Transferring Contracts. The Supplier shall execute such documents and provide such other assistance as the Authority reasonably requires to effect this novation or assignment.
- 7.7 The Authority shall:
- 7.7.1 accept assignments from the Supplier or join with the Supplier in procuring a novation of each Transferring Contract; and
 - 7.7.2 once a Transferring Contract is novated or assigned to the Authority and/or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract, or as applicable, procure that the Replacement Supplier does the same.
- 7.8 The Supplier shall hold any Transferring Contracts on trust for the Authority until such time as the transfer of the relevant Transferring Contract to the Authority and/or the Replacement Supplier has been effected.
- 7.9 The Supplier shall indemnify the Authority (and/or the Replacement Supplier, as applicable) against each loss, liability and cost arising out of any claims made by a

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counterparty to a Transferring Contract which is assigned or novated to the Authority (and/or Replacement Supplier) pursuant to Paragraph 7.6 both:

- 7.9.1 in relation to any matters arising prior to the date of assignment or novation of such Sub-contract; and
- 7.9.2 in relation to any matters arising after the date of assignment or novation of such Sub-contract where the loss, liability or cost arises as a result of the Supplier's failure to comply with Clause 16 (*Intellectual Property Rights*) and/or ~~Schedule 32 (Intellectual Property Rights)~~. ~~Schedule 32 (Intellectual Property Rights)~~.

88. Supplier Personnel

- 8.1 The Authority and Supplier agree and acknowledge that in the event of the Supplier ceasing to provide the Services or part of them for any reason, ~~Schedule 28 (Staff Transfer)~~ ~~Schedule 28 (Staff Transfer)~~ shall apply.
- 8.2 The Supplier shall not take any step (expressly or implicitly or directly or indirectly by itself or through any other person) to dissuade or discourage any employees engaged in the provision of the Services from transferring their employment to the Authority and/or the Replacement Supplier.
- 8.3 During the Termination Assistance Period, the Supplier shall give the Authority and/or the Replacement Supplier reasonable access to the Supplier's personnel to present the case for transferring their employment to the Authority and/or the Replacement Supplier.
- 8.4 The Supplier shall immediately notify the Authority or, at the direction of the Authority, the Replacement Supplier of any period of notice given by the Supplier or received from any person referred to in the Staffing Information, regardless of when such notice takes effect.
- 8.5 The Supplier shall not for a period of 12 months from the date of transfer re-employ or re-engage or entice any employees, suppliers or Sub-contractors whose employment or engagement is transferred to the Authority and/or the Replacement Supplier, except that this Paragraph shall not apply where the employee, supplier or Sub-contractor applies in response to a public advertisement of a vacancy.

99. Charges

- 9.1 During the Termination Assistance Period (or for such shorter period as the Authority may require the Supplier to provide the Termination Services), the Authority shall pay the Charges to the Supplier in respect of the Termination Services in accordance with the rates set out in the Exit Plan (but shall not be required to pay costs in excess of the estimate set out in the Exit Plan). If the scope or timing of the Termination Services is changed and this results in a change to the costs of such Termination Services, the estimate may be varied in accordance with the Change Control Procedure.
- 9.2 Where the Authority requests an extension to the Termination Services beyond the Termination Assistance Period in accordance with Paragraph 6.2:
 - 9.2.1 where more than 6 months' notice is provided, the same rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable;

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and

- 9.2.2 where less than 6 months' notice is provided, no more than [1.2] times the rate as set out in the Exit Plan (or the Charges when not stated in the Exit Plan) shall be payable.
- 9.3 For the purpose of calculating the costs of providing the Termination Services for inclusion in the Exit Plan or, if no Exit Plan has been agreed, the costs of providing Termination Services shall be determined in accordance with the Change Control Procedure.
- 9.4 Except as otherwise expressly specified in this Agreement, the Supplier shall not make any charges for the services provided by the Supplier pursuant to, and the Authority shall not be obliged to pay for costs incurred by the Supplier in relation to its compliance with, this Schedule including the preparation and implementation of the Exit Plan and any activities mutually agreed between the Parties to carry on after the expiry of the Termination Assistance Period.

10.10. Apportionments

- 10.1 All outgoings and expenses (including any remuneration due) and all rents, royalties and other periodical payments receivable in respect of the Transferring Assets and Transferring Contracts shall be apportioned between the Authority and the Supplier and/or the Replacement Supplier and the Supplier (as applicable) as follows:
- 10.1.1 the amounts shall be annualised and divided by 365 to reach a daily rate;
- 10.1.2 the Authority shall be responsible for (or shall procure that the Replacement Supplier shall be responsible for) or entitled to (as the case may be) that part of the value of the invoice pro rata to the number of complete days following the transfer, multiplied by the daily rate; and
- 10.1.3 the Supplier shall be responsible for or entitled to (as the case may be) the rest of the invoice.
- 10.2 Each Party shall pay (and/or the Authority shall procure that the Replacement Supplier shall pay) any monies due under Paragraph 10.1 as soon as reasonably practicable.

Annex 1: Scope of the Termination Services

41. Scope of the Termination Services

- 1.1 The Termination Services to be provided by the Supplier shall include such of the following services as the Authority may specify:
 - 1.1.1 ceasing all non-critical Software changes (except where agreed in writing with the Authority);
 - 1.1.2 notifying the Sub-contractors of procedures to be followed during the Termination Assistance Period and providing management to ensure these procedures are followed;
 - 1.1.3 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 Authority and/or the Replacement Supplier after the end of the Termination Assistance Period;
 - 1.1.4 delivering to the Authority the existing systems support profiles, monitoring or system logs, problem tracking/resolution documentation and status reports all relating to the 12 month period immediately prior to the commencement of the Termination Services;
 - 1.1.5 providing details of work volumes and staffing requirements over the 12 month period immediately prior to the commencement of the Termination Services;
 - 1.1.6 with respect to work in progress as at the end of the Termination Assistance Period, documenting the current status and stabilising for continuity during transition;
 - 1.1.7 providing the Authority with any problem logs which have not previously been provided to the Authority;
 - 1.1.8 providing assistance and expertise as necessary to examine all governance and reports in place for the provision of the Services and re-writing and implementing these during and for a period of 12 months after the Termination Assistance Period;
 - 1.1.9 providing assistance and expertise as necessary to examine all relevant roles and responsibilities in place for the provision of the Services and re-writing and implementing these such that they are appropriate for the continuation of the Services after the Termination Assistance Period;
 - 1.1.10 agreeing with the Authority an effective communication strategy and joint communications plan which sets out the implications for Supplier Personnel, Authority staff, customers and key stakeholders;
 - 1.1.11 reviewing all Software libraries used in connection with the Services and providing details of these to the Authority and/or the Replacement Supplier;
 - 1.1.12 providing assistance and expertise as necessary to support the Authority

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and/or the Replacement Supplier develop the migration plan for business operations and Authority Data to the Replacement Supplier, which may include migration approach, testing of plans, contingency options, and handling of historic or archived Authority Data;

- 1.1.13 provide all necessary support, equipment, tools, and Software such as data migration services and/or Automated Programming Interfaces, in order to enable and support the execution of the migration plan by the Authority and/or Replacement Supplier;
- 1.1.14 making available to the Authority and/or the Replacement Supplier expertise to analyse training requirements and provide all necessary training for the use of tools by such staff as are nominated by the Authority (acting reasonably) at the time of termination or expiry;
- 1.1.15 assisting in establishing naming conventions for any new production site;
- 1.1.16 analysing and providing information about capacity and performance requirements, processor requirements and bandwidth requirements, and known planned requirements for capacity growth across these areas;
- 1.1.17 generating a computer listing of the Source Code of **[insert details of relevant Software]** in a form and on media reasonably requested by the Authority;
- 1.1.18 agreeing with the Authority a handover plan for all of the Supplier's responsibilities as set out in the Security Management Plan;
- 1.1.19 delivering copies of the production databases (with content listings) to the Authority's and/or the Replacement Supplier's operations staff (on appropriate media) as reasonably requested by the Authority;
- 1.1.20 assisting with the loading, testing and implementation of the production databases;
- 1.1.21 assisting in the execution of a parallel operation until the effective date of expiry or termination of this Contract;
- 1.1.22 in respect of the maintenance and support of the Supplier System, providing historical performance data for the previous **[insert time period]**;
- 1.1.23 assisting in the execution of a parallel operation of the maintenance and support of the Supplier System until the end of the Termination Assistance Period or as otherwise specified by the Authority (provided that these Services shall end on a date no later than the end of the Termination Assistance Period);
- 1.1.24 providing an information pack listing and describing the Services for use by the Authority in the procurement of the Replacement Services;
- 1.1.25 answering all reasonable questions from the Authority and/or the Replacement Supplier regarding the Services;
- 1.1.26 agreeing with the Authority and/or the Replacement Supplier a plan for the

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migration of the Authority Data to the Authority and/or the Replacement Supplier;

1.1.27 providing access to the Authority and/or the Replacement Supplier during the Termination Assistance Period and for a period not exceeding 6 months afterwards for the purpose of the smooth transfer of the Services to the Authority and/or the Replacement Supplier:

~~4.~~(a) to information and documentation relating to the Transferring Services that is in the possession or control of the Supplier or its Sub-contractors (and the Supplier agrees and shall procure that its Sub-contractors do not destroy or dispose of that information within this period) including the right to take reasonable copies of that material; and

~~(f)~~(b) following reasonable notice and during the Supplier's normal business hours, to members of the Supplier Personnel who have been involved in the provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and

1.1.28 knowledge transfer services, including:

~~4.~~(a) transferring all training material and providing appropriate training to those Authority and/or Replacement Supplier staff responsible for internal training in connection with the provision of the Services;

~~(g)~~(b) providing for transfer to the Authority and/or the Replacement Supplier of all knowledge reasonably required for the provision of the Services which may, as appropriate, include information, records and documents;

~~(h)~~(c) providing the Supplier and/or the Replacement Supplier with access to such members of the Supplier's or its Sub-contractors' personnel as have been involved in the design, development, provision or management of the Services and who are still employed or engaged by the Supplier or its Sub-contractors; and

~~(i)~~(d) allowing the Authority 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 Authority and the Replacement Supplier with any applicable security and/or health and safety restrictions,

and any such person who is provided with such 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 shall:

1.2.1 provide a documented plan relating to the training matters referred to in Paragraph 1.1.14 for agreement by the Authority at the time of termination or expiry of this Contract;

1.2.2 co-operate fully in the execution of the handover plan agreed pursuant to Paragraph 1.1.18, providing skills and expertise of a suitable standard; and

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- 1.2.3 fully co-operate in the execution of the Authority Data migration plan agreed pursuant to Paragraph 1.1.26, providing skills and expertise of a reasonably acceptable standard.
- 1.3 To facilitate the transfer of knowledge from the Supplier to the Authority and/or its Replacement Supplier, the Supplier shall provide a detailed explanation of the procedures and operations used to provide the Services, the change management process and other standards and procedures to the operations personnel of the Authority and/or the Replacement Supplier.
- 1.4 The information which the Supplier shall provide to the Authority and/or the Replacement Supplier pursuant to Paragraph 1.1.27 1.1.26 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 Authority and/or the Replacement Supplier;
 - 1.4.4 key support contact details for third party supplier personnel under contracts which are to be assigned or novated to the Authority pursuant to this Schedule;
 - 1.4.5 information regarding any unresolved faults in progress at the commencement of the Termination Assistance Period as well as those expected to be in progress at the end of the Termination Assistance Period;
 - 1.4.6 details of physical and logical security processes and tools which will be available to the Authority; and
 - 1.4.7 any relevant interface information,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 Authority 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 access to any Sites pursuant to this Paragraph 1.5 shall:
 - ~~1.(a)~~ sign a confidentiality undertaking in favour of the Supplier (in such form as the Supplier shall reasonably require); and
 - ~~(j)(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 Authority deems reasonable; and
 - 1.5.2 the Authority and/or the Replacement Supplier shall pay the reasonable, proven and proper costs of the Supplier incurred in facilitating such access.

Annex 2: Draft Ethical Wall Agreement

[THE AUTHORITY]

and

[THE COUNTERPARTY]

ETHICAL WALL AGREEMENT

This Agreement is dated [] 20[] (the “Effective Date”).

BETWEEN:

(1)(a) [INSERT insert NAME OF AUTHORITY] (the “Authority”) [acting on behalf of the Crown] of [insert Authority’s address]; and

(2)(a) [NAME OF COUNTERPARTY] a [company]/[limited liability partnership] registered in England and Wales under registered number [insert registered number] whose registered office is at [insert Counterparty’s registered address] (the “Counterparty”),

together the “Parties” and each a “Party”.

BACKGROUND

- A. (A) The Authority is obliged to ensure transparency, fairness, non-discrimination and equal treatment in relation to its procurement process pursuant to the Procurement Regulations (defined below). The purpose of this document (“Agreement”) is to define the protocols to be followed to prevent, identify and remedy any conflict of interest (whether actual, potential or perceived) in the context of the Purpose (defined below).
- B. (B) The Authority is conducting a procurement exercise for the [supply/purchase/provision] of [insert details of project/goods/services] (the “Purpose”).
- C. (C) The Parties wish to enter into this Agreement to ensure that a set of management processes, barriers and disciplines are put in place to ensure that conflicts of interest do not arise, and that the Counterparty does not obtain an unfair competitive advantage over Other Bidders.

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IT IS AGREED:

41. Definitions and Interpretation

1.1 The following capitalised words and expressions shall have the following meanings in this Agreement and its recitals:

“**Affiliate**” means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control of that body corporate from time to time;

“**Agreement**” means this ethical walls agreement duly executed by the Parties;

“**Bid Team**” means any Representatives of the Counterparty, any of its Affiliates and/or any Subcontractors connected to the preparation of an ITT Response;

“~~Central Government~~“**Crown Body**” means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics, including:

- (a) Government Departments;
- (b) Non-Departmental Public Bodies or Assembly Sponsored Public Bodies (advisory, executive, or tribunal);
- (c) Non-Ministerial Departments; or
- (d) Executive Agencies;

“**Conflicted Personnel**” means any Representatives of:

- (a) the Counterparty;
- ~~(b)~~(a) any of the Counterparty’s Affiliates; and/or
- ~~(c)~~(a) any Subcontractors,

who, because of the Counterparty’s, any of its Affiliates’ and/or any Subcontractors’ relationship with the Authority under any Contract, have or have had access to information which creates or may create a conflict of interest or provide the Bid Team with an unfair advantage as regards information Other Bidders would not have;

“**Contract**” means any pre-existing or previous contract between the Authority and:

- (a) the Counterparty;
- ~~(b)~~(a) any of the Counterparty’s Affiliates;
- ~~(c)~~(a) any Subcontractor; and
- ~~(d)~~(a) any other Third Party,

relating to the subject matter of the Purpose at the date of the commencement of the ITT Process;

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“**Control**” means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and “**Controls**” and “**Controlled**” shall be interpreted accordingly;

“**Effective Date**” means the date of this Agreement as set out above;

“**Invitation to Tender**” or “**ITT**” means an invitation to submit tenders issued by the Authority as part of an ITT Process (and shall include an Invitation to Negotiate);

“**ITT Process**” means, with regard to the Purpose, the relevant procedure provided for in the Procurement Regulations (as amended), which the Authority has elected to use to select a contractor or contractors, together with all relevant information, data, correspondence and/or documents issued and/or made available by or on behalf of the Authority as part of that procurement exercise and all information, correspondence and/or documents issued and/or made available by or on behalf of the bidders in response together with any resulting contracts;

“**ITT Response**” means the tender(s) submitted, or to be submitted, by the Counterparty, any of its Affiliates and/or any Subcontractors in response to any invitation(s) to submit bids under the ITT process;

“**Other Bidder**” means any other bidder or potential bidder that is not the Counterparty or any of its Affiliates that has taken or is taking part in the ITT Process;

“**Procurement Process**” means the period commencing on the earlier of: (a) the publication of the first notice in relation to the Purpose; and (b) the execution of this Agreement, and ending on the occurrence of: (i) the publication by the Authority of all contract award notices that result from the ITT Process; or (ii) the abandonment or termination of the ITT Process as notified by the Authority;

“**Procurement Regulations**” means the Public Contracts Regulations 2015, the Public Procurement (Amendment etc.)(EU Exit) Regulations 2020, the Defence and Security Public Contracts Regulations 2011, the Utilities Contracts Regulations 2016, and the Concession Contracts Regulations 2016, each as amended from time to time;

“**Professional Advisor**” means a supplier, subcontractor, advisor or consultant engaged by the Counterparty and/or any of its Affiliates under the auspices of compiling its ITT response;

“**Purpose**” has the meaning given to it in recital B to this Agreement;

“**Representative**” refers to a person’s officers, directors, employees, advisers (including the officers, directors, employees, advisers and agents of any Professional Advisors), agents and, where the context admits, providers or potential providers of finance (including their representatives) to the Counterparty, any of its Affiliates and/or any subcontractors engaged in connection with the ITT Process;

“**Subcontractor**” means an existing or proposed subcontractor of:

(a) the Counterparty; and/or

~~(b)~~(a) any of the Counterparty’s Affiliates,

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who is connected to the preparation of an ITT Response (including key subcontractors named in the ITT Response);

“**Third Party**” means any person who is not a Party, including Other Bidders, their Affiliates and/or their Representatives; and

“**Working Day**” means any day of the week other than a weekend, when Banks in England and Wales are open for business.

- 1.2 Reference to the disclosure of information includes any communication or making available information and includes both direct and indirect disclosure.
- 1.3 Reference to the disclosure of information, or provision of access, by or to the Authority, the Counterparty, any of the Counterparty’s Affiliates and/or any Subcontractors includes disclosure, or provision of access, by or to the Representatives of the Authority, the Counterparty, any of its Affiliates and/or any Subcontractors (as the case may be).
- 1.4 Reference to persons includes legal and natural persons.
- 1.5 Reference to any enactment is to that enactment as amended, supplemented, re-enacted or replaced from time to time.
- 1.6 Reference to clauses and recitals is to clauses of and recitals to this Agreement.
- 1.7 Reference to any gender includes any other.
- 1.8 Reference to writing includes email.
- 1.9 The terms “**associate**”, “**holding company**”, “**subsidiary**”, “**subsidiary undertaking**” and “**wholly owned subsidiary**” have the meanings attributed to them in the Companies Act 2006, except that for the purposes of section 1159(1)(a) of that Act, the words ‘holds a majority of the voting rights’ shall be changed to ‘holds 30% or more of the voting rights’, and other expressions shall be construed accordingly.
- 1.10 The words “**include**” and “**including**” are to be construed without limitation.
- 1.11 The singular includes the plural and vice versa.
- 1.12 The headings contained in this Agreement shall not affect its construction or interpretation.

22. Ethical Walls

- 2.1 In consideration of the sum of £1 payable by the Authority to the Counterparty, receipt of which is hereby acknowledged, the Parties agree to be bound by the terms of this Agreement.

Conflicts of Interest

- 2.2 The Counterparty:
 - 2.2.1 shall take all appropriate steps to ensure that neither the Counterparty, nor its Affiliates, nor any Subcontractors nor any Representatives are in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of

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the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives and the duties owed to the Authority under any Contract or pursuant to an open and transparent ITT Process; and

- 2.2.2 acknowledges and agrees that a conflict of interest may arise in situations where the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives intend to take part in the ITT Process and because of the Counterparty's, any of its Affiliates', any Subcontractors' and/or any Representatives' relationship with the Authority under any Contract, the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives have or have had access to information which could provide the Counterparty, any of its Affiliates, any Subcontractors and/or any Representatives with an advantage and render unfair an otherwise genuine and open competitive ITT Process.
- 2.3 Where there is or is likely to be a conflict of interest, or the perception of a conflict of interest, of any kind in relation to the ITT Process, the Counterparty shall take such steps that are necessary to eliminate the conflict of interest to the Authority's satisfaction, including one or more of the following:
- 2.3.1 not assigning any of the Conflicted Personnel to the Bid Team at any time;
- 2.3.2 providing to the Authority promptly upon request a complete and up to date list of any Conflicted Personnel and the personnel comprising the Bid Team and reissue such list to the Authority promptly upon any change to it;
- 2.3.3 ensuring that no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives results in information of any kind, however conveyed, or in any format and however so stored:
- (k)(a) about the ITT Process (gleaned from the performance of any Contract or otherwise); and/or
- (+)(b) which would or could in the opinion of the Authority confer an unfair advantage on the Counterparty in relation to its participation in the ITT Process,
- becoming available to the Bid Team where the Authority has not made generally available that information to Other Bidders;
- 2.3.4 ensuring that by no act or omission by itself, its Affiliates, any Subcontractors and/or any Representatives and in particular the Bid Team results in information of any kind, however conveyed, in any format and however so stored about the ITT Process, its operation and all matters connected or ancillary to it becoming available to the Conflicted Personnel;
- 2.3.5 ensure that agreements that flow down the Counterparty's obligations in this Agreement, are entered into as necessary, between the Counterparty and its Affiliates and any Subcontractors [in a form to be approved by the Authority];
- 2.3.6 physically separating the Conflicted Personnel and the Bid Team, either in separate buildings or in areas with restricted access;

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- 2.3.7 providing regular training to its Affiliates, any Subcontractors and/or Representatives to ensure it is complying with this Agreement;
- 2.3.8 monitoring Conflicted Personnel movements within restricted areas (both physical and electronic online areas) to ensure it is complying with this Agreement and to ensure adherence to the ethical wall arrangements the Counterparty, its Affiliates, any Subcontractors and/or any Representatives have put in place in order to comply with this Agreement;
- 2.3.9 ensuring that the Conflicted Personnel and the Bid Team are line managed and report independently of each other; and
- 2.3.10 complying with any other action as the Authority, acting reasonably, may direct in connection with the ITT Process and/or this Agreement.

Notification of Conflicts of Interest

2.4 The Counterparty shall:

- 2.4.1 notify the Authority immediately in writing of all perceived, potential and/or actual conflicts of interest that arise or have arisen;
- 2.4.2 submit in writing to the Authority full details of the nature of the perceived, potential and/or actual conflict of interest including full details of the risk assessments undertaken, the impact or potential impact of the perceived, potential and/or actual conflict, the measures and arrangements that have been established and/or are due to be established, to eliminate the perceived, potential and/or actual conflict, and the Counterparty's plans to prevent potential conflicts of interests from arising ("**Proposed Avoidance Measures**"); and
- 2.4.3 seek the Authority's approval to the Proposed Avoidance Measures which the Authority shall have the right to grant, grant conditionally or deny (if the Authority rejects the Proposed Avoidance Measures the Counterparty shall repeat the process set out in this Clause 2.4 until such time as the Authority grants approval or the Counterparty withdraws from the ITT Process).

- 2.5 The Counterparty will provide to the Authority, on demand, any and all information in relation to its adherence with its obligations set out under Clauses 2.2 and 2.3 as reasonably requested by the Authority.
- 2.6 The Authority reserves the right to require the Counterparty to demonstrate the measures put in place by the Counterparty under Clauses 2.2 and 2.3.
- 2.7 The Counterparty acknowledges that any provision of information or demonstration of measures, in accordance with Clauses 2.5 and 2.6, does not constitute acceptance by the Authority of the adequacy of such measures and does not discharge the Counterparty of its obligations or liability under this Agreement.

Exclusion from the ITT Process

- 2.8 Where, in the reasonable opinion of the Authority, there has been any breach by the Counterparty of Clauses 2.2, 2.3, or 2.4 or failure to obtain the Authority's approval of the Proposed Avoidance Measures the Authority shall be entitled to exclude the

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Counterparty, or any of its Affiliates and/or any Representatives, from the ITT Process, and the Authority may, in addition to the right to exclude, take such other steps as it deems necessary.

- 2.9 The actions of the Authority pursuant to Clause 2.8 shall not prejudice or affect any right of action or remedy under this Agreement or at law which shall have accrued or shall thereafter accrue to the Authority.

Bid Costs

- 2.10 In no event shall the Authority be liable for any bid costs incurred by:

2.10.1 the Counterparty or any of its Affiliates, any Representatives and/or any Subcontractors; or

2.10.2 any Third Party,

as a result of any breach of this Agreement by the Counterparty, any of its Affiliates, any Subcontractors and/or Representatives, including where the Counterparty, any of its Affiliates, any Subcontractors or Representatives, or any Third Party is or are excluded from the ITT Process.

Specific Remedies

- 2.11 The Counterparty acknowledges and agrees that:

2.11.1 neither damages nor specific performance are adequate remedies in the event of a breach of the obligations in Clause 2; and

2.11.2 in the event of a breach of any of the obligations in Clause 2 which cannot be effectively remedied the Authority shall have the right to terminate both this Agreement and the Counterparty's participation in the ITT Process in each case with immediate effect on written notice.

33. Sole Responsibility

- 3.1 It is the sole responsibility of the Counterparty to comply with the terms of this Agreement, including ensuring its Affiliates, any Subcontractors, and/or any Representatives comply with the terms of this Agreement. No approval by the Authority of any procedures, agreements or arrangements provided by the Counterparty, any of its Affiliates, any Subcontractors and/or their Representatives to the Authority shall discharge the Counterparty's obligations.

44. Waiver and Invalidity

- 4.1 No failure or delay by any Party in exercising any right, power or privilege under this Agreement or by law shall constitute a waiver of that or any other right, power or privilege, nor shall it restrict the further exercise of that or any other right, power or privilege. No single or partial exercise of such right, power or privilege shall prevent or restrict the further exercise of that or any other right, power or privilege.
- 4.2 If any provision of this Agreement is prohibited or unenforceable in any jurisdiction in relation to any Party, such prohibition or unenforceability will not invalidate the remaining

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provisions of this Agreement, or affect the validity or enforceability of the provisions of this Agreement in relation to any other Party or any other jurisdiction.

55. Assignment and Novation

- 5.1 The Counterparty shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under this Agreement without the prior written consent of the Authority.
- 5.2 The Authority may assign, novate or otherwise dispose of any or all of its rights, obligations and liabilities under this Agreement and/or any associated licences to:
- 5.2.1 any ~~Central Government~~Crown Body; or
 - 5.2.2 to a body other than a ~~Central Government~~Crown Body (including any private sector body) which performs any of the functions that previously had been performed by the Authority; and
 - 5.2.3 the Counterparty shall, at the Authority's request, enter into a novation agreement in such form as the Authority may reasonably specify in order to enable the Authority to exercise its rights pursuant to this Clause 5.
- 5.3 A change in the legal status of the Authority such that it ceases to be a ~~Central Government~~Crown Body shall not affect the validity of this Agreement and this Agreement shall be binding on any successor body to the Authority.

66. Contracts (Rights of Third Parties) Act 1999

- 6.1 A person who is not a Party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any term of this Agreement, but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

77. Transparency

- 7.1 The Parties acknowledge and agree that the Authority is under a legal duty pursuant to the Procurement Regulations to run transparent and fair procurement processes. Accordingly, the Authority may disclose the contents of this Agreement to Other Bidders (and/or potential Other Bidders) for the purposes of transparency and in order to evidence that a fair procurement process has been followed.

88. Notices

- 8.1 Any notices sent under this Agreement must be in writing.
- 8.2 The following table sets out the method by which notices may be served under this Agreement and the respective deemed time and proof of service:

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

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

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

	Counterparty	Authority
Contact		
Address		
Email		

8.4 This Clause 8 does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution.

99. Waiver and Cumulative Remedies

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

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

10. Term

10.1 Each Party's obligations under this Agreement shall continue in full force and effect for period of [] years from the Effective Date/[or for the period of the duration of the Procurement Process]

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11.1.1. Governing Law and Jurisdiction

- 11.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.
- 11.2 The Parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

Signed by the Authority

Name:

Signature:

Position in Authority:

Signed by the Counterparty

Name:

Signature:

Position in Counterparty:

Schedule 26

Service Continuity Plan and Corporate Resolution Planning

Schedule 26: Service Continuity Plan and Corporate Resolution Planning

Part A: Service Continuity Plan

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Business Continuity Plan”	has the meaning given in Paragraph 2.2.1(b);
“Business Continuity Services”	has the meaning given in Paragraph 4.2.2;
“Department”	a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics: (a) Government Department; or (b) Non-Ministerial Department.
“Disaster”	the occurrence of one or more events which, either separately or cumulatively, mean that the Services, or a material part of the Services will be unavailable for a period of [insert details] or which is reasonably anticipated will mean that the Services or a material part of the Services will be unavailable for that period;
“Disaster Recovery Plan”	has the meaning given in Paragraph 2.2.1(c);
“Disaster Recovery Services”	the services embodied in the processes and procedures for restoring the Services following the occurrence of a Disaster;
“Disaster Recovery System”	the system identified by the Supplier in the Supplier Solution which shall be used for the purpose of delivering the Disaster Recovery Services;
“Insolvency Continuity Plan”	has the meaning given in Paragraph 2.2.1(d).
“Related Service Provider”	any person who provides services to the Authority in relation to this Contract from time to time, which persons include as at the Effective Date [insert details];

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“Review Report”	has the meaning given in Paragraphs 7.2.1 to 7.2.3; <u>and</u>
“Service Continuity Plan”	means the plan prepared pursuant to Paragraph 2 of this Schedule which incorporates the Business Continuity Plan, Disaster Recovery Plan and the Insolvency Continuity Plan; <u>and</u>

22. Service Continuity Plan

- 2.1 Within 40 Working Days from the Effective Date the Supplier shall prepare and deliver to the Authority for the Authority’s written approval a plan, which shall detail the processes and arrangements that the Supplier shall follow to:
 - 2.1.1 ensure continuity of the business processes and operations supported by the Services following any failure or disruption of any element of the Services (including where caused by an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member); and
 - 2.1.2 the recovery of the Services in the event of a Disaster.
- 2.2 The Service Continuity Plan shall:
 - 2.2.1 be divided into four parts:
 - ~~1.~~(a) Part A which shall set out general principles applicable to the Service Continuity Plan;
 - ~~(m)~~(b) Part B which shall relate to business continuity (the “**Business Continuity Plan**”);
 - ~~(n)~~(c) Part C which shall relate to disaster recovery (the “**Disaster Recovery Plan**”);
 - ~~(o)~~(d) Part D which shall relate to an Insolvency Event of the Supplier, any Key Sub-contractors and/or any Supplier Group member (the “**Insolvency Continuity Plan**”); and
 - 2.2.2 unless otherwise required by the Authority in writing, be based upon and be consistent with the provisions of Paragraphs 3, 4, 5 and 6.
- 2.3 Following receipt of the draft Service Continuity Plan from the Supplier, the Authority shall:
 - 2.3.1 review and comment on the draft Service Continuity Plan as soon as reasonably practicable; and
 - 2.3.2 notify the Supplier in writing that it approves or rejects the draft Service Continuity Plan no later than 20 Working Days after the date on which the draft Service Continuity Plan is first delivered to the Authority.
- 2.4 If the Authority rejects the draft Service Continuity Plan:
 - 2.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and

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- 2.4.2 the Supplier shall then revise the draft Service Continuity Plan (taking reasonable account of the Authority's comments) and shall re-submit a revised draft Service Continuity Plan to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 2.3 and this Paragraph 2.4 shall apply again to any resubmitted draft Service Continuity Plan, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.

33. Service Continuity Plan: Part A – General Principles and Requirements

3.1 Part A of the Service Continuity Plan shall:

- 3.1.1 set out how the business continuity, disaster recovery and insolvency continuity elements of the plan link to each other;
- 3.1.2 provide details of how the invocation of any element of the Service Continuity Plan may impact upon the operation of the Services and any services provided to the Authority by a Related Service Provider;
- 3.1.3 contain an obligation upon the Supplier to liaise with the Authority and (at the Authority's request) any Related Service Provider with respect to issues concerning business continuity, disaster recovery and insolvency continuity where applicable;
- 3.1.4 detail how the Service Continuity Plan links and interoperates with any overarching and/or connected disaster recovery, business continuity and/or insolvency continuity plan of the Authority and any of its other Related Service Providers in each case as notified to the Supplier by the Authority 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 multi-channels (including but without limitation a web-site (with FAQs), e-mail, phone and fax) for both portable and desk top configurations, where required by the Authority;
- 3.1.6 contain a risk analysis, including:
- ~~1.~~(a) failure or disruption scenarios and assessments and estimates of frequency of occurrence;
 - ~~2.~~(b) identification of any single points of failure within the Services and processes for managing the risks arising therefrom;
 - ~~3.~~(c) identification of risks arising from the interaction of the Services with the services provided by a Related Service Provider;
 - ~~4.~~(d) identification of risks arising from an Insolvency Event of the Supplier, any Key Sub-contractors and/or Supplier Group member; and
 - ~~5.~~(e) a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;

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- 3.1.7 provide for documentation of processes, including business processes, and procedures;
 - 3.1.8 set out key contact details (including roles and responsibilities) for the Supplier (and any Sub-contractors) and for the Authority;
 - 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 ensure that there is no more than the accepted amount of data loss and to preserve data integrity;
 - 3.1.11 identify the responsibilities (if any) that the Authority has agreed it will assume in the event of the invocation of the Service Continuity Plan; and
 - 3.1.12 provide for the provision of technical advice and assistance to key contacts at the Authority as notified by the Authority from time to time to inform decisions in support of the Authority’s business continuity plans.
- 3.2 The Service Continuity Plan shall be designed so as to ensure that:
- 3.2.1 the Services are provided in accordance with this Contract at all times during and after the invocation of the Service Continuity Plan;
 - 3.2.2 the adverse impact of any Disaster; service failure; an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member; or disruption on the operations of the Authority, is minimal as far as reasonably possible;
 - 3.2.3 it complies with the relevant provisions of ISO/IEC 22301 and all other industry standards from time to time in force; and
 - 3.2.4 there is a process for the management of disaster recovery testing detailed in the Service Continuity Plan.
- 3.3 The Service Continuity Plan shall be upgradeable and sufficiently flexible to support any changes to the Services, to the business processes facilitated by and the business operations supported by the Services, and/or changes to the Supplier Group structure.
- 3.4 The Supplier shall not be entitled to any relief from its obligations under the Performance Indicators or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the Supplier of this Contract.

44. Service Continuity Plan: Part B – Business Continuity

Principles and Contents

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked to ensure that the business processes and operations facilitated by the Services remain supported and to ensure continuity of the business operations supported by the Services including, unless the Authority expressly states otherwise in writing:
 - 4.1.1 the alternative processes (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Services; and

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- 4.1.2 the steps to be taken by the Supplier upon resumption of the Services in order to address any prevailing effect of the failure or disruption including a root cause analysis 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 Services;
 - 4.2.2 set out the services to be provided and the steps to be taken to remedy the different levels of failures of and disruption to the Services (such services and steps, the “**Business Continuity Services**”);
 - 4.2.3 specify any applicable Performance Indicators with respect to the provision of the Business Continuity Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Business Continuity Plan; and
 - 4.2.4 clearly set out the conditions and/or circumstances under which the Business Continuity Plan is invoked.

55. Service Continuity Plan: Part C – Disaster Recovery

Principles and Contents

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the Supplier ensures continuity of the business operations of the Authority 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 Disaster Recovery Plan shall be invoked only upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
 - 5.3.1 the technical design and build specification of the Disaster Recovery System;
 - 5.3.2 details of the procedures and processes to be put in place by the Supplier in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
 - ~~6~~-(a) data centre and disaster recovery site audits;
 - ~~7~~-(b) backup methodology and details of the Supplier’s approach to data back-up and data verification;
 - ~~(p)~~(c) identification of all potential disaster scenarios;
 - ~~(q)~~(d) risk analysis;
 - ~~(r)~~(e) documentation of processes and procedures;
 - ~~(s)~~(f) hardware configuration details;
 - ~~4~~-(g) network planning including details of all relevant data networks and communication links;

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~~(t)~~(h) invocation rules;

~~(u)~~(i) Service recovery procedures; and

~~4.~~(j) steps to be taken upon resumption of the Services to address any prevailing effect of the failure or disruption of the Services;

- 5.3.3 any applicable Performance Indicators with respect to the provision of the Disaster Recovery Services and details of any agreed relaxation to the Performance Indicators in respect of other Services during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 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;
- 5.3.5 access controls to any disaster recovery sites used by the Supplier in relation to its obligations pursuant to this Schedule; and
- 5.3.6 testing and management arrangements.

66. Service Continuity Plan: Part D – Insolvency Continuity Plan

Principles and Contents

- 6.1 The Insolvency Continuity Plan shall be designed by the Supplier to permit continuity of the business operations of the Authority supported by the Services through continued provision of the Services following an Insolvency Event of the Supplier, any Key Sub-contractor and/or any Supplier Group member with, as far as reasonably possible, minimal adverse impact.
- 6.2 The Insolvency Continuity Plan shall include the following:
 - 6.2.1 communication strategies which are designed to minimise the potential disruption to the provision of the Services, including key contact details in respect of the supply chain and key contact details for operational and contract Supplier Personnel, Key Sub-contractor personnel and Supplier Group member personnel;
 - 6.2.2 identification, explanation, assessment and an impact analysis of risks in respect of dependencies between the Supplier, Key Sub-contractors and Supplier Group members where failure of those dependencies could reasonably have an adverse impact on the Services;
 - 6.2.3 plans to manage and mitigate identified risks;
 - 6.2.4 details of the roles and responsibilities of the Supplier, Key Sub-contractors and/or Supplier Group members to minimise and mitigate the effects of an Insolvency Event of such persons on the Services;
 - 6.2.5 details of the recovery team to be put in place by the Supplier (which may include representatives of the Supplier, Key Sub-contractors and Supplier Group members); and
 - 6.2.6 sufficient detail to enable an appointed insolvency practitioner to invoke the

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plan in the event of an Insolvency Event of the Supplier.

77. Review and Amendment of the Service Continuity Plan

- 7.1 The Supplier shall review and update the Service Continuity Plan (and the risk analysis on which it is based):
- 7.1.1 on a regular basis and as a minimum once every **[6 months / 12 months]**;
 - 7.1.2 within three calendar months of the Service Continuity Plan (or any part) having been invoked pursuant to Paragraph 9;
 - 7.1.3 within 14 days of a Financial Distress Event;
 - 7.1.4 within 30 days of a Corporate Change Event (unless the Relevant Authority (acting reasonably) agrees to a Corporate Change Event Grace Period, as set out in Paragraph ~~2.8(b)(i)~~2.8.2(a), in which case that Corporate Change Event Grace Period will apply); and
 - 7.1.5 where the Authority requests any additional reviews (over and above those provided for in Paragraphs 7.1.1 to 7.1.4) by notifying the Supplier to such effect in writing, whereupon the Supplier shall conduct such reviews in accordance with the Authority's written requirements. Prior to starting its review, the Supplier shall provide an accurate written estimate of the total costs payable by the Authority for the Authority's approval. The costs of both Parties of any such additional reviews shall be met by the Authority except that the Supplier shall not be entitled to charge the Authority for any costs that it may incur above any estimate without the Authority's prior written approval.
- 7.2 Each review of the Service Continuity Plan pursuant to Paragraph 7.1 shall be a review of the procedures and methodologies set out in the Service Continuity Plan and shall assess their suitability having regard to any change to the Services or any underlying business processes and operations facilitated by or supported by the Services which have taken place since the later of the original approval of the Service Continuity Plan or the last review of the Service Continuity 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 Service Continuity Plan. The review shall be completed by the Supplier within the period required by the Service Continuity Plan or, if no such period is required, within such period as the Authority shall reasonably require. The Supplier shall, within 20 Working Days of the conclusion of each such review of the Service Continuity Plan, provide to the Authority a report (a "**Review Report**") setting out:
- 7.2.1 the findings of the review;
 - 7.2.2 any changes in the risk profile associated with the Services; and
 - 7.2.3 the Supplier's proposals (the "**Supplier's Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the Service Continuity Plan following the review detailing the impact (if any and to the extent that the Supplier can reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

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- 7.3 Following receipt of the Review Report and the Supplier's Proposals, the Authority shall:
- 7.3.1 review and comment on the Review Report and the Supplier's Proposals as soon as reasonably practicable; and
 - 7.3.2 notify the Supplier in writing that it approves or rejects the Review Report and the Supplier's Proposals no later than 20 Working Days after the date on which they are first delivered to the Authority.
- 7.4 If the Authority rejects the Review Report and/or the Supplier's Proposals:
- 7.4.1 the Authority shall inform the Supplier in writing of its reasons for its rejection; and
 - 7.4.2 the Supplier shall then revise the Review Report and/or the Supplier's Proposals as the case may be (taking reasonable account of the Authority's comments and carrying out any necessary actions in connection with the revision) and shall re-submit a revised Review Report and/or revised Supplier's Proposals to the Authority for the Authority's approval within 20 Working Days of the date of the Authority's notice of rejection. The provisions of Paragraph 7.3 and this Paragraph 7.4 shall apply again to any resubmitted Review Report and Supplier's Proposals, provided that either Party may refer any disputed matters for resolution by the Dispute Resolution Procedure at any time.
- 7.5 The Supplier shall as soon as is reasonably practicable after receiving the Authority's approval of the Supplier's Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the Supplier's Proposals. Any such change shall be at the Supplier's expense unless it can be reasonably shown that the changes are required because of a material change to the risk profile of the Services.

88. Testing of the Service Continuity Plan

- 8.1 The Supplier shall test the Service Continuity Plan on a regular basis (and in any event not less than once in every Contract Year). Subject to Paragraph 8.2, the Authority may require the Supplier to conduct additional tests of some or all aspects of the Service Continuity Plan at any time where the Authority considers it necessary, including where there has been any change to the Services or any underlying business processes, or on the occurrence of any event which may increase the likelihood of the need to implement the Service Continuity Plan.
- 8.2 If the Authority requires an additional test of the Service Continuity Plan, it shall give the Supplier written notice and the Supplier shall conduct the test in accordance with the Authority's requirements and the relevant provisions of the Service Continuity Plan. The Supplier's costs of the additional test shall be borne by the Authority unless the Service Continuity Plan fails the additional test in which case the Supplier's costs of that failed test shall be borne by the Supplier.
- 8.3 The Supplier shall undertake and manage testing of the Service Continuity Plan in full consultation with the Authority and shall liaise with the Authority in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the Authority in this regard. Each test shall be carried out under the

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supervision of the Authority or its nominee.

- 8.4 The Supplier shall ensure that any use by it or any Sub-contractor of “live” data in such testing is first approved with the Authority. Copies of live test data used in any such testing shall be (if so required by the Authority) destroyed or returned to the Authority on completion of the test.
- 8.5 The Supplier shall, within 20 Working Days of the conclusion of each test, provide to the Authority a report setting out:
 - 8.5.1 the outcome of the test;
 - 8.5.2 any failures in the Service Continuity Plan (including the Service Continuity Plan’s procedures) revealed by the test; and
 - 8.5.3 the Supplier’s proposals for remedying any such failures.
- 8.6 Following each test, the Supplier shall take all measures requested by the Authority, (including requests for the re-testing of the Service Continuity Plan) to remedy any failures in the Service Continuity Plan and such remedial activity and re-testing shall be completed by the Supplier, at no additional cost to the Authority, by the date reasonably required by the Authority and set out in such notice.
- 8.7 For the avoidance of doubt, the carrying out of a test of the Service Continuity Plan (including a test of the Service Continuity Plan’s procedures) shall not relieve the Supplier of any of its obligations under this Contract.
- 8.8 The Supplier shall also perform a test of the Service Continuity Plan in the event of any major reconfiguration of the Services or as otherwise reasonably requested by the Authority.

99. Invocation of the Service Continuity Plan

- 9.1 In the event of a loss of any critical part of the Service or a Disaster, the Supplier shall immediately invoke the business continuity and disaster recovery provisions in the Service Continuity Plan, including any linked elements in other parts of the Service Continuity Plan, and shall inform the Authority promptly of such invocation. In all other instances the Supplier shall invoke the business continuity and disaster recovery plan elements only with the prior consent of the Authority.
- 9.2 The Insolvency Continuity Plan element of the Service Continuity Plans, including any linked elements in other parts of the Service Continuity Plan, shall be invoked by the Supplier:
 - 9.2.1 where an Insolvency Event of a Key Sub-contractor and/or Supplier Group member (other than the Supplier) could reasonably be expected to adversely affect delivery of the Services; and/or
 - 9.2.2 where there is an Insolvency Event of the Supplier and the insolvency arrangements enable the Supplier to invoke the plan;

Part B: Corporate Resolution Planning

41. Service Status and Supplier Status

1.1 This Contract **[insert 'is' or 'is not']** a Critical Service Contract.

[Guidance note: A Critical Service Contract is a service contract which the Authority has categorised as a Gold contract using the Cabinet Office Contract Tiering Tool available on the Knowledge Hub or which the Authority in consultation with the Cabinet Office Markets and Suppliers Team if appropriate otherwise considers should be classed as a Critical Service Contract.]

1.2 The Supplier shall notify the Authority and the Cabinet Office Markets and Suppliers Team (Resolution.planning@cabinetoffice.gov.uk) in writing within 5 Working Days of the Effective Date and throughout the Term within 120 days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier.

22. Provision of Corporate Resolution Planning Information (CRP Information)

2.1 Paragraphs 2 to 4 of this Part B shall apply if this Contract has been specified as a Critical Service Contract under Paragraph 1.1 of this Part B or the Supplier is or becomes a Public Sector Dependent Supplier.

2.2 Subject to Paragraphs 2.6, 2.10 and 2.11 of this Part B:

2.2.1 where this Contract is a Critical Service Contract, the Supplier shall provide the Relevant Authority or Relevant Authorities with CRP Information within 60 days of the Effective Date; and

2.2.2 except where it has already been provided in accordance with Paragraph 2.2.1 of this Part B, where the Supplier is a Public Sector Dependent Supplier, it shall provide the Relevant Authority or Relevant Authorities with the CRP Information within 60 days of the date of the Relevant Authority's or Relevant Authorities' request.

2.3 The Supplier shall ensure that the CRP Information provided pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B:

2.3.1 is full, comprehensive, accurate and up to date;

2.3.2 is split into three parts:

~~2.(a)~~ Exposure Information (Contracts List);

~~(v)(b)~~ Corporate Resolvability Assessment (Structural Review);

~~(w)(c)~~ Financial Information and Commentary

and is structured and presented in accordance with the requirements and explanatory notes set out at the relevant Annex of the latest published versions of the Resolution Planning Guidance Notes published by the Cabinet Office Government Commercial Function and available at

<https://www.gov.uk/government/publications/the-sourcing-and-consultancy->

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[playbooks](#) and contains the level of detail required (adapted as necessary to the Supplier's circumstances);

- 2.3.3 incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Authority or Relevant Authorities to understand and consider the information for approval;
 - 2.3.4 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 CNI and the nature of those agreements; and
 - 2.3.5 complies with the requirements set out at Annex 1 (~~Exposure Information (Contracts List)~~), (~~Exposure Information (Contracts List)~~), Annex 2 (~~Corporate Resolvability Assessment (Structural Review)~~), (~~Corporate Resolvability Assessment (Structural Review)~~) and Annex 3 (~~Financial Information And Commentary~~), (~~Financial Information And Commentary~~) respectively.
- 2.4 Following receipt by the Relevant Authority or Relevant Authorities of the CRP Information pursuant to Paragraphs 2.2, 2.8 and 2.9 of this Part B, the Authority shall procure that the Relevant Authority or Relevant Authorities 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 either provide an Assurance to the Supplier that Relevant Authority or Relevant Authorities approve the CRP Information or that Relevant Authority or Relevant Authorities reject the CRP Information.
- 2.5 If the Relevant Authority or Relevant Authorities reject the CRP Information:
- 2.5.1 the Authority 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
 - 2.5.2 the Supplier shall revise the CRP Information, taking reasonable account of the Relevant Authority's or Relevant Authorities' comments, and shall re-submit the CRP Information to the Relevant Authority or Relevant Authorities for approval within 30 days of the date of the Relevant Authority's or Relevant Authorities' rejection. The provisions of Paragraph 2.3 to 2.5 of this Part B 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.
- 2.6 Where the Supplier or a member of the Supplier Group has already provided CRP Information to a Department 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 Department 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 2.2 if it provides a copy of the Valid Assurance to the Relevant Authority or Relevant Authorities on or before the date on which the CRP Information would otherwise have been required.

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- 2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 2.6 of this Part B if:
- 2.7.1 the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than 12 months has elapsed since it was issued and no more than 18 months has elapsed since the Accounting Reference Date on which the CRP Information was based); and
 - 2.7.2 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.
- 2.8 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 2.8.3 of this Part B its initial CRP Information) to the Relevant Authority or Relevant Authorities:
- 2.8.1 within 14 days of the occurrence of a Financial Distress Event (along with any additional highly confidential information no longer exempted from disclosure under Paragraph 2.11 of this Part B) unless the Supplier is relieved of the consequences of the Financial Distress Event under Paragraph 7.1 of ~~Schedule 18 (Financial Distress)~~ Schedule_18 (Financial Distress)
 - 2.8.2 within 30 days of a Corporate Change Event unless:
 - ~~1.(a)~~ the Supplier requests and the Relevant Authority (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 Authority (acting reasonably) but shall in any case be no longer than six months after the Corporate Change Event. During a Corporate Change Event Grace Period the Supplier shall regularly and fully engage with the Relevant Authority to enable it to understand the nature of the Corporate Change Event and the Relevant Authority shall reserve the right to terminate a Corporate Change Event Grace Period at any time if the Supplier fails to comply with this Paragraph; or
 - ~~(x)(b)~~ not required pursuant to Paragraph 2.10;
 - 2.8.3 within 30 days of the date that:
 - ~~1.(a)~~ the credit rating(s) of each of the Supplier and its Parent Undertakings fail to meet any of the criteria specified in Paragraph 2.10; or
 - ~~(y)(b)~~ none of the credit rating agencies specified at Paragraph 2.10 hold a public credit rating for the Supplier or any of its Parent Undertakings; and
 - 2.8.4 in any event, within 6 months after each Accounting Reference Date or within 15 months of the date of the previous Assurance received from the Relevant Authority (whichever is the earlier), unless:
 - ~~1.(a)~~ updated CRP Information has been provided under any of Paragraphs ~~2.8.1~~ 2.8.2 or 2.8.3 since the most recent Accounting

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Reference Date (being no more than 12 months previously) within the timescales that would ordinarily be required for the provision of that information under this Paragraph 2.8.4; or

~~(z)~~(b) unless not required pursuant to Paragraph 2.10.

- 2.9 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 2.8.1 to 2.8.4 of this Part B, the Supplier shall provide at the request of the Relevant Authority or Relevant Authorities and within the applicable timescales for each event as set out in Paragraph 2.8 (or such longer timescales as may be notified to the Supplier by the Authority), the CRP Information to the Relevant Authority or Relevant Authorities.
- 2.10 Where the Supplier or a Parent Undertaking of the Supplier has a credit rating of either:
- 2.10.1 Aa3 or better from Moody's; or
 - 2.10.2 AA- or better from Standard and Poor's; or
 - 2.10.3 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 7.1 of ~~Schedule 18 (Financial Distress)~~ Schedule 18 (*Financial Distress*)) or (ii) the Supplier and its Parent Undertakings cease to fulfil the criteria set out in this Paragraph 2.10, in which cases the Supplier shall provide the updated version of the CRP Information in accordance with Paragraph 2.8.
- 2.11 Subject to Paragraph 4, where the Supplier demonstrates to the reasonable satisfaction of the Relevant Authority or Relevant Authorities that a particular item of CRP Information is highly confidential, the Supplier may, having orally disclosed and discussed that information with the Relevant Authority or Relevant Authorities, 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 Authority or Relevant Authorities to the extent required under Paragraph 2.8.

33. Termination Rights

- 3.1 The Authority shall be entitled to terminate this Contract under Clause 31.1(b) (*Termination by the Authority*) if the Supplier is required to provide CRP Information under Paragraph 2 of this Part B and either:
- 3.1.1 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 4 months of the Relevant Authority's or Relevant Authorities' request; or
 - 3.1.2 the Supplier fails to obtain an Assurance from the Relevant Authority or Relevant Authorities within 4 months of the date that it was first required to provide the CRP Information under this Contract.

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44. Confidentiality and usage of CRP Information

- 4.1 The Authority 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 CNI and to enable contingency planning to maintain service continuity for end users and protect CNI in such eventuality.
- 4.2 Where the Relevant Authority is the Cabinet Office Markets and Suppliers Team, at the Supplier's request, the Authority shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage agreement with the Supplier containing terms no less stringent than those placed on the Authority under Paragraph 4.1 of this Part B and Clause 19 (*Confidentiality*).
- 4.3 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 Authority or Relevant Authorities pursuant to Paragraph 2 of this Part B subject, where necessary, to the Relevant Authority or Relevant Authorities entering into an appropriate confidentiality agreement in the form required by the third party.
- 4.4 Where the Supplier is unable to procure consent pursuant to Paragraph 4.3 of this Part B, 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:
 - 4.4.1 redacting only those parts of the information which are subject to such obligations of confidentiality
 - 4.4.2 providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
 - ~~1~~(a) summarising the information;
 - ~~(aa)~~(b) grouping the information;
 - ~~(bb)~~(c) anonymising the information; and
 - ~~(cc)~~(d) presenting the information in general terms
- 4.5 The Supplier shall provide the Relevant Authority or Relevant Authorities 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 Information (Contracts List)

41. 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:
 - 1.1.1 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 authorities, health bodies, police fire and rescue, education bodies and the devolved administrations;
 - 1.1.2 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 1.1.1 of this Annex 1 and where the member of the Supplier Group is acting as a key sub-contractor under the agreement with the end recipient; or
 - 1.1.3 involve or could reasonably be considered to involve CNI;
- 1.2 provide the Relevant Authority 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)

41. The Supplier shall:

- 1.1 provide sufficient information to allow the Relevant Authority to understand the implications on the Supplier Group's UK Public Sector Business and CNI contracts 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 CNI contracts listed pursuant to Annex 1 and the dependencies between each.

Annex 3: Financial Information And Commentary

41. 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 Authority 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.

22. 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 26 (Service Continuity Plan and Corporate Resolution Planning)~~. Schedule 26 ~~(Service Continuity Plan and Corporate Resolution Planning)~~. If such accounts are not available in that timeframe, financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Cabinet Office Markets and Suppliers Team remains protected by confidentiality).

Schedule 27

Conduct of Claims

Schedule 27: Conduct of Claims

41. Indemnities

- 1.1 This Schedule shall apply to the conduct, by a Party from whom an indemnity is sought under this Contract (the “**Indemnifier**”), of claims made by a third person against a party having (or claiming to have) the benefit of the indemnity (the “**Beneficiary**”).
- 1.2 If the Beneficiary receives any notice of any claim for which it appears that the Beneficiary is, or may become, entitled to indemnification under this Contract (a “**Claim**”), the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within 10 Working Days of receipt of the same.
- 1.3 Subject to Paragraph 2, on the giving of a notice by the Beneficiary, where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the Claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by reason of such action) be entitled to dispute the Claim in the name of the Beneficiary at the Indemnifier’s own expense and take conduct of any defence, dispute, compromise or appeal of the Claim and of any incidental negotiations relating to the Claim. If the Indemnifier does elect to conduct the Claim, the Beneficiary shall give the Indemnifier all reasonable cooperation, access and assistance for the purposes of such Claim and, subject to Paragraph 2.2, the Beneficiary shall not make any admission which could be prejudicial to the defence or settlement of the Claim without the prior written consent of the Indemnifier.
- 1.4 With respect to any Claim conducted by the Indemnifier pursuant to Paragraph 1.3:
 - 1.4.1 the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the Claim;
 - 1.4.2 the Indemnifier shall not bring the name of the Beneficiary into disrepute;
 - 1.4.3 the Indemnifier shall not pay or settle such Claim without the prior written consent of the Beneficiary, such consent not to be unreasonably withheld or delayed; and
 - 1.4.4 the Indemnifier shall conduct the Claim with all due diligence.
- 1.5 The Beneficiary shall be entitled to have conduct of the Claim and shall be free to pay or settle any Claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Contract if:
 - 1.5.1 the Indemnifier is not entitled to take conduct of the Claim in accordance with Paragraph 1.3;
 - 1.5.2 the Indemnifier fails to notify the Beneficiary in writing of its intention to take conduct of the relevant Claim within 10 Working Days of the notice from the Beneficiary or if the Indemnifier notifies the Beneficiary in writing that it does not intend to take conduct of the Claim; or
 - 1.5.3 the Indemnifier fails to comply in any material respect with the provisions of

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Paragraph 1.4.

22. Sensitive Claims

- 2.1 With respect to any Claim which the Beneficiary, acting reasonably, considers is likely to have an adverse impact on the general public's perception of the Beneficiary (a "**Sensitive Claim**"), the Indemnifier shall be entitled to take conduct of any defence, dispute, compromise or appeal of the Sensitive Claim only with the Beneficiary's prior written consent. If the Beneficiary withholds such consent and elects to conduct the defence, dispute, compromise or appeal of the Sensitive Claim itself, it shall conduct the Sensitive Claim with all due diligence and if it fails to do so, the Indemnifier shall only be liable to indemnify the Beneficiary in respect of that amount which would have been recoverable by the Beneficiary had it conducted the Sensitive Claim with all due diligence.
- 2.2 The Beneficiary shall be free at any time to give written notice to the Indemnifier that it is retaining or taking over (as the case may be) the conduct of any Claim, to which Paragraph 1.3 applies if, in the reasonable opinion of the Beneficiary, the Claim is, or has become, a Sensitive Claim.

33. Recovery of Sums

- 3.1 If the Indemnifier pays to the Beneficiary an amount in respect of an indemnity and the Beneficiary subsequently recovers (whether by payment, discount, credit, saving, relief or other benefit or otherwise) a sum which is directly referable to the fact, matter, event or circumstances giving rise to the Claim, the Beneficiary shall forthwith repay to the Indemnifier whichever is the lesser of:
 - 3.1.1 an amount equal to the sum recovered (or the value of the discount, credit, saving, relief, other benefit or amount otherwise obtained) less any out-of-pocket costs and expenses properly incurred by the Beneficiary in recovering or obtaining the same; and
 - 3.1.2 the amount paid to the Beneficiary by the Indemnifier in respect of the Claim under the relevant indemnity.

44. Mitigation

- 4.1 Each of the Authority and the Supplier shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to the indemnities in this Schedule.

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Staff Transfer

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Schedule 28: Staff Transfer

[Guidance note: Authorities will need to take their own legal advice on this Schedule 28 Schedule 28 and, in particular, on Part D (Pensions). (Pensions).]

Authorities will need to ensure that appropriate provisions are included to deal with staff transfer on both entry and exit, and, irrespective, 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 Authority 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 the Parties agree that TUPE is not expected to apply at the Operational Service Commencement 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 and/or applies, is likely to apply where Part B apply, then consider whether Part D (Pensions) shall apply and 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 Annex shall apply (either D1 (CSPS), D2 (NHSPS), D3 (LGPS) or D4 (Other Schemes)). 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 Authority Contract Details before signing to specify whether Parts A and/or B, or C and D apply to the Contract. Authorities 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.

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Please note that the Authority is giving indemnities in Part 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 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, even if TUPE does not apply on entry.

For further guidance on this Schedule contact Government Legal Department’s Employment Law Group].]

41. Definitions

1.1 In this Schedule, the following definitions shall apply:

“Admission Agreement”	<u>as defined in Part A; 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;</u>
“Fair Deal Employees”	as defined in Part D;
“Former Supplier”	a supplier supplying services to the Authority before the <u>any</u> Relevant Transfer Date that are the same as or substantially similar to the Services (or any part of the Services) and shall include any sub-contractor of such supplier (or any sub-contractor of any such sub-contractor);
“New Fair Deal”	the revised Fair Deal position set out in the HM Treasury guidance: <i>“Fair Deal for staff pensions: staff transfer from central government”</i> issued in October 2013 including: <ul style="list-style-type: none">(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 Authority;
“Notified Sub-contractor”	a Sub-contractor identified in the Annex to this Schedule to whom Transferring Authority Employees and/or Transferring Former Supplier Employees will transfer on a Relevant Transfer Date;

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“Old Fair Deal”	HM Treasury Guidance “ <i>Staff Transfers from Central Government: A Fair Deal for Staff Pensions</i> ” issued in June 1999 including the supplementary guidance “ <i>Fair Deal for Staff pensions: Procurement of Bulk Transfer Agreements and Related Issues</i> ” issued in June 2004;
“Replacement Sub-contractor”	a sub-contractor of the Replacement Supplier to whom Transferring Supplier Employees will transfer on a Service Transfer Date (or any sub-contractor of any such sub-contractor);
“Relevant Transfer”	a transfer of employment to which the Employment Regulations applies;
“Relevant Transfer Date”	in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place. For the purposes of Part D and its Annexes, where the Supplier or a Sub-contractor was the Former Supplier and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor), references to the Relevant Transfer Date shall become references to the Operational Service Commencement Date;
“Service Transfer”	any transfer of the Services (or any part of the Services), for whatever reason, from the Supplier or any Sub-contractor to a Replacement Supplier or a Replacement Sub-contractor;
“Service Transfer Date”	the date of a Service Transfer or, if more than one, the date of the relevant Service Transfer as the context requires;
“Staffing Information”	in relation to all persons identified on the Supplier’s Provisional Supplier Personnel List or Supplier’s Final Supplier Personnel List, as the case may be, all information required in Annex E2: Staffing Information in the format specified and with the identities of Data Subjects anonymised where possible. The Authority may acting reasonably make changes to the format or information requested in Annex E2: Staffing Information from time to time.
“Statutory Schemes”	means the CSPS, NHSPS or LGPS as defined in the Annexes to Part D of this Schedule;
“Supplier’s Final Supplier Personnel List”	a list provided by the Supplier of all Supplier Personnel who will transfer under the Employment Regulations on the Service Transfer Date;

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“Supplier’s Provisional Supplier Personnel List”	a list prepared and updated by the Supplier of all Supplier Personnel who are at the date of the list wholly or mainly engaged in or assigned to the provision of the Services or any relevant part of the Services which it is envisaged as at the date of such list will no longer be provided by the Supplier;
“Transferring Authority Employees”	those employees of the Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;
“Transferring Former Supplier Employees”	in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date; and
“Transferring Supplier Employees”	those employees of the Supplier and/or the Supplier’s Sub-contractors to whom the Employment Regulations will apply on the Service Transfer Date.

22. Interpretation

- 2.1 Where a provision in this Schedule imposes an obligation on the Supplier to provide an indemnity, undertaking or warranty, the Supplier shall procure that each of its Sub-contractors shall comply with such obligation and provide such indemnity, undertaking or warranty to the Authority, Former Supplier, Replacement Supplier or Replacement Sub-contractor, as the case may be.

33. Applicable Parts of this Schedule

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

~~[DeleteMark N/A if not applicable to the Contract]~~

3.1.1 [Part A (Staff Transfer At ~~StartOperational Commencement~~ Date – Outsourcing From the Authority)]

3.1.2 [Part B (Staff Transfer At ~~StartOperational Commencement~~ Date – Transfer From Former Supplier)]

3.1.3 [Part C (No Staff Transfer On ~~StartOperational Commencement~~ Date)]

3.1.4 [Part D (Pensions)]

~~1.(a)~~ [- Annex D1 (CSPS)]

~~(dd)(b)~~ [- Annex D2 (NHSPS)]

~~(ee)(c)~~ [- Annex D3 (LGPS)]

~~(ff)(d)~~ [- Annex D4 (Other Schemes)]

~~3.1.5~~ Part E (Staff Transfer on Exit)

~~3.1.5~~ Part E (Employment Exit Provisions) of this Schedule will always apply to this Contract, including:

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~~4.(a)~~ Annex E1 (*List Of Notified Sub-Contractors*)

~~(gg)(b)~~ Annex E2 (*Staffing Information*)~~.~~

Part A: Transferring Authority Employees at Commencement of Services

41. Relevant Transfers

- 1.1 The Authority 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 Authority Employees; and
 - 1.1.2 as a result of the operation of the Employment Regulations, the contracts of employment between the Authority and the Transferring Authority 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 Notified Sub-contractor and each such Transferring Authority Employee.
- 1.2 The Authority shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of the Transferring Authority 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 Authority; and (ii) the Supplier and/or any Notified Sub-contractor (as appropriate).

22. Authority Indemnities

- 2.1 Subject to Paragraph 2.2, the Authority shall indemnify the Supplier and any Notified Sub-contractor against any Employee Liabilities arising from or as a result of:
- 2.1.1 any act or omission by the Authority in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee occurring before the Relevant Transfer Date;
 - 2.1.2 the breach or non-observance by the Authority before the Relevant Transfer Date of:
 - ~~1.(a)~~ any collective agreement applicable to the Transferring Authority Employees; and/or
 - ~~2.(b)~~ any custom or practice in respect of any Transferring Authority Employees which the Authority is contractually bound to honour;
 - 2.1.3 any claim by any trade union or other body or person representing the Transferring Authority Employees arising from or connected with any failure by the Authority to comply with any legal obligation to such trade union, body or person arising before the Relevant Transfer Date;

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- 2.1.4 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:
- ~~3-(a)~~ in relation to any Transferring Authority 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
 - ~~4-(b)~~ in relation to any employee who is not a Transferring Authority Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier and/or any Notified Sub-contractor 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 a failure of the Authority 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 Authority Employees arising before the Relevant Transfer Date;
- 2.1.6 any claim made by or in respect of any person employed or formerly employed by the Authority other than a Transferring Authority Employee for whom it is alleged the Supplier and/or any Notified Sub-contractor as appropriate may be liable by virtue of the Employment Regulations; and
- 2.1.7 any claim made by or in respect of a Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee relating to any act or omission of the Authority 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 Sub-contractor 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 Sub-contractor (whether or not a Notified Sub-contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including any Employee Liabilities:
- 2.2.1 arising out of the resignation of any Transferring Authority Employee before the Relevant Transfer Date on account of substantial detrimental changes to his/her working conditions proposed by the Supplier and/or any Sub-contractor to occur in the period from (and including) the Relevant Transfer Date; or
 - 2.2.2 arising from the failure by the Supplier or any Sub-contractor to comply with its obligations under the Employment Regulations.
- 2.3 If any person who is not identified by the Authority as a Transferring Authority Employee claims, or it is determined in relation to any person who is not identified by the Authority as a Transferring Authority Employee, that his/her contract of employment has been transferred from the Authority to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:

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- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority; and
- 2.3.2 the Authority may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of receipt of the notification by the Supplier and/or any Notified Sub-contractor, or take such other reasonable steps as the Authority considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
- 2.5.2 such offer has been made but not accepted; or
- 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in applicable Law, the Authority shall indemnify the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or procures that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
- ~~5-(a)~~ any claim for:
- ~~6-(b)~~ 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
- ~~7-(c)~~ equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
- ~~8-(d)~~ in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or
- ~~9-(e)~~ any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and
- 2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made

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by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority within 6 months of the Effective Relevant Transfer Date.

2.8 If any such person as is referred to in Paragraph 2.3 is neither re-employed by the Authority nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5 such person shall be treated as having transferred to the Supplier and/or any Notified Sub-contractor and the Supplier shall, ~~or shall procure that the Notified Sub-contractor 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.

31. Supplier Indemnities and Obligations

3.1.1 Subject to Paragraph 3.2, the Supplier shall indemnify the Authority against any Employee Liabilities arising from or as a result of:

3.1.1.1 any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Authority Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Authority Employee whether occurring before, on or after the Relevant Transfer Date;

3.1.1.2 the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

10.(a) any collective agreement applicable to the Transferring Authority Employees; and/or

11.(b) any custom or practice in respect of any Transferring Authority Employees which the Supplier or any Sub-contractor is contractually bound to honour;

3.1.1.3 any claim by any trade union or other body or person representing any Transferring Authority Employees arising from or connected with any failure by the Supplier or any Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

3.1.1.4 any proposal by the Supplier or a Sub-contractor made before the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Authority Employees to their material detriment on or after their transfer to the Supplier or the relevant Sub-contractor (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 Authority 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;

3.1.1.5 any statement communicated to or action undertaken by the Supplier or any Sub-contractor to, or in respect of, any Transferring Authority Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Authority in writing;

3.1.1.6 any proceeding, claim or demand by HMRC or other statutory authority in

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respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

12.(a) in relation to any Transferring Authority 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

13.(b) in relation to any employee who is not a Transferring Authority Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Authority to the Supplier or a Sub-contractor, 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;

3.1.71.1.7 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Authority Employees in respect of the period from (and including) the Relevant Transfer Date;

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

3.1.91.1.9 a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above.

3.21.2 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 Authority whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Authority's failure to comply with its obligations under the Employment Regulations.

3.31.3 The Supplier shall comply, and shall procure that each Sub-contractor 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, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of the Transferring Authority 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 Authority and the Supplier.

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42. Information

4.12.1 The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority in writing such information as is necessary to enable the Authority to carry out its duties under regulation 13 of the Employment Regulations. The Authority shall promptly provide to the Supplier and each Notified Sub-contractor in writing such information as is necessary to enable the Supplier and each Notified Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

53. Principles of Good Employment Practice

5.13.1 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.

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

5.2.43.2.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.2.23.2.2 Old Fair Deal; and/or

5.2.33.2.3 the New Fair Deal.

3.3 Any changes embodied in 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.

5.33.4 Any changes 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 Change Control Procedure.

64. Pensions

6.14.1 The Supplier shall, and/or shall procure that each of its Sub-contractors shall, comply with:

6.1.14.1.1 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

6.1.24.1.2 Part D (and its Annexes) to this Staff Transfer Schedule.

Part B: Transferring Former Supplier Employees at Commencement of Services

41. Relevant Transfers

- 1.1 The Authority 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 Notified Sub-contractor and each such Transferring Former Supplier Employee.
- 1.2 The Authority 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 Authority shall procure that each Former Supplier makes, any necessary apportionments in respect of any periodic payments.

22. Former Supplier Indemnities

- 2.1 Subject to Paragraph 2.2, the Authority shall procure that each Former Supplier shall indemnify the Supplier and any Notified Sub-contractor 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:
 - ~~14.(a)~~ any collective agreement applicable to the Transferring Former Supplier Employees; and/or
 - ~~15.(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

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primary and secondary national insurance contributions:

~~16.~~(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

~~17.~~(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 employment from the Former Supplier to the Supplier and/or any Notified Sub-contractor 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 Sub-contractor 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 Sub-contractor 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 Sub-contractor 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 working conditions proposed by the Supplier or any Sub-contractor 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 Sub-contractor to comply with its obligations under the Employment Regulations.

2.3 If any person who is not identified ~~by the Authority~~ as a Transferring Former Supplier Employee claims, or it is determined in relation to any person who is not identified ~~by the Authority~~ as a Transferring Former Supplier Employee, that his/her contract of

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employment has been transferred from a Former Supplier to the Supplier and/or any Notified Sub-contractor pursuant to the Employment Regulations then:

- 2.3.1 the Supplier shall, or shall procure that the Notified Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, to the Former Supplier; and
 - 2.3.2 the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier and/or the Notified Sub-contractor or take such other reasonable steps as the Former Supplier considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 2.4 If an offer referred to in Paragraph 2.3.2 is accepted, or if the situation has otherwise been resolved by the Former Supplier and/or the Authority, the Supplier shall, or shall procure that the Notified Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 2.5 If by the end of the 15 Working Day period specified in Paragraph 2.3.2:
- 2.5.1 no such offer of employment has been made;
 - 2.5.2 such offer has been made but not accepted; or
 - 2.5.3 the situation has not otherwise been resolved,
- the Supplier and/or any Notified Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.6 Subject to the Supplier and/or any Notified Sub-contractor acting in accordance with the provisions of Paragraphs 2.3 to 2.5 and in accordance with all applicable proper employment procedures set out in Law, the Authority shall procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor (as appropriate) against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.5 provided that the Supplier takes, or shall procure that the Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.7 The indemnity in Paragraph 2.6:
- 2.7.1 shall not apply to:
 - ~~18.~~(a) any claim for:
 - (i)(b) 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)(c) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,
 - ~~19.~~(d) in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

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~~20.(e)~~ any claim that the termination of employment was unfair because the Supplier and/or Notified Sub-contractor neglected to follow a fair dismissal procedure; and

2.7.2 shall apply only where the notification referred to in Paragraph 2.3.1 is made by the Supplier and/or any Notified Sub-contractor (as appropriate) to the Authority and, if applicable, the Former Supplier, within 6 months of the ~~Effective~~Relevant Transfer Date.

2.8 If any such person as is described in Paragraph 2.3 is neither re-employed by the Former Supplier nor dismissed by the Supplier and/or any Notified Sub-contractor within the time scales set out in Paragraph 2.5, such person shall be treated as having transferred to the Supplier or Notified Sub-contractor and the Supplier shall, or shall ~~procure that the Notified Sub-contractor shall,~~(a) comply with such obligations as may be imposed upon it under the Law and (b) comply with the provisions of Part D (Pensions) and its Annexes of this Staff Transfer Schedule.

31. Supplier Indemnities and Obligations

~~3.1.1~~ Subject to Paragraph 3.2, the Supplier shall indemnify the Authority and/or the Former Supplier against any Employee Liabilities arising from or as a result of:

~~3.1.41.1.1~~ any act or omission by the Supplier or any Sub-contractor in respect of any Transferring Former Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Supplier Employee whether occurring before, on or after the Relevant Transfer Date;

~~3.1.21.1.2~~ the breach or non-observance by the Supplier or any Sub-contractor on or after the Relevant Transfer Date of:

~~21.(a)~~ any collective agreement applicable to the Transferring Former Supplier Employee; and/or

~~22.(b)~~ any custom or practice in respect of any Transferring Former Supplier Employees which the Supplier or any Sub-contractor is contractually bound to honour;

~~3.1.31.1.3~~ 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 Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

~~3.1.41.1.4~~ any proposal by the Supplier or a Sub-contractor 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 Sub-contractor (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

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for a reason connected to such proposed changes;

~~3-1.51.1.5~~ any statement communicated to or action undertaken by the Supplier or a Sub-contractor 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 Authority and/or the Former Supplier in writing;

~~3-1.61.1.6~~ 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:

~~23-~~(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

~~24-~~(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 employment from the Former Supplier to the Supplier or a Sub-contractor, 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;

~~3-1.71.1.7~~ a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Supplier Employees in respect of the period from (and including) the Relevant Transfer Date;

~~3-1.81.1.8~~ 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 Sub-contractor 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

~~3-1.91.1.9~~ a failure by the Supplier or any Sub-Contractor to comply with its obligations under Paragraph 2.8 above

~~3-21.2~~ 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, without limitation, any Employee Liabilities arising from the Former Supplier's failure to comply with its obligations under the Employment Regulations.

~~3-31.3~~ The Supplier shall comply, and shall procure that each Sub-contractor 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 Sub-contractor shall perform and discharge, all its obligations in respect of all the Transferring

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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 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 Supplier and the Former Supplier.

42. Information

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

53. Principles of Good Employment Practice

5.13.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with any requirement notified to it by the Authority relating to pensions in respect of any Transferring Former Supplier Employee as set down in:

5.1.13.1.1 the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector of January 2000, revised December 2013;

5.1.23.1.2 Old Fair Deal; and/or

5.1.33.1.3 the New Fair Deal.

5.23.2 Any changes ~~embodied in~~necessary to this Contract as a result of changes embodied 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 Procedure.

64. Procurement Obligations

6.14.1 Notwithstanding any other provisions of this Part B, where in this Part B the Authority 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 Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

75. Pensions

7.15.1 The Supplier shall, and shall procure that each Sub-contractor shall, comply with:

7.1.15.1.1 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

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7.1.25.1.2 Part D (and its Annexes) to this Staff Transfer Schedule.

Part C: No Transfer of Employees Expected at Commencement of Services

41. Procedure in the Event of Transfer

- 1.1 The Authority and the Supplier agree that the commencement of the provision of the Services or of any part of the Services willis not expected to be a Relevant Transfer in relation to any employees of the Authority and/or any Former Supplier.
- 1.2 If any employee of the Authority and/or a Former Supplier claims, or it is determined in relation to any employee of the Authority and/or a Former Supplier, that his/her contract of employment has been transferred from the Authority and/or the Former Supplier to the Supplier and/or any Sub-contractor pursuant to the Employment Regulations then:
 - 1.2.1 the Supplier shall, and shall procure that the relevant Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Authority and, where required by the Authority, give notice to the Former Supplier; and
 - 1.2.2 the Authority and/or the Former Supplier may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Supplier or the Sub-contractor (as appropriate) or take such other reasonable steps as the Authority or Former Supplier (as the case may be) considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.
- 1.3 If an offer referred to in Paragraph 1.2.2 is accepted (or if the situation has otherwise been resolved by the Authority and/or the Former Supplier), the Supplier shall, or shall procure that the Sub-contractor shall, immediately release the person from his/her employment or alleged employment.
- 1.4 If by the end of the 15 Working Day period specified in Paragraph 1.2.2:
 - 1.4.1 no such offer of employment has been made;
 - 1.4.2 such offer has been made but not accepted; or
 - 1.4.3 the situation has not otherwise been resolved,the Supplier and/or the Sub-contractor may within 5 Working Days give notice to terminate the employment or alleged employment of such person.

21. Indemnities

2.4.1.1 Subject to the Supplier and/or the relevant Sub-contractor acting in accordance with the provisions of Paragraphs 1.2 to 1.4 and in accordance with all applicable employment procedures set out in applicable Law and subject also to Paragraph 2.4, the Authority shall:

2.4.1.1.1 indemnify the Supplier and/or the relevant Sub-contractor against all Employee Liabilities arising out of the termination of the employment of any employees of the Authority referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the

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Notified Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities; and

2.4.21.1.2 procure that the Former Supplier indemnifies the Supplier and/or any Notified Sub-contractor against all Employee Liabilities arising out of termination of the employment of the employees of the Former Supplier referred to in Paragraph 1.2 made pursuant to the provisions of Paragraph 1.4 provided that the Supplier takes, or shall procure that the relevant Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.

2.21.2 If any such person as is described in Paragraph 1.2 is neither re employed by the Authority and/or the Former Supplier as appropriate nor dismissed by the Supplier and/or any Sub-contractor within the 15 Working Day period referred to in Paragraph 1.4 such person shall be treated as having transferred to the Supplier and/or the Sub-contractor (as appropriate) and the Supplier shall, ~~or shall procure that the Sub-contractor shall,~~ (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.

2.31.3 Where any person remains employed by the Supplier and/or any Sub-contractor pursuant to Paragraph 2.2, all Employee Liabilities in relation to such employee shall remain with the Supplier and/or the Sub-contractor and the Supplier shall indemnify the Authority and any Former Supplier, and shall procure that the Sub-contractor shall indemnify the Authority and any Former Supplier, against any Employee Liabilities that either of them may incur in respect of any such employees of the Supplier and/or employees of the Sub-contractor.

2.41.4 The indemnities in Paragraph 2.1:

2.4.41.4.1 shall not apply to:

~~25.~~ (a) any claim for:

~~(hh)~~ 1. 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)~~ 2. equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees,

~~(jj)~~ in any case in relation to any alleged act or omission of the Supplier and/or any Sub-contractor; or

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

2.4.21.4.2 shall apply only where the notification referred to in Paragraph 1.2.1 is made by the Supplier and/or any Sub-contractor to the Authority and, if applicable, Former Supplier within 6 months of the Effective Relevant Transfer Date.

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31. Procurement Obligations

3.11.1 Where in this Part C the Authority 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 Authority's contract with the Former Supplier contains a contractual right in that regard which the Authority may enforce, or otherwise so that it requires only that the Authority must use reasonable endeavours to procure that the Former Supplier does or does not act accordingly.

Part D: Pensions

41. Definitions

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

- “Actuary”** a Fellow of the Institute and Faculty of Actuaries;
- “Admission Agreement”** ~~either or both of the CSPS Admission Agreement (as defined in Annex D1: CSPA) 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”** (a) in respect of a pension scheme, a status satisfying the condition that there are no identifiable employees who will suffer material detriment overall in terms of future accrual of pension benefits as assessed in accordance with Annex A of New Fair Deal and demonstrated by the issue by the Government Actuary’s Department of a broad comparability certificate; and/or
- (b) in respect of benefits provided for or in respect of a member under a pension scheme, benefits that are consistent with that pension scheme’s certificate of broad comparability issued by the Government Actuary’s Department,
- and **“Broad Comparability”** shall be construed accordingly;
- “CSPA”** 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 CSPA Eligible Employees (as defined in Annex D1 to this Part D), the NHSPA 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”** any of:

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- (a) Transferring Authority Employees;
- (b) Transferring Former Supplier Employees; and/or
- (c) employees who are not Transferring Authority Employees or Transferring Former Supplier Employees but to whom the Employment Regulations apply on the Relevant Transfer Date to transfer their employment to the Supplier or a Sub-Contractor, and whose employment is not terminated in accordance with the provisions of ~~Paragraphs 2.5 of Parts A or B~~ Paragraph 2.5 of Part A or Part B or Paragraph 1.4 of Part C;
- (d) where the Supplier or a Sub-contractor was the Former Supplier, the employees of the Supplier (or Sub-contractor);
 - (e) who at the Relevant Transfer Date are or become entitled to New Fair Deal or Best Value Direction protection in respect of any of the Statutory Schemes or a Broadly Comparable pension scheme provided in accordance with Paragraph 10 of this Part D as notified by the Authority;

“Fund Actuary”

a Fund Actuary as defined in Annex D3 to this Part D;

“LGPS”

the scheme as defined in Annex D3 to this Part D;

“NHSPS”

the schemes as defined in Annex D2 to this Part D; and

“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:

any amendments to that document immediately prior to the Relevant Transfer Date; and

any similar pension protection in accordance with the subsequent Annex D1-D3 inclusive as notified to the Supplier by the Authority.

21. Participation

2.21.1 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.

2.21.2 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.

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2.31.3 The Supplier undertakes:

2.3.41.3.1 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

2.3.21.3.2 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.

2.41.4 Where the Supplier is the Former Supplier (or a Sub-contractor is a sub-contractor of the Former Supplier) and there is no Relevant Transfer of the Fair Deal Employees because they remain continuously employed by the Supplier (or Sub-contractor) at the Operational Service Commencement Date, this Part D and its Annexes shall be modified accordingly so that the Supplier (or Sub-contractor) shall comply with its requirements from the Operational Service Commencement Date or, where it previously provided a Broadly Comparable pension scheme, from the date it is able to close accrual of its Broadly Comparable pension scheme (following appropriate consultation and contractual changes as appropriate) if later. The Supplier (or Sub-contractor) shall make arrangements for a bulk transfer from its Broadly Comparable pension scheme to the relevant Statutory Scheme in accordance with the requirements of the previous contract with the Authority.

32. Provision of Information

3.42.1 The Supplier undertakes to the Authority:

3.1.42.1.1 to provide all information which the Authority may reasonably request concerning matters referred to in this Part D as expeditiously as possible;

3.1.22.1.2 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 Authority (such consent not to be unreasonably withheld or delayed); and

3.1.32.1.3 retain such records as would be necessary to manage the pension aspects in relation to any current or former Fair Deal Eligible Employees arising on expiry or termination of this Contract.

43. Indemnities

4.13.1 The Supplier shall indemnify and keep indemnified the Authority, [NHS Pensions,] any Replacement Supplier and/or any Replacement Sub-contractor on demand from and against all and any Losses whatsoever suffered or incurred by it or them which:

4.1.43.1.1 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 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;

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4.1.23.1.2 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 Sub-contractor on and after the Relevant Transfer Date until the date of termination or expiry of this Contract, including the Statutory Schemes or any Broadly Comparable pension scheme provided in accordance with Paragraphs 10 or 11 of this Part D;

4.1.33.1.3 relate to claims by Fair Deal Employees of the Supplier and/or of any Sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of all or any such Fair Deal Employees which Losses:

4-(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) arise out of the failure of the Supplier and/or any relevant Sub-contractor to comply with the provisions of this Part D before the date of termination or expiry of this Contract; and/or

4.1.43.1.4 arise out of or in connection with the Supplier (or its Sub-contractor) allowing anyone who is not an NHSPS Fair Deal Employee to join or claim membership of the NHSPS at any time during the Term.

4.23.2 The indemnities in this Part D and its Annexes:

4.2.13.2.1 shall survive termination of this Contract; and

4.2.23.2.2 shall not be affected by the caps on liability contained in Clause 23 (*Limitations on Liability*).

54. Disputes

5.14.1 The Dispute Resolution Procedure will not apply to any dispute (i) between the Authority and/or the Supplier or (ii) between their respective actuaries and/or the Fund Actuary about any of the actuarial matters referred to in this Part D and its Annexes shall in the absence of agreement between the Authority and/or the Supplier be referred to an independent Actuary:

5.1.14.1.1 who will act as an expert and not as an arbitrator;

5.1.24.1.2 whose decision will be final and binding on the Authority and/or the Supplier; and

5.1.34.1.3 whose expenses shall be borne equally by the Authority and/or the Supplier unless the independent Actuary shall otherwise direct.

5.24.2 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.

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65. Third Party Rights

6.15.1 The Parties agree Clause 41 (*Third Party Rights*) does not apply and that the CRTPA applies to this Part D to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation in respect of to him or her by the Supplier under this Part D, in his or her or its own right under section 1(1) of the CRTPA.

6.25.2 Further, the Supplier must ensure that the CRTPA will apply to any Sub-contract to the extent necessary to ensure that any Fair Deal Employee will have the right to enforce any obligation owed to them by the Sub-contractor in his or her own right under section 1(1) of the CRTPA.

76. Breach

7.16.1 The Supplier agrees to notify the Authority should it breach any obligations it has under this Part D and agrees that the Authority shall be entitled to terminate its Contract for material Default in the event that the Supplier:

7.1.16.1.1 commits an irremediable breach of any provision or obligation it has under this Part D; or

7.1.26.1.2 commits a breach of any provision or obligation it has under this Part D which, where capable of remedy, it fails to remedy within a reasonable time and in any event within 28 days of the date of a notice from the Authority giving particulars of the breach and requiring the Supplier to remedy it.

87. Transfer to Another Employer/Sub-contractors

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

8.1.17.1.1 notify the Authority as far as reasonably practicable in advance of the transfer to allow the Authority to make the necessary arrangements for participation with the relevant Statutory Scheme(s);

8.1.27.1.2 consult with about, and inform those Fair Deal Eligible Employees of, the pension provisions relating to that transfer; and

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

98. Pension Issues on Expiry or Termination

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

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9-28.2 The Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract provide all such co-operation and assistance (including co-operation and assistance from the Broadly Comparable pension scheme's Actuary) as the Replacement Supplier and/or NHS Pension and/or CSPA and/or the relevant Administering Authority and/or the Authority 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.

109. Broadly Comparable Pension Scheme on Relevant Transfer Date

10-19.1 If the terms of any of Paragraphs 4 of Annex D2: NHSPS or 3.1 of Annex D3: LGPS applies, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the Relevant Transfer Date until the day before the Service Transfer Date, the relevant Fair Deal Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

10-29.2 Such Broadly Comparable pension scheme must be:

10-2-19.2.1 established by the Relevant Transfer Date;

10-2-29.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;

10-2-39.2.3 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 Authority);

10-2-49.2.4 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 Authority); and

10-2-59.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).

10-39.3 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 10, the Supplier shall (and shall procure that any of its Sub-contractors shall):

10-3-19.3.1 supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the Relevant Transfer Date) covering all relevant Fair Deal Employees, as soon as it is able to do so before the Relevant Transfer Date (where possible) and in any event no later than seven (7) days after receipt of the certificate;

10-3-29.3.2 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;

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10.3.39.3.3 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 Authority (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

10.3.49.3.4 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 Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

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

10.4.19.4.1 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 10.3.3 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 10.3.3 but using the last day of the Fair Deal Eligible Employees' employment with the Supplier or Sub-contractor (as appropriate) as the date used to determine the actuarial assumptions; and

10.4.29.4.2 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 10.4.1 been complied with, the Supplier shall (or shall procure that

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the Sub-contractor shall) pay the amount of the difference to the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) or as the Authority shall otherwise direct. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the difference as required under this Paragraph.

4110. Broadly Comparable Pension Scheme in Other Circumstances

41.410.1 If the terms of any of Paragraphs 2.2 of Annex D1: CSPS, 5.2 of Annex D2: NHSPS and/or 3.2 of Annex D3: LGPS apply, the Supplier must (and must, where relevant, procure that each of its Sub-contractors will) ensure that, with effect from the cessation of participation in the Statutory Scheme, until the day before the Service Transfer Date, the relevant Fair Deal Eligible Employees will be eligible for membership of a pension scheme under which the benefits are Broadly Comparable to those provided under the relevant Statutory Scheme at the date of cessation of participation in the relevant Statutory Scheme, and then on such terms as may be decided by the Authority.

41.210.2 Such Broadly Comparable pension scheme must be:

41.2.410.2.1 established by the date of cessation of participation in the Statutory Scheme;

41.2.210.2.2 a registered pension scheme for the purposes of Part 4 of the Finance Act 2004;

41.2.310.2.3 capable of receiving a bulk transfer payment from the relevant Statutory Scheme (where instructed to do so by the Authority);

41.2.410.2.4 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 Authority); and

41.2.510.2.5 maintained until such bulk transfer payments have been received or paid (unless otherwise instructed by the Authority).

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

41.3.110.3.1 supply to the Authority details of its (or its Sub-contractor's) Broadly Comparable pension scheme and provide a full copy of the valid certificate of broad comparability (which remains valid as at the date of cessation of participation in the Statutory Scheme) covering all relevant Fair Deal Eligible Employees, as soon as it is able to do so before the cessation of participation in the Statutory Scheme (where possible) and in any event no later than seven (7) days after receipt of the certificate;

41.3.210.3.2 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

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11.3.310.3.3 where required to do so by the Authority, 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 Authority (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

11.3.410.3.4 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 Sub-contractor and are still eligible for New Fair Deal protection in the event that the Supplier and/or Sub-contractor's Broadly Comparable pension scheme is closed to future accrual and/or terminated. The relevant Fair Deal Eligible Employees must be given the option to transfer their accrued benefits from the previous Broadly Comparable pension scheme to the new Broadly Comparable pension scheme on day for day and/or pound for pound terms (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes).

11.410.4 Where the Supplier has provided a Broadly Comparable pension scheme pursuant to the provisions of this Paragraph 11, the Supplier shall (and shall procure that any of its Sub-contractors shall) prior to the termination of this Contract allow and make all necessary arrangements to effect, in respect of any Fair Deal Eligible Employee that remains eligible for New Fair Deal protection, following a Service Transfer, the bulk transfer of past service from any such Broadly Comparable pension scheme into the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). The bulk transfer terms provided shall be sufficient to secure day for day and/or pound for pound credits (as applicable) (or actuarially equivalent where there are benefit differences between the two schemes) in the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable). For the avoidance of doubt, should the amount offered by the Broadly Comparable pension scheme be less than the amount required by the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) to fund the required credits ("the **Shortfall**"), the Supplier or the Sub-contractor (as agreed between them) must pay the Replacement Supplier's Broadly Comparable pension scheme (or relevant Statutory Scheme if applicable) the Shortfall as required, provided that in the absence of any agreement between the Supplier and any Sub-contractor, the Shortfall shall be paid by the Supplier. The Supplier shall indemnify the Authority or the Replacement Supplier's Broadly Comparable pension scheme (or the relevant Statutory Scheme if applicable) (as the Authority directs) for any failure to pay the Shortfall under this Paragraph.

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1211. Right of Set-Off

~~12.111.1~~ The Authority shall have a right to set off against any payments due to the Supplier under this Contract an amount equal to:

~~12.1.111.1.1~~ 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 Sub-contractor or due from any third party under any indemnity, bond or guarantee;

~~12.1.211.1.2~~ 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 Sub-contractor or due from any third party under any indemnity, bond or guarantee; or

~~12.1.311.1.3~~ 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 Sub-contractor or due from any third party under any indemnity, bond or guarantee;

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

~~12.211.2~~ The Authority 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 Authority as result of Paragraphs 12.1 above.

Annex D1: CSPA

41. Definitions

1.1 In this Annex D1: CSPA to Part D: ~~Pensions~~, Pensions, the following words have the following meanings:

“CSPA 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 CSPA in respect of the Services;
“CSPA Eligible Employee”	any CSPA Fair Deal Employee who at the relevant time is an active member or eligible to participate in the CSPA under a CSPA Admission Agreement;
“CSPA Fair Deal Employee”	a Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the CSPA in accordance with the provisions of New Fair Deal;
“CSPA”	the Principal Civil <u>“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.

22. Future Service Benefits

2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any CSPA 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 CSPA, shall each secure a CSPA Admission Agreement to ensure that CSPA Fair Deal Employees or CSPA Eligible Employees as appropriate shall be either admitted into, or offered continued membership of, the 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 Sub-contractors 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.

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- 2.2 If the Supplier and/or any of its Sub-contractors 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 Sub-contractor still employs any CSPA Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, 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: NHSPS

41. Definitions

1.1 In this Annex D2: NHSPS to Part D: ~~Pensions~~, Pensions, the following words have the following meanings:

“Direction Letter/Determination”

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

“NHS Broadly Comparable Employees”

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

- (a) their employment with the Authority, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

but who is now ineligible to participate in the NHSPS under the rules of the NHSPS and in respect of whom the Authority has agreed are to be provided with a Broadly Comparable pension scheme to provide Pension Benefits that are Broadly Comparable to those provided under the NHSPS.

“NHSPS Eligible Employees”

any NHSPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the NHSPS under a Direction Letter/Determination Letter.

“NHSPS Fair Deal Employees”

means other than the NHS Broadly Comparable Employees, each of the Fair Deal Employees who at a Relevant Transfer Date was a member of, or was entitled to become a member

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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 Authority, an NHS Body or other employer which participates automatically in the NHSPS; or
- (b) their employment with a Former Supplier who provides access to either the NHSPS pursuant to a Direction Letter/Determination or to a Broadly Comparable pension scheme in respect of their employment with that Former Supplier (on the basis that they are entitled to protection under New Fair Deal (or previous guidance), having been formerly in employment with the Authority, an NHS Body or other employer who participated automatically in the NHSPS in connection with the Services, prior to being employed by the Former Supplier),

and, in each case, being continuously engaged for more than fifty per cent (50%) of their employed time in the delivery of services (the same as or similar to the Services).

For the avoidance of doubt, an individual who is in or entitled to become a member of the NHSPS as a result of being engaged in the Services and being covered by an “open” Direction Letter/Determination or other NHSPS “access” facility but who has never been employed directly by the Authority, an NHS Body or other body which participates automatically in the NHSPS is not an NHSPS Fair Deal Employee;

“NHS Body”

has the meaning given to it in section 275 of the National Health Service Act 2006 as amended by section 138(2)(c) of Schedule 4 to the Health and Social Care Act 2012;

“NHS Pensions”

NHS Pensions as the administrators of the NHSPS or such other body as may from time to time be responsible for relevant administrative functions of the NHSPS;

“NHSPS”

the National Health Service Pension Scheme for England and Wales, established pursuant to the Superannuation Act 1972 and the Public Service Pensions Act 2013 governed by subsequent regulations under those Acts including the NHS Pension Scheme Regulations;

“NHS Pension Scheme Regulations”

as appropriate, any or all of the National Health Service Pension Scheme Regulations 1995 (SI 1995/300), the National Health Service Pension Scheme Regulations 2008 (SI 2008/653), the National Health Service Pension Scheme Regulations 2015 (2015/94) and any subsequent regulations

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made in respect of the NHSPS, each as amended from time to time;

“NHS Premature Retirement Rights”

rights to which any NHSPS Fair Deal Employee (had they remained in the employment of the Authority, an NHS Body or other employer which participates automatically in the NHSPS) would have been or is entitled under the NHS Pension Scheme Regulations, the NHS Compensation for Premature Retirement Regulations 2002 (SI 2002/1311), the NHS (Injury Benefits) Regulations 1995 (SI 1995/866) and section 45 of the General Whitley Council conditions of service, or any other legislative or contractual provision which replaces, amends, extends or consolidates the same from time to time;

“Pension Benefits”

any benefits payable in respect of an individual (including but not limited to pensions related allowances and lump sums) relating to old age, invalidity or survivor’s benefits provided under an occupational pension scheme; and

22. Membership of the NHSPS

- 2.1 In accordance with New Fair Deal, the Supplier and/or any of its Sub-contractors to which the employment of any NHSPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not an NHS Body or other employer which participates automatically in the NHSPS, shall each secure a Direction Letter/Determination to enable the NHSPS Fair Deal Employees to retain either continuous active membership of or eligibility for the NHSPS for so long as they remain employed in connection with the delivery of the Services under this Contract.
- 2.2 Where it is not possible for the Supplier and/or any of its Sub-contractors to secure a Direction Letter/Determination on or before the Relevant Transfer Date, the Supplier must secure a Direction Letter/Determination as soon as possible after the Relevant Transfer Date, and in the period between the Relevant Transfer Date and the date the Direction Letter/Determination is secure, the Provider must ensure that:
 - 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 Authority a complete copy of each Direction Letter/Determination within 5 Working Days of receipt of the Direction Letter/Determination.
- 2.4 The Supplier must ensure (and procure that each of its Sub-contractors (if any) ensures) that all of its NHSPS Fair Deal Employees have a contractual right to continuous active membership of or eligibility for the NHSPS for so long as they have a right to membership or eligibility of that scheme under the terms of the Direction Letter/Determination.
- 2.5 The Supplier will (and will procure that its Sub-contractors (if any) will) comply with the terms of the Direction Letter/Determination, the NHS Pension Scheme Regulations

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(including any terms which change as a result of changes in Law) and any relevant policy issued by the Department of Health and Social Care in respect of the NHSPS Fair Deal Employees for so long as it remains bound by the terms of any such Direction Letter/Determination.

- 2.6 Where any employee omitted from the Direction Letter/Determination supplied in accordance with Paragraph 2 of this Annex are subsequently found to be an NHSPS Fair Deal Employee, the Supplier will (and will procure that its Sub-contractors (if any) will) treat that person as if they had been an NHSPS Fair Deal Employee from the Relevant Transfer Date so that their Pension Benefits and NHS Premature Retirement Rights are not adversely affected.
- 2.7 The Supplier will (and will procure that its Sub-contractors (if any) will) provide any indemnity, bond or guarantee required by NHS Pensions in relation to a Direction Letter/Determination.

33. NHS Premature Retirement Rights

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

44. NHS Broadly Comparable Employees

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

55. Breach and Cancellation of any Direction Letter/Determination(s)

- 5.1 The Supplier agrees that the Authority is entitled to make arrangements with NHS Pensions for the Authority to be notified if the Supplier (or its Sub-contractors) breaches the terms of its Direction Letter/Determination. Notwithstanding the provisions of the foregoing, the Supplier shall notify the Authority in the event that it (or its Sub-contractor) breaches the terms of its Direction Letter/Determination.
- 5.2 If the Supplier (or its Sub-contractors, if relevant) ceases to participate in the NHSPS for whatever reason, the Supplier (or any such Sub-contractor, as appropriate) shall offer the NHSPS Eligible Employees membership of a pension scheme which is Broadly Comparable to the NHSPS on the date the NHSPS Eligible Employees ceased to participate in the NHSPS in accordance with the provisions of Paragraph 11 of Part D.

66. Compensation

- 6.1 If the Supplier (or its Sub-contractor, if relevant) is unable to provide the NHSPS Fair Deal Employees with either membership of:
- 6.1.1 the NHSPS (having used its best endeavours to secure a Direction Letter/Determination); or

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6.1.2 a Broadly Comparable pension scheme,

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

6.2 This flexibility for the Authority to allow compensation in place of Pension Benefits is in addition to and not instead of the Authority's right to terminate the Contract under Paragraph 7 (~~Breach~~)(~~Breach~~) of Part D of this Schedule.

77. Supplier Indemnities

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

Annex D3: LGPS

41. Definitions

1.1 In this Annex D3 LGPS to Part D: ~~Pensions~~, Pensions, the following words have the following meanings:

“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 2013 Regulations;
“Fund Actuary”	the actuary to a Fund appointed by the Administering Authority of the Fund;
“Fund”	[insert name], a pension fund within the LGPS;
“Initial Contribution Rate”	[XX%] of pensionable pay (as defined in the 2013 Regulations);
“LGPS”	the Local Government Pension Scheme as governed by the LGPS Regulations, and any other regulations (in each case as amended from time to time) which are from time to time applicable to the Local Government Pension Scheme;
“LGPS Admission Agreement”	an admission agreement within the meaning in Schedule 1 of the 2013 Regulations;
“LGPS Admission Body”	an admission body (within the meaning of Part 3 of Schedule 2 of the 2013 Regulations);
“LGPS Eligible Employees”	any LGPS Fair Deal Employee who at the relevant time is an active member or eligible to participate in the LGPS under an LGPS Admission Agreement;
“LGPS Fair Deal Employees”	any Fair Deal Employee who at the Relevant Transfer Date is or becomes entitled to protection in respect of the LGPS or a pension scheme that is Broadly Comparable to the LGPS in accordance with the provisions in accordance with the provisions of New Fair Deal and/or the Best Value Direction; and
“LGPS Regulations”	the 2013 Regulations and The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014 (SI 2014/525), and any other regulations (in

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each case as amended from time to time) which are from time to time applicable to the LGPS.

22. Supplier to Become an LGPS Admission Body

2.1 In accordance with the principles of New Fair Deal and/or the Best Value Direction, the Supplier and/or any of its Sub-contractors to which the employment of any LGPS Fair Deal Employee compulsorily transfers as a result of either the award of this Contract or a Relevant Transfer, if not a scheme employer which participates automatically in the LGPS, shall each become an LGPS Admission Body by entering into an LGPS Admission 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 active members of the LGPS (or a Broadly Comparable pension scheme) immediately before the Relevant Transfer Date; or

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

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

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

33. Broadly Comparable Scheme

3.1 If the Supplier and/or any of its Sub-contractors 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 Sub-contractors shall), with effect from the Relevant Transfer Date, offer the LGPS Fair Deal

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Employees membership of a pension scheme which is Broadly Comparable to LGPS on the Relevant Transfer Date in accordance with the provisions of Paragraph 10 of Part D.

- 3.2 If the Supplier and/or any of its Sub-contractors becomes an LGPS Admission Body in accordance with Paragraph 2.1 but the LGPS Admission Agreement is terminated during the term of this Contract for any reason at a time when the Supplier or Sub-contractors still employs any LGPS Eligible Employees, the Supplier shall (and procure that its Sub-contractors shall) at no extra cost to the Authority, 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.

44. Discretionary Benefits

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

55. 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 Sub-contractor to pay employer contributions or other payments to the Fund in aggregate in excess of the Initial Contribution Rate, the excess of employer contributions above the Initial Contribution Rate for a Contract Year (the “**Excess Amount**”) shall be paid by the Supplier or the Sub-contractor, as the case may be, and the Supplier shall be reimbursed by the Authority.
- 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 Sub-contractor to pay employer contributions or payments to the Fund in aggregate below the Initial Contribution Rate for a Contract Year, the Supplier shall reimburse the Authority an amount equal to A–B (the “**Refund Amount**”) where:
- A = the amount which would have been paid if contributions and payments had been paid equal to the Initial Contribution Rate for that Contract Year; and
- B = the amount of contributions or payments actually paid by the Supplier or Sub-contractor for that Contract Year, as the case may be, to the Fund.
- 5.3 Subject to Paragraphs 5.4 to 5.10, where the Administering 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 Sub-contractor is required to pay any exit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Payment**”), such Exit Payment shall be paid by the Supplier or any Sub-contractor (as the case may be) and the Supplier shall be reimbursed by the Authority.

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- 5.4 The Supplier and any Sub-contractors 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 Sub-contractor including without limitation any decision made under Regulation 30(8) of the 2013 Regulations or Schedule 2 of The Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;
 - 5.4.5 any employer contributions relating to the costs of enhanced benefits made at the discretion of the Supplier or any relevant Sub-contractors including without limitation additional pension awarded under Regulation 31 of the 2013 Regulations or otherwise;
 - 5.4.6 any increase to the employer contribution rate resulting from the award of pay increases by the Supplier or relevant Sub-contractors in respect of all or any of the LGPS Eligible Employees in excess of the pay increases assumed in the Fund's most recent actuarial valuation (unless the Supplier and/or any Sub-contractor is contractually bound to provide such increases on the Relevant Transfer Date);
 - 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 Sub-contractors 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 Sub-contractor'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 Sub-contractor 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 Sub-

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contractors are responsible for in accordance with Paragraph 5.4 above shall be disregarded and excluded from the calculation. In the event of any dispute as to level of any cost that should be excluded from the calculation, the opinion of the Fund Actuary shall be final and binding.

- 5.6 Where the Administering 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 Sub-contractor receives payment of an exit credit payment under Regulation 64(2) of the 2013 Regulations (the “**Exit Credit**”), the Supplier shall (or procure that any Sub-contractor shall) reimburse the Authority an amount equal to the Exit Credit within twenty (20) Working Days of receipt of the Exit Credit.
- 5.7 The Supplier shall (or procure that the Sub-contractor shall) notify the Authority 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 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 Sub-contractor and provide a copy of any revised rates and adjustments certificate detailing the Exit Payment or Exit Credit and its calculation.
- 5.8 Within twenty (20) Working Days of receiving the notification under Paragraph 5.7 above, the Authority 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 Authority shall notify the Supplier in writing. In the event that the Supplier and the Authority 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 Authority or in accordance with the Dispute Resolution Procedure shall be paid by the Authority within timescales as agreed between Authority and Supplier. The amount to be paid by the Authority shall be an amount equal to the Excess Amount or Exit Payment less an amount equal to any corporation tax relief which has been claimed in respect of the Excess Amount or Exit Payment by the Supplier or a Sub-contractor.
- 5.11 Any Refund Amount agreed by the Authority or in accordance with the Dispute Resolution Procedure as payable by the Supplier or any Sub-contractor to the Authority, shall be paid by the Supplier or any Sub-contractor forthwith as the liability has been

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agreed. In the event the Supplier or any Sub-contractor fails to pay any agreed Refund Amount, the Authority 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.

Annex D4: Other Schemes

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

Part E: Employment Exit Provisions

[Guidance: Please note, the reference at Paragraphs 1.6.1, 1.6.2 and 1.6.4 is to Supplier Personnel 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 Paragraph 1.6.3 is limited to employees]

41. Pre-service Transfer Obligations

- 1.1 The Supplier agrees that within 20 Working Days of the earliest of:
 - 1.1.1 receipt of a notification from the Authority of a Service Transfer or intended Service Transfer;
 - 1.1.2 receipt of the giving of notice of early termination or any Partial Termination of this Contract; and
 - 1.1.3 the date which is 12 months before the end of the Term; and/or
 - 1.1.4 receipt of a written request of the Authority at any time (provided that the Authority shall only be entitled to make one such request in any 6 month period),it shall provide in a suitably anonymised format so as to comply with the DPA 2018, the Supplier's Provisional Supplier Personnel List, together with the Staffing Information and it shall provide an updated Supplier's Provisional Supplier Personnel List at such intervals as are reasonably requested by the Authority.
- 1.2 At least 20 Working Days prior to the Service Transfer Date, the Supplier shall provide to the Authority or at the direction of the Authority to any Replacement Supplier and/or any Replacement Sub-contractor:
 - 1.2.1 the Supplier's Final Supplier Personnel List, which shall identify which of the Supplier Personnel are Transferring Supplier Employees; and
 - 1.2.2 the Staffing Information in relation to the Supplier's Final Supplier Personnel List (insofar as such information has not previously been provided).
- 1.3 The Authority shall be permitted to use and disclose information provided by the Supplier under Paragraphs 1.1 and 1.2 for the purpose of informing any prospective Replacement Supplier and/or Replacement Sub-contractor.
- 1.4 The Supplier warrants, for the benefit of the Authority, any Replacement Supplier, and any Replacement Sub-contractor that all information provided pursuant to Paragraphs 1.1 and 1.2 shall be true and accurate in all material respects at the time of providing the information.
- 1.5 From the date of the earliest event referred to in Paragraph 1.1.1, 1.1.2 and 1.1.3, the Supplier agrees, that it shall not, and agrees to procure that each Sub-contractor shall not, assign any person to the provision of the Services who is not listed on the Supplier's Provisional Supplier Personnel List and shall not without the approval of the Authority (not to be unreasonably withheld or delayed):
 - 1.5.1 replace or re-deploy any Supplier Personnel listed on the Supplier Provisional

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Supplier Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person ~~he/she replaces~~they replace;

- 1.5.2 make, promise, propose, permit or implement any material changes to the terms and conditions of employment of the Supplier Personnel (including pensions and any payments connected with the termination of employment);
- 1.5.3 increase the proportion of working time spent on the Services (or the relevant part of the Services) by any of the Supplier Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- 1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Supplier's Provisional Supplier Personnel List;
- 1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Services (or the relevant part of the Services); or
- 1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Supplier's Provisional Supplier Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-contractor shall promptly notify, the Authority or, at the direction of the Authority, any Replacement Supplier and any Replacement Sub-contractor of any notice to terminate employment given by the Supplier or relevant Sub-contractor or received from any persons listed on the Supplier's Provisional Supplier Personnel List regardless of when such notice takes effect.

- 1.6 During the Term, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, within 20 Working Days to the Authority any information the Authority may reasonably require relating to the manner in which the Services are organised, which shall include:
 - 1.6.1 the numbers of ~~employees~~Supplier Personnel engaged in providing the Services;
 - 1.6.2 the percentage of time spent by each ~~employee~~Supplier Personnel engaged in providing the Services;
 - 1.6.3 the extent to which each employee qualifies for membership of any of the Statutory Schemes or any Broadly Comparable scheme set up pursuant to the provisions of any of the Annexes to Part D ~~(Pensions) of this Schedule 28 (Staff Transfer)~~(Pensions) of this Schedule 28 (Staff Transfer) (as appropriate); and
 - 1.6.4 a description of the nature of the work undertaken by each ~~employee~~Supplier Personnel by location.
- 1.7 The Supplier shall provide, and shall procure that each Sub-contractor shall provide, all reasonable cooperation and assistance to the Authority, any Replacement Supplier and/or any Replacement Sub-contractor to ensure the smooth transfer of the Transferring Supplier Employees on the Service Transfer Date including providing sufficient information in advance of the Service Transfer Date to ensure that all necessary payroll

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arrangements can be made to enable the Transferring Supplier Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Service Transfer Date, the Supplier shall provide, and shall procure that each Sub-contractor shall provide, to the Authority or, at the direction of the Authority, to any Replacement Supplier and/or any Replacement Sub-contractor (as appropriate), in respect of each person on the Supplier's Final Supplier Personnel List who is a Transferring Supplier Employee:

- 1.7.1 the most recent month's copy pay slip data;
- 1.7.2 details of cumulative pay for tax and pension purposes;
- 1.7.3 details of cumulative tax paid;
- 1.7.4 tax code;
- 1.7.5 details of any voluntary deductions from pay; ~~and~~

1.7.6 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

~~1.7.6~~1.7.8 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 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 [reasonable] request to align and assign Supplier Personnel to any future delivery model proposed by the Authority for Replacement Services within 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 Change Control Procedure.

22. Employment Regulations Exit Provisions

2.1 The Authority and the Supplier acknowledge that subsequent to the commencement of the provision of the Services, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination or Partial Termination of this Contract or otherwise) resulting in the Services being undertaken by a Replacement Supplier and/or a Replacement Sub-contractor. Such change in the identity of the supplier of such services may constitute a Relevant Transfer to which the Employment Regulations will apply. The Authority and the Supplier further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Supplier and the Transferring Supplier Employees (except in relation to any contract terms disapplied through operation of regulation 10~~(2)~~ of the Employment Regulations) will have effect on and from the Service Transfer Date as if originally made between the Replacement Supplier and/or a Replacement Sub-contractor (as the case may be) and each such Transferring Supplier Employee.

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2.2 The Supplier shall, and shall procure that each Sub-contractor 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 Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel List all the Transferring Supplier Employees 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' Employees' participation in the Schemes 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)~~

2.2.1 the Supplier and/or the Sub-contractor (as appropriate); and ~~(ii)~~

~~2.2.2.2~~ the Replacement Supplier and/or Replacement Sub-contractor.

2.3 Subject to Paragraph 2.4, the Supplier shall indemnify the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor against any Employee Liabilities arising from or as a result of:

2.3.1 any act or omission of the Supplier or any Sub-contractor in respect of any Transferring Supplier Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Supplier Employee whether occurring before, on or after the Service Transfer Date;

2.3.2 the breach or non-observance by the Supplier or any Sub-contractor occurring ~~on or~~ before but excluding the Service Transfer Date of:

~~1.(a)~~ any collective agreement applicable to the Transferring Supplier Employees; and/or

~~(mm)(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 Sub-contractor 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 Sub-contractor 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:

~~1.(a)~~ in relation to any Transferring Supplier Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authority

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relates to financial obligations arising ~~on and~~ before but excluding the Service Transfer Date; and

~~(nn)~~(b) in relation to any employee who is not identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier to the Authority and/or Replacement Supplier and/or any Replacement Sub-contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising ~~on or~~ before but excluding the Service Transfer Date;

- 2.3.5 a failure of the Supplier or any Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees in respect of the period up to (~~and including~~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 Sub-contractor other than a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List for whom it is alleged the Authority and/or the Replacement Supplier and/or any Replacement Sub-contractor may be liable by virtue of this Contract and/or the Employment Regulations; and
- 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 Sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Authority and/or Replacement Supplier to comply with regulation 13(4) of the Employment Regulations.

- 2.4 The indemnities in Paragraph 2.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Supplier and/or any Replacement Sub-contractor whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities:
- 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 working conditions proposed by the Replacement Supplier and/or any Replacement Sub-contractor to occur in the period on or after the Service Transfer Date); or
- 2.4.2 arising from the Replacement Supplier's failure, and/or Replacement Sub-contractor's failure, to comply with its obligations under the Employment Regulations.
- 2.5 If any person who is not identified in the Supplier's Final Supplier Personnel ~~list~~List claims, or it is determined in relation to any person who is not identified in the Supplier's Final Supplier Personnel ~~list~~List, that his/her contract of employment has been

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transferred from the Supplier or any Sub-contractor to the Replacement Supplier and/or Replacement Sub-contractor pursuant to the Employment Regulations, then:

- 2.5.1 the Authority shall procure that the Replacement Supplier shall, or any Replacement Sub-contractor shall, within 5 Working Days of becoming aware of that fact, give notice in writing to the Supplier; and
 - 2.5.2 the Supplier may offer (or may procure that a Sub-contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Supplier and/or any and/or Replacement Sub-contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 2.6 If such offer is accepted, or if the situation has otherwise been resolved by the Supplier or a Sub-contractor, the Authority shall procure that the Replacement Supplier shall, or procure that the Replacement Sub-contractor shall, immediately release or procure the release of the person from his/her employment or alleged employment.
- 2.7 If after the 15 Working Day period specified in Paragraph 2.5.2 has elapsed:
- 2.7.1 no such offer of employment has been made;
 - 2.7.2 such offer has been made but not accepted; or
 - 2.7.3 the situation has not otherwise been resolved
- the Authority shall advise the Replacement Supplier and/or Replacement Sub-contractor, as appropriate that it may within 5 Working Days give notice to terminate the employment or alleged employment of such person.
- 2.8 Subject to the Replacement Supplier and/or Replacement Sub-contractor acting in accordance with the provisions of Paragraphs 2.5 to 2.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Supplier shall indemnify the Replacement Supplier and/or Replacement Sub-contractor against all Employee Liabilities arising out of the termination of employment pursuant to the provisions of Paragraph 2.7 provided that the Replacement Supplier takes, or shall procure that the Replacement Sub-contractor takes, all reasonable steps to minimise any such Employee Liabilities.
- 2.9 The indemnity in Paragraph 2.8:
- 2.9.1 shall not apply to:
 - ~~4.(a)~~ any claim for:
 - (i) 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,

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in any case in relation to any alleged act or omission of the Replacement Supplier and/or Replacement Sub-contractor; or

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

2.9.2 shall apply only where the notification referred to in Paragraph 2.5.1 is made by the Replacement Supplier and/or Replacement Sub-contractor to the Supplier within 6 months of the Service Transfer Date.

2.10 If any such person as is described in Paragraph 2.5 is neither re-employed by the Supplier or any Sub-contractor nor dismissed by the Replacement Supplier and/or Replacement Sub-contractor within the time scales set out in Paragraphs 2.5 to 2.7, such person shall be treated as a Transferring Supplier Employee.

~~2.11—The Supplier shall comply, and shall procure that each Sub-contractor shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each Sub-contractor shall perform and discharge, all its obligations in respect of any person identified in the Supplier's Final Supplier Personnel list before and on the Service Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions and such sums due as a result of any Fair Deal Employees' participation in the Schemes and any requirement to set up a broadly comparable pension scheme which in any case are attributable in whole or in part in respect of the period up to (and including) the Service Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between:~~

~~2.11.1—the Supplier and/or any Sub-contractor; and~~

~~2.11.2—the Replacement Supplier and/or the Replacement Sub-contractor.~~

~~2.12.11~~ The Supplier shall, and shall procure that each Sub-contractor shall, promptly provide to the Authority and any Replacement Supplier and/or Replacement Sub-contractor, in writing such information as is necessary to enable the Authority, the Replacement Supplier and/or Replacement Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Authority shall procure that the Replacement Supplier and/or Replacement Sub-contractor, shall promptly provide to the Supplier and each Sub-contractor in writing such information as is necessary to enable the Supplier and each Sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

~~2.13.12~~ Subject to Paragraph 2.13, the Authority shall procure that the Replacement Supplier indemnifies the Supplier on its own behalf and on behalf of any Replacement Sub-contractor and its sub-contractors against any Employee Liabilities arising from or as a result of:

~~2.13.12.1~~ any act or omission of the Replacement Supplier and/or Replacement Sub-contractor in respect of any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee;

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~~2.13.22.12.2~~ the breach or non-observance by the Replacement Supplier and/or Replacement Sub-contractor on or after the Service Transfer Date of:

~~1.(a)~~ any collective agreement applicable to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List; and/or

~~(pp)(b)~~ any custom or practice in respect of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List which the Replacement Supplier and/or Replacement Sub-contractor is contractually bound to honour;

~~2.13.32.12.3~~ any claim by any trade union or other body or person representing any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List arising from or connected with any failure by the Replacement Supplier and/or Replacement Sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the Service Transfer Date;

~~2.13.42.12.4~~ any proposal by the Replacement Supplier and/or Replacement Sub-contractor to change the terms and conditions of employment or working conditions of any Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List on or after their transfer to the Replacement Supplier or Replacement Sub-contractor (as the case may be) on the Service Transfer Date, or to change the terms and conditions of employment or working conditions of any person identified in the Supplier's Final Supplier Personnel List who would have been a Transferring Supplier Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Service Transfer Date as a result of or for a reason connected to such proposed changes;

~~2.13.52.12.5~~ any statement communicated to or action undertaken by the Replacement Supplier or Replacement Sub-contractor to, or in respect of, any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List on or before the Service Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Supplier in writing;

~~2.13.62.12.6~~ 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:

~~1.(a)~~ in relation to any Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, to the extent that the proceeding, claim or demand by HMRC or other statutory authority relates to financial obligations arising on and after the Service Transfer Date; and

~~(qq)(b)~~ in relation to any employee who is not a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer his/her employment from the Supplier or Sub-contractor, to the Replacement Supplier or

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Replacement Sub-contractor 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;

~~2.13.72.12.7~~ a failure of the Replacement Supplier or Replacement Sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Supplier Employees identified in the Supplier's Final Supplier Personnel List in respect of the period from (and including) the Service Transfer Date; and

~~(e)2.12.8~~ any claim made by or in respect of a Transferring Supplier Employee identified in the Supplier's Final Supplier Personnel List or any appropriate employee representative (as defined in the Employment Regulations) of any such Transferring Supplier Employee relating to any act or omission of the Replacement Supplier or Replacement Sub-contractor in relation to obligations under regulation 13 of the Employment Regulations.

~~2.142.13~~ The indemnities in Paragraph 2.12 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Supplier and/or any Sub-contractor (as applicable) whether occurring or having its origin before, on or after the Service Transfer Date, including any Employee Liabilities arising from the failure by the Supplier and/or any Sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.

Annex E1: List of Notified Sub-contractors

Annex E2: Staffing Information

Employee Information (Anonymised)

Name of Transferor:

Number of Employees in-scope to transfer:

41. Completion notes

- 1.1 If you have any Key Sub-contractors, please complete all the above information for any staff employed by such Key Sub-contractor(s) in a separate spreadsheet.
- 1.2 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.
- 1.3 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.

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EMPLOYEE DETAILS & KEY TERMS

Details	Job Title	Grade / band	Work Location	<u>Age</u> <u>Date of Birth</u> <u>(dd/mm/yy)</u>	Employment status (for example, employee, fixed-term employee, self-employed, agency worker)?	Continuous service date (dd/mm/yy)	Date employment started with existing employer
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

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EMPLOYEE DETAILS & KEY TERMS							
Details	Contract end date (if fixed term contract or temporary contract)	Contractual notice period	Contractual weekly hours	Regular overtime hours per week	Mobility or flexibility clause in contract?	Previously TUPE transferred to organisation? If so, please specify (i) date of transfer, (ii) name of transferor, and (iii) whether ex public sector	Any collective agreements?
Emp No 1							
Emp No 2							
Emp No							
Emp No							
Emp No							
Emp No							
Emp No							

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	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								

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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								
Emp No								
Emp No								
Emp No								

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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						

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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						

Schedule 28: (Staff Transfer)

[Subject to Contract]

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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						

Schedule 28: (Staff Transfer)

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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 29

Key Personnel

Schedule 29: (Key Personnel)

[Subject to Contract]

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Schedule 29: Key Personnel

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 Operational Service Commencement Date (“**Key Personnel**”).

KEY ROLE Key Role	Name of KEY Personnel	Responsibilities/ Authorities	Phase of the project during which they will be a MEMBER OF member of Key Personnel	MINIMUM PERIOD Minimum Period in Key Role

Schedule 30

Deed of Guarantee

Schedule 30: Deed 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 insert the name of the Guarantor]

- and -

[Insert insert the name of the Beneficiary]

DEED OF GUARANTEE

THIS DEED is executed as a deed and dated **[Insert insert date of execution]** (the “**Deed**”)

BETWEEN:

- (1) **[INSERT insert NAME OF THE GUARANTOR]** [a company incorporated in [England and Wales] under registered number **[insert registered number]** whose registered office is at **[insert registered office]**] **[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]** (the “**Guarantor**”); and
- (2) **[INSERT insert NAME OF THE AUTHORITY]**, [acting on behalf of the Crown] of **[insert the Authority's address]** (the “**Authority**”).

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

BACKGROUND:

- (A) The Authority **[has awarded]** a contract dated **[insert date]** to **[insert details of the Supplier]** (the “**Supplier**”) for the provision of **[insert details of goods or services to be provided]** (the “**Guaranteed Agreement**”).
- (B) It is a condition of the Authority entering into the Guaranteed Agreement that the Supplier procures the execution and delivery to the Authority of a parent company guarantee substantially in the form of this Deed.
- (C) The Guarantor has agreed to guarantee the due performance of the Guaranteed Agreement.

IT IS AGREED as follows:

41. Definitions and Interpretation

Definitions

1.1 The following definitions apply in this Deed:

“**Business Day**” means a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

Schedule 30:- (Deed of Guarantee)

[Subject to Contract]

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“Control”	means the power of a person to secure that the affairs of a body corporate are conducted in accordance with the wishes of that person: (a) by means of the holding of shares or the possession of voting power in relation to that body or any other body corporate; or (b) as a result of any powers conferred by the constitutional or corporate documents, or any other document regulating that body or any other body corporate;
“Guaranteed Agreement”	has the meaning given to it in Recital 0;
“Guaranteed Obligations”	has the meaning given to it in Clause 2.1.1;
“Supplier”	has the meaning given to it in Recital (A) (A);
“VAT”	means value added tax or any equivalent tax chargeable in the UK or elsewhere.

Interpretation

- 1.2 Unless otherwise stated, any reference in this Deed to:
- 1.2.1 the “Guarantor”, the “Authority”, the “Supplier” or any other person shall be construed so as to include their successors in title, permitted assigns and permitted transferees, whether direct or indirect;
 - 1.2.2 “assets” includes present and future properties, revenues and rights of every description;
 - 1.2.3 this “Deed”, or any other agreement or instrument is a reference to, this deed or other agreement or instrument as amended, novated, supplemented, extended or restated;
 - 1.2.4 “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - 1.2.5 a “person” includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
 - 1.2.6 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; and
 - 1.2.7 a time of day is a reference to London time.

21. Guarantee and Indemnity

2.1.1 The Guarantor:

2.1.1.1 guarantees to the Authority the due and punctual performance of all of the Supplier's present and future obligations under and in connection with the Guaranteed Agreement if and when they become due and performable in accordance with the terms of the Guaranteed Agreement (the "**Guaranteed Obligations**");

2.1.1.2 shall pay to the Authority from time to time on demand all monies (together with interest on such sum accrued before and after the date of demand until the date of payment) that have become payable by the Supplier to the Authority under or in connection with the Guaranteed Agreement but which has not been paid at the time the demand is made; and

2.1.1.3 shall, if the Supplier fails to perform in full and on time any of the Guaranteed Obligations and upon written notice from the Authority, immediately on demand perform or procure performance of the same at the Guarantor's own expense.

2.2 The Guarantor, as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under Clause 2.1, shall indemnify and keep indemnified the Authority in full and on demand from and against all and any losses, damages, costs and expenses suffered or incurred by the Authority arising out of, or in connection with:

2.2.1 any failure by the Supplier to perform or discharge the Guaranteed Obligations;
or

2.2.2 any of the Guaranteed Obligations being or becoming wholly or partially unenforceable for any reason,

2.2.3 provided that the Guarantor's liability under this Clause 2.2 shall be no greater than the Supplier's liability under the Guaranteed Agreement was (or would have been had the relevant Guaranteed Obligation been fully enforceable).

31. Authority Protections

Continuing Guarantee

3.1.1 This Deed is, and shall at all times be, a continuing and irrevocable security until the Guaranteed Obligations have been satisfied or performed in full, and is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Authority may at any time hold for the performance of the Guaranteed Obligations and may be enforced without first having recourse to any such security.

Preservation of the Guarantor's liability

3.2 The Guarantor's liability under this Deed shall not be reduced, discharged or otherwise adversely affected by:

3.2.1 any arrangement made between the Supplier and the Authority;

3.2.2 any partial performance (except to the extent of such partial performance) by

Schedule 30: (Deed of Guarantee)

[Subject to Contract]

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the Supplier of the Guaranteed Obligations;

~~3.2.3~~1.2.3 any alteration in the obligations undertaken by the Supplier whether by way of any variation referred to in Clause 4 or otherwise;

~~3.2.4~~1.2.4 any waiver or forbearance by the Authority whether as to payment, time, performance or otherwise;

~~3.2.5~~1.2.5 the taking, variation, renewal or release of, the enforcement or neglect to perfect or enforce any right, guarantee, remedy or security from or against the Supplier or any other person;

~~3.2.6~~1.2.6 any unenforceability, illegality or invalidity of any of the provisions of the Guaranteed Agreement or any of the Supplier's obligations under the Guaranteed Agreement, so that this Deed shall be construed as if there were no such unenforceability, illegality or invalidity;

~~3.2.7~~1.2.7 any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, Control or ownership, insolvency, liquidation, administration, voluntary arrangement, or appointment of a receiver, of the Supplier or any other person.

Immediate demand

~~3.3~~1.3 The Guarantor waives any right it may have to require the Authority to proceed against, enforce any other right or claim for payment against, or take any other action against, the Supplier or any other person before claiming from the Guarantor under this Guarantee.

Deferral of rights

~~3.4~~1.4 Until all amounts which may be or become payable under the Guaranteed Agreement or this Deed have been irrevocably paid in full, the Guarantor shall not, as a result of this Deed or any payment performance under this Deed:

~~3.4.1~~1.4.1 be subrogated to any right or security of the Authority;

~~3.4.2~~1.4.2 claim or prove in competition with the Authority against the Supplier or any other person;

~~3.4.3~~1.4.3 demand or accept repayment in whole or in part of any indebtedness due from the Supplier;

~~3.4.4~~1.4.4 take the benefit of, share in or enforce any security or other guarantee or indemnity against the Supplier; or

~~3.4.5~~1.4.5 claim any right of contribution, set-off or indemnity from the Supplier,

without the prior written consent of the Authority (and in such case only in accordance with any written instructions of the Authority).

~~3.5~~1.5 If the Guarantor receives any payment or other benefit in breach of Clause 3.4, or as a result of any action taken in accordance with a written instruction of the Authority given pursuant to Clause 3.4, such payment or other benefit, and any benefit derived directly or indirectly by the Guarantor therefrom, shall be held by the Guarantor on trust for the Authority applied towards the discharge of the Guarantor's obligations to the Authority

Schedule 30:- (Deed of Guarantee)

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under this Deed.

42. Variation of the Guaranteed Agreement

4.12.1 The Guarantor confirms that it intends that this Deed shall extend and apply from time to time to any variation, increase, extension or addition of the Guaranteed Agreement, however, fundamental, and any associated fees, costs and/or expenses.

53. Payment and Costs

5.13.1 All sums payable by the Guarantor under this Deed shall be paid in full to the Authority in pounds sterling:

5.1.13.1.1 without any set-off, condition or counterclaim whatsoever; and

5.1.23.1.2 free and clear of any deductions or withholdings whatsoever except as may be required by applicable law which is binding on the Guarantor.

5.23.2 If any deduction or withholding is required by any applicable law to be made by the Guarantor:

5.2.13.2.1 the amount of the payment due from the Guarantor shall be increased to an amount which (after making any deduction or withholding) leaves an amount equal to the payment which would have been due if no deduction or withholding had been required; and

5.2.23.2.2 the Guarantor shall promptly deliver to the Authority all receipts issued to it evidencing each deduction or withholding which it has made.

5.33.3 The Guarantor shall not and may not direct the application by the Authority of any sums received by the Authority from the Guarantor under any of the terms in this Deed.

5.43.4 The Guarantor shall pay interest on any amount due under this Deed 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.

5.53.5 The Guarantor shall, on a full indemnity basis, pay to the Authority on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any VAT on those costs and expenses) which the Authority incurs in connection with:

5.5.13.5.1 the preservation, or exercise and enforcement, of any rights under or in connection with this Deed or any attempt to do so; and

5.5.23.5.2 any discharge or release of this Deed.

64. Conditional Discharge

6.14.1 Any release, discharge or settlement between the Guarantor and the Authority in relation to this Deed shall be conditional on no right, security, disposition or payment to the Authority by the Guarantor, the Supplier or any other person being avoided, set aside or ordered to be refunded pursuant to any enactment or law relating to breach of duty by any person, bankruptcy, liquidation, administration, protection from creditors generally or insolvency for any other reason.

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~~6.24.2~~ If any such right, security, disposition or payment as referred to in Clause 6.1 is avoided, set aside or ordered to be refunded, the Authority shall be entitled subsequently to enforce this Deed against the Guarantor as if such release, discharge or settlement had not occurred and any such security, disposition or payment has not been made.

75. Representations and Warranties

~~7.15.1~~ The Guarantor represents and warrants to the Authority that:

~~7.1.45.1.1~~ it is duly incorporated with limited liability 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;

~~7.1.25.1.2~~ it has full power under its constitution or equivalent constitutional documents in the jurisdiction in which it is established to enter into this Deed;

~~7.1.35.1.3~~ it has full power to perform the obligations expressed to be assumed by it or contemplated by this Deed;

~~7.1.45.1.4~~ it has been duly authorised to enter into this Deed;

~~7.1.55.1.5~~ it has taken all necessary corporate action to authorise the execution, delivery and performance of this Deed;

~~7.1.65.1.6~~ this Deed when executed and delivered will constitute a legally binding obligation on it enforceable in accordance with its terms;

~~7.1.75.1.7~~ all necessary consents and authorisations for the giving and implementation of this Deed have been obtained;

~~7.1.85.1.8~~ that its entry into and performance of its obligations under this Deed will not constitute any breach of or default under any contractual, government or public obligation binding on it; and

~~7.1.95.1.9~~ that it is not engaged in any litigation or arbitration proceedings that might affect its capacity or ability to perform its obligations under this Deed and to the best of its knowledge no such legal or arbitration proceedings have been threatened or are pending against it.

86. Assignment

~~8.16.1~~ The Authority shall be entitled by notice in writing to the Guarantor to assign the benefit of this Deed at any time to any person without the consent of the Guarantor being required and any such assignment shall not release the Guarantor from liability under this Deed.

~~8.26.2~~ The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed without the prior written consent of the Authority.

97. Variation

~~9.17.1~~ No variation of this Deed shall be effective unless it is in writing and signed by the parties.

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108. Demands and Notices

10.18.1 Any demand or notice served by the Authority on the Guarantor under this Deed shall be in writing, addressed to:

10.1.18.1.1 For the Attention of [insert details]

10.1.28.1.2 [Address of the Guarantor in England and Wales]

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

10.38.3 Any notice or demand served on the Guarantor or the Authority under this Deed shall be deemed to have been served:

10.3.18.3.1 if delivered by hand, at the time of delivery; or

10.3.28.3.2 if posted, at 10.00 a.m. on the second Business Day after it was put into the post.

10.48.4 In proving service of a notice or demand on the Guarantor 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.

10.58.5 Any notice purported to be served on the Authority under this Deed shall only be valid when received in writing by the Authority.

119. Entire Agreement

11.19.1 This Deed constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.29.2 The Guarantor acknowledges that it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by, any representation, warranty or undertaking made by or on behalf of the Authority (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

1210. Waiver

12.110.1 No failure or delay by the Authority to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12.210.2 Any waiver by the Authority of any terms of this Deed, 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.

1311. Severance

13.111.1 If any provision or part-provision of this Deed is or becomes invalid, illegal or unenforceable for any reason, such provision or part-provision shall be deemed deleted,

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but that shall not affect the validity and enforceability of the rest of this Deed.

44.12. Third Party Rights

~~44.12.1~~ A person who is not a Party to this Deed shall have no right under the Contracts (Rights of Third Parties) Act 1999 (as amended, updated or replaced from time to time) to enforce any of its terms but this does not affect any third party right which exists or is available independently of that Act.

45.13. Governing Law and Jurisdiction

~~45.13.1~~ This Deed and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

~~45.13.2~~ The Guarantor irrevocably agrees for the benefit of the Authority that the courts of England shall have jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Deed or its subject matter or formation.

~~45.13.3~~ Nothing contained in Clause 15.2 shall limit the rights of the Authority 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).

~~45.13.4~~ 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.

~~45.13.5~~ [The Guarantor irrevocably appoints [~~insert~~insert name of agent] of [~~insert~~insert address of agent] as its agent to receive on its behalf in England or Wales service of any proceedings under this Clause 15. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Guarantor) and shall be valid until such time as the Authority has received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Guarantor shall appoint a substitute acceptable to the Authority and deliver to the Authority the new agent's name and address within England and Wales.]

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Executed as a deed by [insert the name of the Guarantor] acting by [insert name of Director] a director, in the presence of a witness:

.....
[Signature of Witness]

.....
[Signature of Director]

Name of Director:

.....

Name of Witness:

.....

Address of Witness:

.....

.....

Occupation of Witness:

.....

Schedule 31

Processing Personal Data

Schedule 31: Processing Personal Data

41. Data Processing

- 1.1 This Schedule 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 Schedule shall be with the Authority at its absolute discretion.
- 1.2 The contact details of the Authority’s Data Protection Officer are: **[Insertinsert Contact details]**
- 1.3 The contact details of the Supplier’s Data Protection Officer are: **[Insertinsert Contact details]**
- 1.4 The Processor shall comply with any further written instructions with respect to processing by the Controller.
- 1.5 Any such further instructions shall be incorporated into this Schedule.

[Guidance: the Authority 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 Authority is Controller and the Supplier is Processor The Parties acknowledge that in accordance with Clause 21.2 to 23.15 and for the purposes of the Data Protection Legislation, the Authority is the Controller and the Supplier is the Processor of the following Personal Data:</p> <p>[Insertinsert the scope of Personal Data for which the purposes and means of the processing by the Supplier is determined by the Authority]</p> <p>The Supplier is Controller and the Authority is Processor The Parties acknowledge that for the purposes of the Data Protection Legislation, the Supplier is the Controller and the Authority is the Processor in accordance with Clause 21.2 to 21.15 of the following Personal Data:</p> <p>[Insertinsert the scope of Personal Data for which the purposes and means of the processing by the Authority is determined by the Supplier]</p> <p>The Parties are Joint Controllers The Parties acknowledge that they are Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>[Insertinsert the scope of Personal Data for which the purposes and means of the processing is determined by both Parties together]</p> <p>The Parties are Independent Controllers of Personal Data</p>

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Description	Details
	<p>The Parties acknowledge that they are Independent Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p>Business contact details <u>Personally identifiable information</u> <u>Business</u> of Supplier Personnel,</p> <p>Business contact details <u>Personally identifiable information</u> <u>Business</u> of any directors, officers, employees, agents, consultants and contractors of the Authority (excluding the Supplier Personnel) engaged in the performance of the Authority's duties under this Contract).</p> <p><u>[Insert insert the scope of other Personal Data provided by one Party who is Data Controller to the other Party who will separately determine the nature and purposes of its processing the Personal Data on receipt.</u></p> <p>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 Authority 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 Authority]</p>
<u>Subject matter of the Processing</u>	<p><u>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</u></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><u>[Clearly set out the duration of the processing including dates]</u></p>
Nature and purposes of the processing	<p><u>[Please be as specific as possible, but make sure that you cover all intended purposes.</u></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>
Type of Personal Data <u>being processed</u>	<p><u>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</u></p>
Categories of Data Subject	<p><u>[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]</u></p>
Plan for return and destruction of the data	<p><u>[Describe how long the data will be retained for, how it be returned or destroyed]</u></p>

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Description	Details
once the processing is complete UNLESS requirement under law to preserve that type of data	
Locations at which the Supplier and/or its Sub-contractors process Personal Data under this Contract <u>and international transfers and legal gateway</u>	<p>[Clearly identify each location][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]</p>
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 data) or a <u>Personal Data Breach</u> <u>Loss Event</u>	<p>[Please be as specific as possible]</p>

Annex 1: Joint Controller Agreement

41. 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 1 (*Joint Controller Agreement*) in replacement of Clause 21.2-21.15 (*Where one Party is Controller and the other Party is Processor*) and 21.17-24.28 (*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/Authority]:
- 1.2.1 is the exclusive point of contact for Data Subjects and is responsible for all steps necessary 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 Joint Controller Agreement (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/Authority'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 Data Controller.

22. Undertakings of Both Parties

- 2.1 The Supplier and the Authority each undertake that they shall:
- 2.1.1 report to the other Party every [x] months on:
 - 1-(a) the volume of Data Subject Access Requests (or purported Data Subject Access Requests) from Data Subjects (or third parties on their behalf);
 - (##)(b) the volume of requests from Data Subjects (or third parties on their behalf) to rectify, block or erase any Personal Data;

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~~(ss)~~(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;

~~(tt)~~(d) any communications from the Information Commissioner or any other regulatory authority in connection with Personal Data; and

~~(uu)~~(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 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 2.1.11.5(a) to (e); and
- 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 1.2 ~~and~~ 2.1.11.5(c) to (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 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 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 take all reasonable steps to ensure the reliability and integrity of any of its Personnel who have access to the Personal Data and ensure that its Personnel:
 - 4-(a) are aware of and comply with their duties under this Annex 1 (*Joint Controller Agreement*) and those in respect of Confidential Information
 - ~~(vv)~~(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 that Party would not be permitted to do so;

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~~(ww)(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 Data Loss Event having taken account of the:

~~1-(a)~~ nature of the data to be protected;

~~(xx)(b)~~ harm that might result from a Data Loss Event;

~~(yy)(c)~~ state of technological development; and

~~(zz)(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;

2.1.10 ensure that it notifies the other Party as soon as it becomes aware of a Data 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:

~~1-(a)~~ the destination country has been recognised as adequate by the UK government is 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 UK EU GDPR or DPA 2018 Section 73;(where applicable); or

~~(aaa)(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 or International Data Transfer Agreement Addendum to the European Commission's SCCs as published by the Information Commissioner's Office and as set out in Annex 2 to ~~Schedule 31 (Processing Personal Data)~~ Schedule 31 ~~(Processing Personal Data)~~ (as appropriate), as well as any additional measures;

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

(i) the UK 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 [and as set out in Annex 2 to Schedule 31 (Processing Personal Data)] [Guidance: see guidance notes and

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Annex 2 for an explanation of these options]; or

- (ii) 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] OR [set out in Annex 3 to Schedule 31 (Processing Personal Data) [Guidance: see guidance notes and Annex 3 for an explanation of these options] [Guidance: see guidance notes and Annex 3 for an explanation of these options] (the “EU SCCs”), together with the UK International Data Transfer Agreement Addendum to the EU SCCs (the “Addendum”) [or such updated version of such Addendum as is published by the Information Commissioner’s Office under section 119A(1) of the DPA 2018 from time to time] OR [and as set out in Annex 2 to Schedule 31 (Processing Personal Data)] [Guidance: see guidance notes and Annex 2 for an explanation of these options]; and/or

(B) 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;

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

(ccc)(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

(ddd)(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

~~2.1.12 where the Personal Data 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:~~

~~(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 set out in Annex 3 to Schedule 31 (Processing Personal Data) as well as any additional measures;~~

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

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- ~~(d) — the transferring Party complies with its obligations under the EU GDPR 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.~~

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

33. 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 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 other Party 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:

- ~~1.(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;
- ~~(f)(b)~~ (b) co-operation with the other Party including taking such reasonable steps as are directed by the Authority to assist in the investigation, mitigation and remediation of a Personal Data Breach Loss Event;
- ~~(g)(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;
- ~~(h)(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 take all steps to restore, re-constitute and/or reconstruct any Personal Data where it has lost, damaged, destroyed, altered or corrupted as a result of a Personal Data Breach Data 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,

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including providing the other Party, as soon as possible and within 48 hours of the ~~Personal Data BreachLoss Event~~ relating to the ~~Personal Data BreachLoss Event~~, in particular:

- 3.2.1 the nature of the ~~Personal Data BreachLoss 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 BreachLoss Event~~; and
- 3.2.6 describe the likely consequences of the ~~Personal Data BreachLoss Event~~.

44. Audit

- 4.1 The Supplier shall permit:
 - 4.1.1 the Authority, or a third-party auditor acting under the Authority's direction, to conduct, at the Authority'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 1 and the Data Protection Legislation.
 - 4.1.2 the Authority, or a third-party auditor acting under the Authority'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 of the UK GDPR by the Supplier so far as relevant to the Contract, and procedures, including premises under the control of any third party appointed by the Supplier to assist in the provision of the Services.
- 4.2 The Authority 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.

55. Impact Assessments

- 5.1 The Parties shall:
 - 5.1.1 provide all reasonable assistance to each other to prepare any Data Protection Impact Assessment as may be required (including provision of detailed information and assessments in relation to processing operations, risks and measures);
 - 5.1.2 maintain full and complete records of all Processing carried out in respect of the Personal Data in connection with this Contract, in accordance with the terms of Article 30 of the UK GDPR.

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66. ICO Guidance

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

77. Liabilities for Data Protection Breach

[Guidance note: 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 Authority or the Supplier for a Personal-Data BreachLoss Event (“**Financial Penalties**”) then the following shall occur:
- 7.1.1 If in the view of the Information Commissioner, the Authority is responsible for the Personal-Data BreachLoss Event, in that it is caused as a result of the actions or inaction of the Authority, its employees, agents, contractors (other than the Supplier) or systems and procedures controlled by the Authority, then the Authority shall be responsible for the payment of such Financial Penalties. In this case, the Authority will conduct an internal audit and engage at its reasonable cost when necessary, an independent third party to conduct an audit of any such data incident. The Supplier shall provide to the Authority 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 data incident;
- 7.1.2 If in the view of the Information Commissioner, the Supplier is responsible for the Personal-Data BreachLoss Event, in that it is not a breach that the Authority is responsible for, then the Supplier shall be responsible for the payment of these Financial Penalties. The Supplier will provide to the Authority and its auditors, on request and at the Supplier's sole cost, full cooperation and access to conduct a thorough audit of such data incident; or
- 7.1.3 If no view as to responsibility is expressed by the Information Commissioner, then the Authority and the Supplier shall work together to investigate the relevant data incident 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 BreachLoss 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 Schedule 23 (Dispute Resolution Procedure).
- 7.2 If either the Authority 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 BreachLoss 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 BreachLoss Event shall be liable for the losses arising from such breach. Where both Parties are

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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 BreachLoss Event** (the “**Claim Losses**”):

7.3.1 if the Authority is responsible for the relevant breach, then the Authority shall be responsible for the Claim Losses;

7.3.2 if the Supplier is responsible for the relevant breach, then the Supplier shall be responsible for the Claim Losses; and

7.3.3 if responsibility is unclear, then the Authority and the Supplier shall be responsible for the Claim Losses equally.

7.4 Nothing in Paragraphs 7.2-7.3 shall preclude the Authority 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 BreachLoss Event**, having regard to all the circumstances of the breach and the legal and financial obligations of the Authority.

88. Termination

8.1 If the Supplier is in material Default under any of its obligations under this Annex 1 (*Joint Controller Agreement*), the Authority shall be entitled to terminate this Contract by issuing a Termination Notice to the Supplier in accordance with Clause 31 (*Termination Rights*).

99. Sub-Processing

9.1 In respect of any Processing of Personal performed by a third party on behalf of a Party, that Party shall:

9.1.1 carry out adequate due diligence on such third party to ensure that it is capable of providing the level of protection for the Personal Data as is required by this Contract, and provide evidence of such due diligence to the other Party where reasonably requested; and

9.1.2 ensure that a suitable agreement is in place with the third party as required under applicable Data Protection Legislation.

1010. Data Retention

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

Annex 2: International Data Transfer Agreement and International Data Transfer Agreement Addendum to the EU Commission Standard Contractual Clauses

Part A: International Data Transfer Agreement

[Guidance: Delete this Annex and replace with the text 'NOT USED' if the Authority has chosen to refer out to the IDTA, rather than incorporating the text, that is, by selecting the first set of square brackets in Clause 21 of the Core Terms and in this Schedule.]



Information Commissioner's Office

Standard Data Protection Clauses to be issued by the Commissioner under S119A(1) Data Protection Act 2018

International Data Transfer Agreement

VERSION A1.0, in force 21 March 2022

This IDTA has been issued by the Information Commissioner for Parties making Restricted Transfers. The Information Commissioner considers that it provides Appropriate Safeguards for Restricted Transfers when it is entered into as a legally binding contract.

Part 1: Tables

Table 1: Parties and signatures

Start date		
The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)
Parties' details	Full legal name: Trading name (if different): Main address (if a company registered address): Official registration number (if any) (company number or similar identifier):	Full legal name: Trading name (if different): Main address (if a company registered address): Official registration number (if any) (company number or similar identifier):
Key Contact	Full Name (optional):	Full Name (optional):

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The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)
	Job Title: Contact details including email:	Job Title: Contact details including email:
Importer Data Subject Contact		Job Title: Contact details including email:
Signatures confirming each Party agrees to be bound by this IDTA	Signed for and on behalf of the Exporter set out above Signed: Date of signature: Full name: Job title: <input type="text"/>	Signed for and on behalf of the Importer set out above Signed: Date of signature: Full name: Job title: <input type="text"/>

Table 2: Transfer Details

UK country's law that governs the IDTA:	England and Wales Northern Ireland Scotland
Primary place for legal claims to be made by the Parties	England and Wales Northern Ireland Scotland
The status of the Exporter	In relation to the Processing of the Transferred Data: Exporter is a Controller Exporter is a Processor or Sub-Processor
The status of the Importer	In relation to the Processing of the Transferred Data: Importer is a Controller Importer is the Exporter's Processor or Sub-Processor Importer is not the Exporter's Processor or Sub-Processor (and the Importer has been instructed by a Third Party Controller)
Whether UK GDPR applies to the Importer	UK GDPR applies to the Importer's Processing of the Transferred Data UK GDPR does not apply to the Importer's Processing of the Transferred Data
Linked Agreement	If the Importer is the Exporter's Processor or Sub-Processor – the agreement(s) between the Parties which sets out the Processor's or Sub-Processor's instructions for Processing the Transferred Data: Name of agreement: Date of agreement:

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	<p>Parties to the agreement:</p> <p>Reference (if any):</p> <p>Other agreements – any agreement(s) between the Parties which set out additional obligations in relation to the Transferred Data, such as a data sharing agreement or service agreement:</p> <p>Name of agreement:</p> <p>Date of agreement:</p> <p>Parties to the agreement:</p> <p>Reference (if any):</p> <p>If the Exporter is a Processor or Sub-Processor – the agreement(s) between the Exporter and the Party(s) which sets out the Exporter's instructions for Processing the Transferred Data:</p> <p>Name of agreement:</p> <p>Date of agreement:</p> <p>Parties to the agreement:</p> <p>Reference (if any): [REDACTED]</p>
Term	<p>The Importer may Process the Transferred Data for the following time period:</p> <p>the period for which the Linked Agreement is in force</p> <p>time period:</p> <p>(only if the Importer is a Controller or not the Exporter's Processor or Sub-Processor) no longer than is necessary for the Purpose.</p>
Ending the IDTA before the end of the Term	<p>the Parties cannot end the IDTA before the end of the Term unless there is a breach of the IDTA or the Parties agree in writing.</p> <p>the Parties can end the IDTA before the end of the Term by serving: [REDACTED] months' written notice, as set out in Section 29 (How to end this IDTA without there being a breach).</p>
Ending the IDTA when the Approved IDTA changes	<p>Which Parties may end the IDTA as set out in Section 29.2:</p> <p>Importer</p> <p>Exporter</p> <p>neither Party</p>
Can the Importer make further transfers of the Transferred Data?	<p>The Importer MAY transfer on the Transferred Data to another organisation or person (who is a different legal entity) in accordance with Section 16.1 (Transferring on the Transferred Data).</p> <p>The Importer MAY NOT transfer on the Transferred Data to another organisation or person (who is a different legal entity) in accordance with Section 16.1 (Transferring on the Transferred Data).</p>

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Specific restrictions when the Importer may transfer on the Transferred Data	<p>The Importer MAY ONLY forward the Transferred Data in accordance with Section 16.1:</p> <p>if the Exporter tells it in writing that it may do so.</p> <p>to:</p> <p>to the authorised receivers (or the categories of authorised receivers) set out in:</p> <p>there are no specific restrictions.</p>
Review Dates	<p><input type="checkbox"/> No review is needed as this is a one-off transfer and the Importer does not retain any Transferred Data</p> <p>First review date: [REDACTED]</p> <p>The Parties must review the Security Requirements at least once:</p> <p>each [REDACTED] month(s)</p> <p>each quarter</p> <p>each 6 months</p> <p>each year</p> <p>each [REDACTED] year(s)</p> <p>each time there is a change to the Transferred Data, Purposes, Importer Information, TRA or risk assessment</p>

Table 3: Transferred Data

Transferred Data	<p>The personal data to be sent to the Importer under this IDTA consists of:</p> <p>The categories of Transferred Data will update automatically if the information is updated in the Linked Agreement referred to.</p> <p>The categories of Transferred Data will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.</p>
Special Categories of Personal Data and criminal convictions and offences	<p>The Transferred Data includes data relating to:</p> <p>racial or ethnic origin</p> <p>political opinions</p> <p>religious or philosophical beliefs</p> <p>trade union membership</p> <p>genetic data</p> <p>biometric data for the purpose of uniquely identifying a natural person</p> <p>physical or mental health</p> <p>sex life or sexual orientation</p> <p>criminal convictions and offences</p> <p>none of the above</p>

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	<p>set out in:</p> <p>And:</p> <p>The categories of special category and criminal records data will update automatically if the information is updated in the Linked Agreement referred to.</p> <p>The categories of special category and criminal records data will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.</p>
Relevant Data Subjects	<p>The Data Subjects of the Transferred Data are:</p> <p>The categories of Data Subjects will update automatically if the information is updated in the Linked Agreement referred to.</p> <p>The categories of Data Subjects will not update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.</p>
Purpose	<p>The Importer may Process the Transferred Data for the following purposes:</p> <p>The Importer may Process the Transferred Data for the purposes set out in:</p> <p>In both cases, any other purposes which are compatible with the purposes set out above.</p> <p>The purposes will update automatically if the information is updated in the Linked Agreement referred to.</p> <p>The purposes will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.</p>

Table 4: Security Requirements

Security of Transmission	
Security of Storage	
Security of Processing	
Organisational security measures	
Technical security minimum requirements	
Updates to the Security Requirements	The Security Requirements will update automatically if the information is updated in the Linked Agreement referred to.

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	The Security Requirements will NOT update automatically if the information is updated in the Linked Agreement referred to. The Parties must agree a change under Section 5.3.
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Part 2: Extra Protection Clauses

Extra Protection Clauses:	
(i) Extra technical security protections	
(ii) Extra organisational protections	
(iii) Extra contractual protections	

Part 3: Commercial Clauses

Commercial Clauses	
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Part 4: Mandatory Clauses

Information that helps you to understand this IDTA

41. This IDTA and Linked Agreements

- 1.1 Each Party agrees to be bound by the terms and conditions set out in the IDTA, in exchange for the other Party also agreeing to be bound by the IDTA.
- 1.2 This IDTA is made up of:
 - 1.2.1 Part one: Tables;
 - 1.2.2 Part two: Extra Protection Clauses;
 - 1.2.3 Part three: Commercial Clauses; and
 - 1.2.4 Part four: Mandatory Clauses.
- 1.3 The IDTA starts on the Start Date and ends as set out in Sections 29 or 30.
- 1.4 If the Importer is a Processor or Sub-Processor instructed by the Exporter: the Exporter must ensure that, on or before the Start Date and during the Term, there is a Linked Agreement which is enforceable between the Parties and which complies with Article 28 UK GDPR (and which they will ensure continues to comply with Article 28 UK GDPR).
- 1.5 References to the Linked Agreement or to the Commercial Clauses are to that Linked Agreement or to those Commercial Clauses only in so far as they are consistent with the Mandatory Clauses.

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22. Legal Meaning of Words

- 2.1 If a word starts with a capital letter it has the specific meaning set out in the Legal Glossary in Section 36.
- 2.2 To make it easier to read and understand, this IDTA contains headings and guidance notes. Those are not part of the binding contract which forms the IDTA.

33. You have provided all the information required

- 3.1 The Parties must ensure that the information contained in Part one: Tables is correct and complete at the Start Date and during the Term.
- 3.2 In Table 2: Transfer Details, if the selection that the Parties are Controllers, Processors or Sub-Processors is wrong (either as a matter of fact or as a result of applying the UK Data Protection Laws) then:
 - 3.2.1 the terms and conditions of the Approved IDTA which apply to the correct option which was not selected will apply; and
 - 3.2.2 the Parties and any Relevant Data Subjects are entitled to enforce the terms and conditions of the Approved IDTA which apply to that correct option.
- 3.3 In Table 2: Transfer Details, if the selection that the UK GDPR applies is wrong (either as a matter of fact or as a result of applying the UK Data Protection Laws), then the terms and conditions of the IDTA will still apply to the greatest extent possible.

44. How to sign the IDTA

- 4.1 The Parties may choose to each sign (or execute):
 - 4.1.1 the same copy of this IDTA;
 - 4.1.2 two copies of the IDTA. In that case, each identical copy is still an original of this IDTA, and together all those copies form one agreement;
 - 4.1.3 a separate, identical copy of the IDTA. In that case, each identical copy is still an original of this IDTA, and together all those copies form one agreement,unless signing (or executing) in this way would mean that the IDTA would not be binding on the Parties under Local Laws.

55. Changing this IDTA

- 5.1 Each Party must not change the Mandatory Clauses as set out in the Approved IDTA, except only:
 - 5.1.1 to ensure correct cross-referencing: cross-references to Part one: Tables (or any Table), Part two: Extra Protections, and/or Part three: Commercial Clauses can be changed where the Parties have set out the information in a different format, so that the cross-reference is to the correct location of the same information, or where clauses have been removed as they do not apply, as set out below;
 - 5.1.2 to remove those Sections which are expressly stated not to apply to the

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selections made by the Parties in Table 2: Transfer Details, that the Parties are Controllers, Processors or Sub-Processors and/or that the Importer is subject to, or not subject to, the UK GDPR. The Exporter and Importer understand and acknowledge that any removed Sections may still apply and form a part of this IDTA if they have been removed incorrectly, including because the wrong selection is made in Table 2: Transfer Details;

5.1.3 so the IDTA operates as a multi-party agreement if there are more than two Parties to the IDTA. This may include nominating a lead Party or lead Parties which can make decisions on behalf of some or all of the other Parties which relate to this IDTA (including reviewing Table 4: Security Requirements and Part two: Extra Protection Clauses, and making updates to Part one: Tables (or any Table), Part two: Extra Protection Clauses, and/or Part three: Commercial Clauses); and/or

5.1.4 to update the IDTA to set out in writing any changes made to the Approved IDTA under Section 5.4, if the Parties want to. The changes will apply automatically without updating them as described in Section 5.4;

provided that the changes do not reduce the Appropriate Safeguards.

5.2 If the Parties wish to change the format of the information included in Part one: Tables, Part two: Extra Protection Clauses or Part three: Commercial Clauses of the Approved IDTA, they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.

5.3 If the Parties wish to change the information included in Part one: Tables, Part two: Extra Protection Clauses or Part three: Commercial Clauses of this IDTA (or the equivalent information), they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.

5.4 From time to time, the ICO may publish a revised Approved IDTA which:

5.4.1 makes reasonable and proportionate changes to the Approved IDTA, including correcting errors in the Approved IDTA; and/or

5.4.2 reflects changes to UK Data Protection Laws.

The revised Approved IDTA will specify the start date from which the changes to the Approved IDTA are effective and whether an additional Review Date is required as a result of the changes. This IDTA is automatically amended as set out in the revised Approved IDTA from the start date specified.

66. Understanding this IDTA

6.1 This IDTA must always be interpreted in a manner that is consistent with UK Data Protection Laws and so that it fulfils the Parties' obligation to provide the Appropriate Safeguards.

6.2 If there is any inconsistency or conflict between UK Data Protection Laws and this IDTA, the UK Data Protection Laws apply.

6.3 If the meaning of the IDTA is unclear or there is more than one meaning, the meaning which most closely aligns with the UK Data Protection Laws applies.

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- 6.4 Nothing in the IDTA (including the Commercial Clauses or the Linked Agreement) limits or excludes either Party's liability to Relevant Data Subjects or to the ICO under this IDTA or under UK Data Protection Laws.
- 6.5 If any wording in Parts one, two or three contradicts the Mandatory Clauses, and/or seeks to limit or exclude any liability to Relevant Data Subjects or to the ICO, then that wording will not apply.
- 6.6 The Parties may include provisions in the Linked Agreement which provide the Parties with enhanced rights otherwise covered by this IDTA. These enhanced rights may be subject to commercial terms, including payment, under the Linked Agreement, but this will not affect the rights granted under this IDTA.
- 6.7 If there is any inconsistency or conflict between this IDTA and a Linked Agreement or any other agreement, this IDTA overrides that Linked Agreement or any other agreements, even if those agreements have been negotiated by the Parties. The exceptions to this are where (and in so far as):
- 6.7.1 the inconsistent or conflicting terms of the Linked Agreement or other agreement provide greater protection for the Relevant Data Subject's rights, in which case those terms will override the IDTA; and
 - 6.7.2 a Party acts as Processor and the inconsistent or conflicting terms of the Linked Agreement are obligations on that Party expressly required by Article 28 UK GDPR, in which case those terms will override the inconsistent or conflicting terms of the IDTA in relation to Processing by that Party as Processor.
- 6.8 The words "include", "includes", "including", "in particular" are used to set out examples and not to set out a finite list.
- 6.9 References to:
- 6.9.1 singular or plural words or people, also includes the plural or singular of those words or people;
 - 6.9.2 legislation (or specific provisions of legislation) means that legislation (or specific provision) as it may change over time. This includes where that legislation (or specific provision) has been consolidated, re-enacted and/or replaced after this IDTA has been signed; and
 - 6.9.3 any obligation not to do something, includes an obligation not to allow or cause that thing to be done by anyone else.

77. Which laws apply to this IDTA

- 7.1 This IDTA is governed by the laws of the UK country set out in Table 2: Transfer Details. If no selection has been made, it is the laws of England and Wales. This does not apply to Section 35 which is always governed by the laws of England and Wales.

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How this IDTA provides Appropriate Safeguards

88. The Appropriate Safeguards

- 8.1 The purpose of this IDTA is to ensure that the Transferred Data has Appropriate Safeguards when Processed by the Importer during the Term. This standard is met when and for so long as:
 - 8.1.1 both Parties comply with the IDTA, including the Security Requirements and any Extra Protection Clauses; and
 - 8.1.2 the Security Requirements and any Extra Protection Clauses provide a level of security which is appropriate to the risk of a ~~Personal Data Breach~~ Loss Event occurring and the impact on Relevant Data Subjects of such a ~~Personal Data Breach~~ Loss Event, including considering any Special Category Data within the Transferred Data.
- 8.2 The Exporter must:
 - 8.2.1 ensure and demonstrate that this IDTA (including any Security Requirements and Extra Protection Clauses) provides Appropriate Safeguards; and
 - 8.2.2 (if the Importer reasonably requests) provide it with a copy of any TRA.
- 8.3 The Importer must:
 - 8.3.1 before receiving any Transferred Data, provide the Exporter with all relevant information regarding Local Laws and practices and the protections and risks which apply to the Transferred Data when it is Processed by the Importer, including any information which may reasonably be required for the Exporter to carry out any TRA (the "Importer Information");
 - 8.3.2 co-operate with the Exporter to ensure compliance with the Exporter's obligations under the UK Data Protection Laws;
 - 8.3.3 review whether any Importer Information has changed, and whether any Local Laws contradict its obligations in this IDTA and take reasonable steps to verify this, on a regular basis. These reviews must be at least as frequent as the Review Dates; and
 - 8.3.4 inform the Exporter as soon as it becomes aware of any Importer Information changing, and/or any Local Laws which may prevent or limit the Importer complying with its obligations in this IDTA. This information then forms part of the Importer Information.
- 8.4 The Importer must ensure that at the Start Date and during the Term:
 - 8.4.1 the Importer Information is accurate;
 - 8.4.2 it has taken reasonable steps to verify whether there are any Local Laws which contradict its obligations in this IDTA or any additional information regarding Local Laws which may be relevant to this IDTA.
- 8.5 Each Party must ensure that the Security Requirements and Extra Protection Clauses provide a level of security which is appropriate to the risk of a ~~Personal Data Breach~~ Loss

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Event occurring and the impact on Relevant Data Subjects of such a ~~Personal Data Breach~~ Loss Event.

99. Reviews to ensure the Appropriate Safeguards continue

9.1 Each Party must:

9.1.1 review this IDTA (including the Security Requirements and Extra Protection Clauses and the Importer Information) at regular intervals, to ensure that the IDTA remains accurate and up to date and continues to provide the Appropriate Safeguards. Each Party will carry out these reviews as frequently as the relevant Review Dates or sooner; and

9.1.2 inform the other party in writing as soon as it becomes aware if any information contained in either this IDTA, any TRA or Importer Information is no longer accurate and up to date.

9.2 If, at any time, the IDTA no longer provides Appropriate Safeguards the Parties must Without Undue Delay:

9.2.1 pause transfers and Processing of Transferred Data whilst a change to the Tables is agreed. The Importer may retain a copy of the Transferred Data during this pause, in which case the Importer must carry out any Processing required to maintain, so far as possible, the measures it was taking to achieve the Appropriate Safeguards prior to the time the IDTA no longer provided Appropriate Safeguards, but no other Processing;

9.2.2 agree a change to Part one: Tables or Part two: Extra Protection Clauses which will maintain the Appropriate Safeguards (in accordance with Section 5); and

9.2.3 where a change to Part one: Tables or Part two: Extra Protection Clauses which maintains the Appropriate Safeguards cannot be agreed, the Exporter must end this IDTA by written notice on the Importer.

1010. The ICO

10.1 Each Party agrees to comply with any reasonable requests made by the ICO in relation to this IDTA or its Processing of the Transferred Data.

10.2 The Exporter will provide a copy of any TRA, the Importer Information and this IDTA to the ICO, if the ICO requests.

10.3 The Importer will provide a copy of any Importer Information and this IDTA to the ICO, if the ICO requests.

The Exporter

1111. Exporter's obligations

11.1 The Exporter agrees that UK Data Protection Laws apply to its Processing of the Transferred Data, including transferring it to the Importer.

11.2 The Exporter must:

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- 11.2.1 comply with the UK Data Protection Laws in transferring the Transferred Data to the Importer;
 - 11.2.2 comply with the Linked Agreement as it relates to its transferring the Transferred Data to the Importer; and
 - 11.2.3 carry out reasonable checks on the Importer's ability to comply with this IDTA, and take appropriate action including under Section 9.2, Section 29 or Section 30, if at any time it no longer considers that the Importer is able to comply with this IDTA or to provide Appropriate Safeguards.
- 11.3 The Exporter must comply with all its obligations in the IDTA, including any in the Security Requirements, and any Extra Protection Clauses and any Commercial Clauses.
- 11.4 The Exporter must co-operate with reasonable requests of the Importer to pass on notices or other information to and from Relevant Data Subjects or any Third Party Controller where it is not reasonably practical for the Importer to do so. The Exporter may pass these on via a third party if it is reasonable to do so.
- 11.5 The Exporter must co-operate with and provide reasonable assistance to the Importer, so that the Importer is able to comply with its obligations to the Relevant Data Subjects under Local Law and this IDTA.

The Importer

12.12. General Importer obligations

- 12.1 The Importer must:
- 12.1.1 only Process the Transferred Data for the Purpose;
 - 12.1.2 comply with all its obligations in the IDTA, including in the Security Requirements, any Extra Protection Clauses and any Commercial Clauses;
 - 12.1.3 comply with all its obligations in the Linked Agreement which relate to its Processing of the Transferred Data;
 - 12.1.4 keep a written record of its Processing of the Transferred Data, which demonstrate its compliance with this IDTA, and provide this written record if asked to do so by the Exporter;
 - 12.1.5 if the Linked Agreement includes rights for the Exporter to obtain information or carry out an audit, provide the Exporter with the same rights in relation to this IDTA; and
 - 12.1.6 if the ICO requests, provide the ICO with the information it would be required on request to provide to the Exporter under this Section 12.1 (including the written record of its Processing, and the results of audits and inspections).
- 12.2 The Importer must co-operate with and provide reasonable assistance to the Exporter and any Third Party Controller, so that the Exporter and any Third Party Controller are able to comply with their obligations under UK Data Protection Laws and this IDTA.

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1313. Importer's obligations if it is subject to the UK Data Protection Laws

- 13.1 If the Importer's Processing of the Transferred Data is subject to UK Data Protection Laws, it agrees that:
- 13.1.1 UK Data Protection Laws apply to its Processing of the Transferred Data, and the ICO has jurisdiction over it in that respect; and
 - 13.1.2 it has and will comply with the UK Data Protection Laws in relation to the Processing of the Transferred Data.
- 13.2 If Section 13.1 applies and the Importer complies with Section 13.1, it does not need to comply with:
- 13.2.1 Section 14 (Importer's obligations to comply with key data protection principles);
 - 13.2.2 Section 15 (What happens if there is an Importer ~~Personal Data Breach~~Loss Event);
 - 13.2.3 Section 15 (How Relevant Data Subjects can exercise their data subject rights); and
 - 13.2.4 Section 21 (How Relevant Data Subjects can exercise their data subject rights – if the Importer is the Exporter's Processor or Sub-Processor).

1414. Importer's obligations to comply with key data protection principles

- 14.1 The Importer does not need to comply with this Section 14 if it is the Exporter's Processor or Sub-Processor.
- 14.2 The Importer must:
- 14.2.1 ensure that the Transferred Data it Processes is adequate, relevant and limited to what is necessary for the Purpose;
 - 14.2.2 ensure that the Transferred Data it Processes is accurate and (where necessary) kept up to date, and (where appropriate considering the Purposes) correct or delete any inaccurate Transferred Data it becomes aware of Without Undue Delay; and
 - 14.2.3 ensure that it Processes the Transferred Data for no longer than is reasonably necessary for the Purpose.

1515. What happens if there is an Importer ~~Personal Data Breach~~Loss Event

- 15.1 If there is an Importer ~~Personal Data Breach~~Loss Event, the Importer must:
- 15.1.1 take reasonable steps to fix it, including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again. If the Importer is the Exporter's Processor or Sub-Processor: these steps must comply with the Exporter's instructions and the Linked Agreement and be in co-operation with the Exporter and any Third Party Controller; and
 - 15.1.2 ensure that the Security Requirements continue to provide (or are changed

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in accordance with this IDTA so they do provide) a level of security which is appropriate to the risk of a **Personal-Data BreachLoss Event** occurring and the impact on Relevant Data Subjects of such a **Personal-Data BreachLoss Event**.

- 15.2 If the Importer is a Processor or Sub-Processor: if there is an Importer **Personal-Data BreachLoss Event**, the Importer must:
- 15.2.1 notify the Exporter Without Undue Delay after becoming aware of the breach, providing the following information:
- (i)(a) a description of the nature of the Importer **Personal-Data BreachLoss Event**;
 - (ii)(b) (if and when possible) the categories and approximate number of Data Subjects and Transferred Data records concerned;
 - (iii)(c) likely consequences of the Importer **Personal-Data BreachLoss Event**;
 - (iv)(d) steps taken (or proposed to be taken) to fix the Importer **Personal-Data BreachLoss Event** (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Appropriate Safeguards are in place;
 - (v)(e) contact point for more information; and
 - (vi)(f) any other information reasonably requested by the Exporter,
- 15.2.2 if it is not possible for the Importer to provide all the above information at the same time, it may do so in phases, Without Undue Delay; and
- 15.2.3 assist the Exporter (and any Third Party Controller) so the Exporter (or any Third Party Controller) can inform Relevant Data Subjects or the ICO or any other relevant regulator or authority about the Importer **Personal-Data BreachLoss Event** Without Undue Delay.
- 15.3 If the Importer is a Controller: if the Importer **Personal-Data BreachLoss Event** is likely to result in a risk to the rights or freedoms of any Relevant Data Subject the Importer must notify the Exporter Without Undue Delay after becoming aware of the breach, providing the following information:
- 15.3.1 a description of the nature of the Importer **Personal-Data BreachLoss Event**;
- 15.3.2 (if and when possible) the categories and approximate number of Data Subjects and Transferred Data records concerned;
- 15.3.3 likely consequences of the Importer **Personal-Data BreachLoss Event**;
- 15.3.4 steps taken (or proposed to be taken) to fix the Importer **Personal-Data BreachLoss Event** (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Appropriate Safeguards are in place;
- 15.3.5 contact point for more information; and

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15.3.6 any other information reasonably requested by the Exporter.

If it is not possible for the Importer to provide all the above information at the same time, it may do so in phases, Without Undue Delay.

15.4 If the Importer is a Controller: if the Importer ~~Personal-Data BreachLoss Event~~ is likely to result in a high risk to the rights or freedoms of any Relevant Data Subject, the Importer must inform those Relevant Data Subjects Without Undue Delay, except in so far as it requires disproportionate effort, and provided the Importer ensures that there is a public communication or similar measures whereby Relevant Data Subjects are informed in an equally effective manner.

15.5 The Importer must keep a written record of all relevant facts relating to the Importer ~~Personal-Data BreachLoss Event~~, which it will provide to the Exporter and the ICO on request.

This record must include the steps it takes to fix the Importer ~~Personal-Data BreachLoss Event~~ (including to minimise the harmful effects on Relevant Data Subjects, stop it from continuing, and prevent it happening again) and to ensure that Security Requirements continue to provide a level of security which is appropriate to the risk of a ~~Personal-Data BreachLoss Event~~ occurring and the impact on Relevant Data Subjects of such a ~~Personal-Data BreachLoss Event~~.

4616. Transferring on the Transferred Data

16.1 The Importer may only transfer on the Transferred Data to a third party if it is permitted to do so in Table 2: Transfer Details Table, the transfer is for the Purpose, the transfer does not breach the Linked Agreement, and one or more of the following apply:

16.1.1 the third party has entered into a written contract with the Importer containing the same level of protection for Data Subjects as contained in this IDTA (based on the role of the recipient as controller or processor), and the Importer has conducted a risk assessment to ensure that the Appropriate Safeguards will be protected by that contract; or

16.1.2 the third party has been added to this IDTA as a Party; or

16.1.3 if the Importer was in the UK, transferring on the Transferred Data would comply with Article 46 UK GDPR; or

16.1.4 if the Importer was in the UK transferring on the Transferred Data would comply with one of the exceptions in Article 49 UK GDPR; or

16.1.5 the transfer is to the UK or an Adequate Country.

16.2 The Importer does not need to comply with Section 16.1 if it is transferring on Transferred Data and/or allowing access to the Transferred Data in accordance with Section 23 (Access Requests and Direct Access).

4717. Importer's responsibility if it authorises others to perform its obligations

17.1 The Importer may sub-contract its obligations in this IDTA to a Processor or Sub-Processor (provided it complies with Section 16).

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- 17.2 If the Importer is the Exporter's Processor or Sub-Processor: it must also comply with the Linked Agreement or be with the written consent of the Exporter.
- 17.3 The Importer must ensure that any person or third party acting under its authority, including a Processor or Sub-Processor, must only Process the Transferred Data on its instructions.
- 17.4 The Importer remains fully liable to the Exporter, the ICO and Relevant Data Subjects for its obligations under this IDTA where it has sub-contracted any obligations to its Processors and Sub-Processors, or authorised an employee or other person to perform them (and references to the Importer in this context will include references to its Processors, Sub-Processors or authorised persons).

What rights do individuals have?

1818. The right to a copy of the IDTA

- 18.1 If a Party receives a request from a Relevant Data Subject for a copy of this IDTA:
 - 18.1.1 it will provide the IDTA to the Relevant Data Subject and inform the other Party, as soon as reasonably possible;
 - 18.1.2 it does not need to provide copies of the Linked Agreement, but it must provide all the information from those Linked Agreements referenced in the Tables;
 - 18.1.3 it may redact information in the Tables or the information provided from the Linked Agreement if it is reasonably necessary to protect business secrets or confidential information, so long as it provides the Relevant Data Subject with a summary of those redactions so that the Relevant Data Subject can understand the content of the Tables or the information provided from the Linked Agreement.

1919. The right to Information about the Importer and its Processing

- 19.1 The Importer does not need to comply with this Section 19 if it is the Exporter's Processor or Sub-Processor.
- 19.2 The Importer must ensure that each Relevant Data Subject is provided with details of:
 - 19.2.1** the Importer (including contact details and the Importer Data Subject Contact);
 - 19.2.2** the Purposes; and
 - 19.2.3** any recipients (or categories of recipients) of the Transferred Data;

The Importer can demonstrate it has complied with this Section 19.2 if the information is given (or has already been given) to the Relevant Data Subjects by the Exporter or another party.

The Importer does not need to comply with this Section 19.2 in so far as to do so would be impossible or involve a disproportionate effort, in which case, the Importer must make the information publicly available.

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- 19.3 The Importer must keep the details of the Importer Data Subject Contact up to date and publicly available. This includes notifying the Exporter in writing of any such changes.
- 19.4 The Importer must make sure those contact details are always easy to access for all Relevant Data Subjects and be able to easily communicate with Data Subjects in the English language Without Undue Delay.

2020. How Relevant Data Subjects can exercise their data subject rights

- 20.1 The Importer does not need to comply with this Section 20 if it is the Exporter's Processor or Sub-Processor.
- 20.2 If an individual requests, the Importer must confirm whether it is Processing their Personal Data as part of the Transferred Data.
- 20.3 The following Sections of this Section 20, relate to a Relevant Data Subject's Personal Data which forms part of the Transferred Data the Importer is Processing.
- 20.4 If the Relevant Data Subject requests, the Importer must provide them with a copy of their Transferred Data:
- 20.4.1 Without Undue Delay (and in any event within one month);
 - 20.4.2 at no greater cost to the Relevant Data Subject than it would be able to charge if it were subject to the UK Data Protection Laws;
 - 20.4.3 in clear and plain English that is easy to understand; and
 - 20.4.4 in an easily accessible form
- 20.4.5 together with
- 20.4.520.4.6 (if needed) a clear and plain English explanation of the Transferred Data so that it is understandable to the Relevant Data Subject; and
- 20.4.620.4.7 information that the Relevant Data Subject has the right to bring a claim for compensation under this IDTA.
- 20.5 If a Relevant Data Subject requests, the Importer must:
- 20.5.1 rectify inaccurate or incomplete Transferred Data;
 - 20.5.2 erase Transferred Data if it is being Processed in breach of this IDTA;
 - 20.5.3 cease using it for direct marketing purposes; and
 - 20.5.4 comply with any other reasonable request of the Relevant Data Subject, which the Importer would be required to comply with if it were subject to the UK Data Protection Laws.
- 20.6 The Importer must not use the Transferred Data to make decisions about the Relevant Data Subject based solely on automated processing, including profiling (the "Decision-Making"), which produce legal effects concerning the Relevant Data Subject or similarly significantly affects them, except if it is permitted by Local Law and:

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- 20.6.1 the Relevant Data Subject has given their explicit consent to such Decision-Making; or
- 20.6.2 Local Law has safeguards which provide sufficiently similar protection for the Relevant Data Subjects in relation to such Decision-Making, as to the relevant protection the Relevant Data Subject would have if such Decision-Making was in the UK; or
- 20.6.3 the Extra Protection Clauses provide safeguards for the Decision-Making which provide sufficiently similar protection for the Relevant Data Subjects in relation to such Decision-Making, as to the relevant protection the Relevant Data Subject would have if such Decision-Making was in the UK.

2121. How Relevant Data Subjects can exercise their data subject rights– if the Importer is the Exporter’s Processor or Sub-Processor

- 21.1 Where the Importer is the Exporter’s Processor or Sub-Processor: If the Importer receives a request directly from an individual which relates to the Transferred Data it must pass that request on to the Exporter Without Undue Delay. The Importer must only respond to that individual as authorised by the Exporter or any Third Party Controller.

2222. Rights of Relevant Data Subjects are subject to the exemptions in the UK Data Protection Laws

- 22.1 The Importer is not required to respond to requests or provide information or notifications under Sections 18, 19, 20, 21 and 23 if:
 - 22.1.1 it is unable to reasonably verify the identity of an individual making the request; or
 - 22.1.2 the requests are manifestly unfounded or excessive, including where requests are repetitive. In that case the Importer may refuse the request or may charge the Relevant Data Subject a reasonable fee; or
 - 22.1.3 a relevant exemption would be available under UK Data Protection Laws, were the Importer subject to the UK Data Protection Laws.

If the Importer refuses an individual’s request or charges a fee under Section 22.1.2 it will set out in writing the reasons for its refusal or charge, and inform the Relevant Data Subject that they are entitled to bring a claim for compensation under this IDTA in the case of any breach of this IDTA.

How to give third parties access to Transferred Data under Local Laws

2323. Access requests and direct access

- 23.1 In this Section 23 an “Access Request” is a legally binding request (except for requests only binding by contract law) to access any Transferred Data and “Direct Access” means direct access to any Transferred Data by public authorities of which the Importer is aware.
- 23.2 The Importer may disclose any requested Transferred Data in so far as it receives an Access Request, unless in the circumstances it is reasonable for it to challenge that Access Request on the basis there are significant grounds to believe that it is unlawful.

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- 23.3 In so far as Local Laws allow and it is reasonable to do so, the Importer will Without Undue Delay provide the following with relevant information about any Access Request or Direct Access: the Exporter; any Third Party Controller; and where the Importer is a Controller, any Relevant Data Subjects.
- 23.4 In so far as Local Laws allow, the Importer must:
- 23.4.1 make and keep a written record of Access Requests and Direct Access, including (if known): the dates, the identity of the requestor/accessor, the purpose of the Access Request or Direct Access, the type of data requested or accessed, whether it was challenged or appealed, and the outcome; and the Transferred Data which was provided or accessed; and
- 23.4.2 provide a copy of this written record to the Exporter on each Review Date and any time the Exporter or the ICO reasonably requests.

2424. Giving notice

- 24.1 If a Party is required to notify any other Party in this IDTA it will be marked for the attention of the relevant Key Contact and sent by e-mail to the e-mail address given for the Key Contact.
- 24.2 If the notice is sent in accordance with Section 24.1, it will be deemed to have been delivered at the time the e-mail was sent, or if that time is outside of the receiving Party's normal business hours, the receiving Party's next normal business day, and provided no notice of non-delivery or bounceback is received.
- 24.3 The Parties agree that any Party can update their Key Contact details by giving 14 days' (or more) notice in writing to the other Party.

2525. General clauses

- 25.1 In relation to the transfer of the Transferred Data to the Importer and the Importer's Processing of the Transferred Data, this IDTA and any Linked Agreement:
- 25.1.1 contain all the terms and conditions agreed by the Parties; and
- 25.1.2 override all previous contacts and arrangements, whether oral or in writing.
- 25.2 If one Party made any oral or written statements to the other before entering into this IDTA (which are not written in this IDTA) the other Party confirms that it has not relied on those statements and that it will not have a legal remedy if those statements are untrue or incorrect, unless the statement was made fraudulently.
- 25.3 Neither Party may novate, assign or obtain a legal charge over this IDTA (in whole or in part) without the written consent of the other Party, which may be set out in the Linked Agreement.
- 25.4 Except as set out in Section 17.1, neither Party may sub contract its obligations under this IDTA without the written consent of the other Party, which may be set out in the Linked Agreement.
- 25.5 This IDTA does not make the Parties a partnership, nor appoint one Party to act as the agent of the other Party.

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- 25.6 If any Section (or part of a Section) of this IDTA is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity and enforceability of any other Section (or the rest of that Section) of this IDTA.
- 25.7 If a Party does not enforce, or delays enforcing, its rights or remedies under or in relation to this IDTA, this will not be a waiver of those rights or remedies. In addition, it will not restrict that Party's ability to enforce those or any other right or remedy in future.
- 25.8 If a Party chooses to waive enforcing a right or remedy under or in relation to this IDTA, then this waiver will only be effective if it is made in writing. Where a Party provides such a written waiver:
- 25.8.1 it only applies in so far as it explicitly waives specific rights or remedies;
 - 25.8.2 it shall not prevent that Party from exercising those rights or remedies in the future (unless it has explicitly waived its ability to do so); and
 - 25.8.3 it will not prevent that Party from enforcing any other right or remedy in future.

What happens if there is a breach of this IDTA?

2626. Breaches of this IDTA

- 26.1 Each Party must notify the other Party in writing (and with all relevant details) if it:
- 26.1.1 has breached this IDTA; or
 - 26.1.2 it should reasonably anticipate that it may breach this IDTA, and provide any information about this which the other Party reasonably requests.
- 26.2 In this IDTA "Significant Harmful Impact" means that there is more than a minimal risk of a breach of the IDTA causing (directly or indirectly) significant damage to any Relevant Data Subject or the other Party.

2727. Breaches of this IDTA by the Importer

- 27.1 If the Importer has breached this IDTA, and this has a Significant Harmful Impact, the Importer must take steps Without Undue Delay to end the Significant Harmful Impact, and if that is not possible to reduce the Significant Harmful Impact as much as possible.
- 27.2 Until there is no ongoing Significant Harmful Impact on Relevant Data Subjects:
- 27.2.1 the Exporter must suspend sending Transferred Data to the Importer;
 - 27.2.2 If the Importer is the Exporter's Processor or Sub-Processor: if the Exporter requests, the importer must securely delete all Transferred Data or securely return it to the Exporter (or a third party named by the Exporter); and
 - 27.2.3 if the Importer has transferred on the Transferred Data to a third party receiver under Section 16, and the breach has a Significant Harmful Impact on Relevant Data Subject when it is Processed by or on behalf of that third party receiver, the Importer must:

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(i)(a) notify the third party receiver of the breach and suspend sending it Transferred Data; and

(ii)(b) if the third party receiver is the Importer's Processor or Sub-Processor: make the third party receiver securely delete all Transferred Data being Processed by it or on its behalf, or securely return it to the Importer (or a third party named by the Importer).

27.3 If the breach cannot be corrected Without Undue Delay, so there is no ongoing Significant Harmful Impact on Relevant Data Subjects, the Exporter must end this IDTA under Section 30.1.

2828. Breaches of this IDTA by the Exporter

28.1 If the Exporter has breached this IDTA, and this has a Significant Harmful Impact, the Exporter must take steps Without Undue Delay to end the Significant Harmful Impact and if that is not possible to reduce the Significant Harmful Impact as much as possible.

28.2 Until there is no ongoing risk of a Significant Harmful Impact on Relevant Data Subjects, the Exporter must suspend sending Transferred Data to the Importer.

28.3 If the breach cannot be corrected Without Undue Delay, so there is no ongoing Significant Harmful Impact on Relevant Data Subjects, the Importer must end this IDTA under Section 30.1.

Ending the IDTA

2929. How to end this IDTA without there being a breach

29.1 The IDTA will end:

29.1.1 at the end of the Term stated in Table 2: Transfer Details; or

29.1.2 if in Table 2: Transfer Details, the Parties can end this IDTA by providing written notice to the other: at the end of the notice period stated;

29.1.3 at any time that the Parties agree in writing that it will end; or

29.1.4 at the time set out in Section 29.2.

29.2 If the ICO issues a revised Approved IDTA under Section 5.4, if any Party selected in Table 2 "Ending the IDTA when the Approved IDTA changes", will as a direct result of the changes in the Approved IDTA have a substantial, disproportionate and demonstrable increase in:

29.2.1 its direct costs of performing its obligations under the IDTA; and/or

29.2.2 its risk under the IDTA,

and in either case it has first taken reasonable steps to reduce that cost or risk so that it is not substantial and disproportionate, that Party may end the IDTA at the end of a reasonable notice period, by providing written notice for that period to the other Party before the start date of the revised Approved IDTA.

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3030. How to end this IDTA if there is a breach

30.1 A Party may end this IDTA immediately by giving the other Party written notice if:

30.1.1 the other Party has breached this IDTA and this has a Significant Harmful Impact. This includes repeated minor breaches which taken together have a Significant Harmful Impact, and

(i)(a) the breach can be corrected so there is no Significant Harmful Impact, and the other Party has failed to do so Without Undue Delay (which cannot be more than 14 days of being required to do so in writing); or

(ii)(b) the breach and its Significant Harmful Impact cannot be corrected;

30.1.2 the Importer can no longer comply with Section 8.3, as there are Local Laws which mean it cannot comply with this IDTA and this has a Significant Harmful Impact.

3131. What must the Parties do when the IDTA ends?

31.1 If the parties wish to bring this IDTA to an end or this IDTA ends in accordance with any provision in this IDTA, but the Importer must comply with a Local Law which requires it to continue to keep any Transferred Data then this IDTA will remain in force in respect of any retained Transferred Data for as long as the retained Transferred Data is retained, and the Importer must:

31.1.1 notify the Exporter Without Undue Delay, including details of the relevant Local Law and the required retention period;

31.1.2 retain only the minimum amount of Transferred Data it needs to comply with that Local Law, and the Parties must ensure they maintain the Appropriate Safeguards, and change the Tables and Extra Protection Clauses, together with any TRA to reflect this; and

31.1.3 stop Processing the Transferred Data as soon as permitted by that Local Law and the IDTA will then end and the rest of this Section ~~29~~ 31 will apply.

31.2 When this IDTA ends (no matter what the reason is):

31.2.1 the Exporter must stop sending Transferred Data to the Importer; and

31.2.2 if the Importer is the Exporter's Processor or Sub-Processor: the Importer must delete all Transferred Data or securely return it to the Exporter (or a third party named by the Exporter), as instructed by the Exporter;

31.2.3 if the Importer is a Controller and/or not the Exporter's Processor or Sub-Processor: the Importer must securely delete all Transferred Data.

31.2.4 the following provisions will continue in force after this IDTA ends (no matter what the reason is):

•1. Section 1 (This IDTA and Linked Agreements);

•2. Section 2 (Legal Meaning of Words);

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- 3. Section 6 (Understanding this IDTA);
- 4. Section 7 (Which laws apply to this IDTA);
- 5. Section 10 (The ICO);
- 6. Sections 11.1 and 11.4 (Exporter's obligations);
- 7. Sections 12.1.2, 12.1.3, 12.1.4, 12.1.5 and 12.1.6 (General Importer obligations);
- 8. Section 13.1 (Importer's obligations if it is subject to UK Data Protection Laws);
- 9. Section 17 (*Importer's responsibility if it authorised others to perform its obligations*);
- 10. Section 24 (*Giving notice*);
- 11. Section 25 (*General clauses*);
- 12. Section 31 (*What must the Parties do when the IDTA ends*);
- 13. Section 32 (*Your liability*);
- 14. Section 33 (*How Relevant Data Subjects and the ICO may bring legal claims*);
- 15. Section 34 (*Courts legal claims can be brought in*);
- 16. Section 35 (*Arbitration*); and
- 17. Section 36 (*Legal Glossary*).

How to bring a legal claim under this IDTA

32.2. Your liability

- 32.1 The Parties remain fully liable to Relevant Data Subjects for fulfilling their obligations under this IDTA and (if they apply) under UK Data Protection Laws.
- 32.2 Each Party (in this Section, "Party One") agrees to be fully liable to Relevant Data Subjects for the entire damage suffered by the Relevant Data Subject, caused directly or indirectly by:
- 32.2.1 Party One's breach of this IDTA; and/or
 - 32.2.2 where Party One is a Processor, Party One's breach of any provisions regarding its Processing of the Transferred Data in the Linked Agreement;
 - 32.2.3 where Party One is a Controller, a breach of this IDTA by the other Party if it involves Party One's Processing of the Transferred Data (no matter how minimal)

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in each case unless Party One can prove it is not in any way responsible for the event giving rise to the damage.

32.3 If one Party has paid compensation to a Relevant Data Subject under Section 32.2, it is entitled to claim back from the other Party that part of the compensation corresponding to the other Party's responsibility for the damage, so that the compensation is fairly divided between the Parties.

32.4 The Parties do not exclude or restrict their liability under this IDTA or UK Data Protection Laws, on the basis that they have authorised anyone who is not a Party (including a Processor) to perform any of their obligations, and they will remain responsible for performing those obligations.

3333. How Relevant Data Subjects and the ICO may bring legal claims

33.1 The Relevant Data Subjects are entitled to bring claims against the Exporter and/or Importer for breach of the following (including where their Processing of the Transferred Data is involved in a breach of the following by either Party):

- 1. Section 1 (*This IDTA and Linked Agreements*);
- 2. Section 3 (*You have provided all the information required by Part one: Tables and Part two: Extra Protection Clauses*);
- 3. Section 8 (*The Appropriate Safeguards*);
- 4. Section 9 (*Reviews to ensure the Appropriate Safeguards continue*);
- 5. Section 11 (*Exporter's obligations*);
- 6. Section 12 (*General Importer Obligations*);
- 7. Section 13 (*Importer's obligations if it is subject to UK Data Protection Laws*);
- 8. Section 14 (*Importer's obligations to comply with key data protection laws*);
- 9. Section 15 (*What happens if there is an Importer ~~Personal Data Breach~~ Loss Event*);
- 10. Section 16 (*Transferring on the Transferred Data*);
- 11. Section 17 (*Importer's responsibility if it authorises others to perform its obligations*);
- 12. Section 18 (*The right to a copy of the IDTA*);
- 13. Section 19 (*The Importer's contact details for the Relevant Data Subjects*);
- 14. Section 20 (*How Relevant Data Subjects can exercise their data subject rights*);
- 15. Section 21 (*How Relevant Data Subjects can exercise their data subject rights— if the Importer is the Exporter's Processor or Sub-Processor*);
- 16. Section 23 (*Access Requests and Direct Access*);

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- 17. Section 26 (*Breaches of this IDTA*);
- 18. Section 27 (*Breaches of this IDTA by the Importer*);
- 19. Section 28 (*Breaches of this IDTA by the Exporter*);
- 20. Section 30 (*How to end this IDTA if there is a breach*);
- 21. Section 31 (*What must the Parties do when the IDTA ends*); and
- 22. any other provision of the IDTA which expressly or by implication benefits the Relevant Data Subjects.

- 33.2 The ICO is entitled to bring claims against the Exporter and/or Importer for breach of the following Sections: Section 10 (*The ICO*), Sections 11.1 and 11.2 (*Exporter's obligations*), Section 12.1.6 (*General Importer obligations*) and Section 13 (*Importer's obligations if it is subject to UK Data Protection Laws*).
- 33.3 No one else (who is not a Party) can enforce any part of this IDTA (including under the Contracts (Rights of Third Parties) Act 1999).
- 33.4 The Parties do not need the consent of any Relevant Data Subject or the ICO to make changes to this IDTA, but any changes must be made in accordance with its terms.
- 33.5 In bringing a claim under this IDTA, a Relevant Data Subject may be represented by a not-for-profit body, organisation or association under the same conditions set out in Article 80(1) UK GDPR and sections 187 to 190 of the Data Protection Act 2018.

3434. Courts legal claims can be brought in

- 34.1 The courts of the UK country set out in Table 2: Transfer Details have non-exclusive jurisdiction over any claim in connection with this IDTA (including non-contractual claims).
- 34.2 The Exporter may bring a claim against the Importer in connection with this IDTA (including non-contractual claims) in any court in any country with jurisdiction to hear the claim.
- 34.3 The Importer may only bring a claim against the Exporter in connection with this IDTA (including non-contractual claims) in the courts of the UK country set out in the Table 2: Transfer Details
- 34.4 Relevant Data Subjects and the ICO may bring a claim against the Exporter and/or the Importer in connection with this IDTA (including non-contractual claims) in any court in any country with jurisdiction to hear the claim.
- 34.5 Each Party agrees to provide to the other Party reasonable updates about any claims or complaints brought against it by a Relevant Data Subject or the ICO in connection with the Transferred Data (including claims in arbitration).

3535. Arbitration

- 35.1 Instead of bringing a claim in a court under Section 34, any Party, or a Relevant Data Subject may elect to refer any dispute arising out of or in connection with this IDTA (including non-contractual claims) to final resolution by arbitration under the Rules of the

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London Court of International Arbitration, and those Rules are deemed to be incorporated by reference into this Section 35.

- 35.2 The Parties agree to submit to any arbitration started by another Party or by a Relevant Data Subject in accordance with this Section 35.
- 35.3 There must be only one arbitrator. The arbitrator (1) must be a lawyer qualified to practice law in one or more of England and Wales, or Scotland, or Northern Ireland and (2) must have experience of acting or advising on disputes relating to UK Data Protection Laws.
- 35.4 London shall be the seat or legal place of arbitration. It does not matter if the Parties selected a different UK country as the 'primary place for legal claims to be made' in Table 2: Transfer Details.
- 35.5 The English language must be used in the arbitral proceedings.
- 35.6 English law governs this Section 35. This applies regardless of whether or not the parties selected a different UK country's law as the 'UK country's law that governs the IDTA' in Table 2: Transfer Details.

3636. Legal Glossary

Word or Phrase	Legal definition (this is how this word or phrase must be interpreted in the IDTA)
Access Request	As defined in Section 23, as a legally binding request (except for requests only binding by contract law) to access any Transferred Data.
Adequate Country	A third country, or: <ul style="list-style-type: none">•(a) a territory;•(b) one or more sectors or organisations within a third country;•(c) an international organisation; which the Secretary of State has specified by regulations provides an adequate level of protection of Personal Data in accordance with Section 17A of the Data Protection Act 2018.
Appropriate Safeguards	The standard of protection over the Transferred Data and of the Relevant Data Subject's rights, which is required by UK Data Protection Laws when you are making a Restricted Transfer relying on standard data protection clauses under Article 46(2)(d) UK GDPR.
Approved IDTA	The template IDTA A1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 5.4.
Commercial Clauses	The commercial clauses set out in Part three.
Controller	As defined in the UK GDPR.
Damage	All material and non-material loss and damage.
Data Subject	As defined in the UK GDPR.

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Word or Phrase	Legal definition (this is how this word or phrase must be interpreted in the IDTA)
Decision-Making	As defined in Section 20.6, as decisions about the Relevant Data Subjects based solely on automated processing, including profiling, using the Transferred Data.
Direct Access	As defined in Section 23 as direct access to any Transferred Data by public authorities of which the Importer is aware.
Exporter	The exporter identified in Table 1: Parties & Signature.
Extra Protection Clauses	The clauses set out in Part two: Extra Protection Clauses.
ICO	The Information Commissioner.
Importer	The importer identified in Table 1: Parties & Signature.
Importer Data Subject Contact	The Importer Data Subject Contact identified in Table 1: Parties & Signature, which may be updated in accordance with Section 19.
Importer Information	As defined in Section 8.3.1, as all relevant information regarding Local Laws and practices and the protections and risks which apply to the Transferred Data when it is Processed by the Importer, including for the Exporter to carry out any TRA.
Importer Personal Data Breach Loss Event	A 'personal data breach' as defined in UK GDPR, in relation to the Transferred Data when Processed by the Importer.
Linked Agreement	The linked agreements set out in Table 2: Transfer Details (if any).
Local Laws	Laws which are not the laws of the UK and which bind the Importer.
Mandatory Clauses	Part four: Mandatory Clauses of this IDTA.
Notice Period	As set out in Table 2: Transfer Details.
Party/Parties	The parties to this IDTA as set out in Table 1: Parties & Signature.
Personal Data	As defined in the UK GDPR.
Personal Data Breach Loss Event	As defined in the UK GDPR.
Processing	As defined in the UK GDPR. When the IDTA refers to Processing by the Importer, this includes where a third party Sub-Processor of the Importer is Processing on the Importer's behalf.
Processor	As defined in the UK GDPR.
Purpose	The 'Purpose' set out in Table 2: Transfer Details, including any purposes which are not incompatible with the purposes stated or referred to.
Relevant Data Subject	A Data Subject of the Transferred Data.
Restricted Transfer	A transfer which is covered by Chapter V of the UK GDPR

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Word or Phrase	Legal definition (this is how this word or phrase must be interpreted in the IDTA)
Review Dates	The review dates or period for the Security Requirements set out in Table 2: Transfer Details, and any review dates set out in any revised Approved IDTA.
Significant Harmful Impact	As defined in Section 26.2 as where there is more than a minimal risk of the breach causing (directly or indirectly) significant harm to any Relevant Data Subject or the other Party.
Special Category Data	As described in the UK GDPR, together with criminal conviction or criminal offence data.
Start Date	As set out in Table 1: Parties and signature.
Sub-Processor	A Processor appointed by another Processor to Process Personal Data on its behalf. This includes Sub-Processors of any level, for example a Sub-Sub-Processor.
Tables	The Tables set out in Part one of this IDTA.
Term	As set out in Table 2: Transfer Details.
Third Party Controller	The Controller of the Transferred Data where the Exporter is a Processor or Sub-Processor If there is not a Third Party Controller this can be disregarded.
Transfer Risk Assessment or TRA	A risk assessment in so far as it is required by UK Data Protection Laws to demonstrate that the IDTA provides the Appropriate Safeguards
Transferred Data	Any Personal Data which the Parties transfer, or intend to transfer under this IDTA, as described in Table 2: Transfer Details
UK Data Protection Laws	All laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018.
UK GDPR	As defined in Section 3 of the Data Protection Act 2018.
Without Undue Delay	Without undue delay, as that phrase is interpreted in the UK GDPR.

Alternative Part 4 Mandatory Clauses:

Mandatory Clauses	Part 4: Part 4: Mandatory Clauses of the Approved IDTA, being the template IDTA A.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 5.4 of those Mandatory Clauses.
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Part B: International Data Transfer Agreement Addendum to the EU Commission Standard Contractual Clauses



Information Commissioner's Office

Standard Data Protection Clauses to be issued by the Commissioner under S119A(1) Data Protection Act 2018

International Data Transfer Addendum to the EU Commission Standard Contractual Clauses

VERSION B1.0, in force 21 March 2022

This Addendum has been issued by the Information Commissioner for Parties making Restricted Transfers. The Information Commissioner considers that it provides Appropriate Safeguards for Restricted Transfers when it is entered into as a legally binding contract.

Part 1: Tables

Table 1: Parties

Start date		
The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)
Parties' details	Full legal name: <input type="text"/> Trading name (if different): <input type="text"/> Main address (if a company registered address): <input type="text"/> Official registration number (if any) (company number or similar identifier): <input type="text"/>	Full legal name: <input type="text"/> Trading name (if different): <input type="text"/> Main address (if a company registered address): <input type="text"/> Official registration number (if any) (company number or similar identifier): <input type="text"/>
Key Contact	Full Name (optional): <input type="text"/> Job Title: <input type="text"/> Contact details including email: <input type="text"/>	Full Name (optional): <input type="text"/> Job Title: <input type="text"/> Contact details including email: <input type="text"/>

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The Parties	Exporter (who sends the Restricted Transfer)	Importer (who receives the Restricted Transfer)
Signature (if required for the purposes of Section 2)		

Table 2: Selected SCCs, Modules and Selected Clauses

Addendum EU SCCs	<input type="checkbox"/> The version of the Approved EU SCCs which this Addendum is appended to, detailed below, including the Appendix Information: Date: <input type="text"/> Reference (if any): <input type="text"/> Other identifier (if any): <input type="text"/> Or <input type="checkbox"/> the Approved EU SCCs, including the Appendix Information and with only the following modules, clauses or optional provisions of the Approved EU SCCs brought into effect for the purposes of this Addendum:
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Module	Module in operation	Clause 7 (Docking Clause)	Clause 11 (Option)	Clause 9a (Prior Authorisation or General Authorisation)	Clause 9a (Time period)	Is personal data received from the Importer combined with personal data collected by the Exporter?

Table 3: Appendix Information

“**Appendix Information**” means the information which must be provided for the selected modules as set out in the Appendix of the Approved EU SCCs (other than the Parties), and which for this Addendum is set out in:

-
- Annex 1A: List of Parties:
-
- Annex 1B: Description of Transfer:
-
- ~~Annex II:~~ Annex II: Technical and organisational measures including technical and organisational measures to ensure the security of the data:
-
- ~~Annex III:~~ Annex III: List of Sub processors (Modules 2 and 3 only):
-

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Table 4: Ending this Addendum when the Approved Addendum Changes

Ending this Addendum when the Approved Addendum changes	Which Parties may end this Addendum as set out in Section 1919: <input type="checkbox"/> Importer <input type="checkbox"/> Exporter <input type="checkbox"/> neither Party
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Part 2: Mandatory Clauses

Entering into this Addendum

- 41.** Each Party agrees to be bound by the terms and conditions set out in this Addendum, in exchange for the other Party also agreeing to be bound by this Addendum.
- 22.** Although Annex 1A and Clause 7 of the Approved EU SCCs require signature by the Parties, for the purpose of making Restricted Transfers, the Parties may enter into this Addendum in any way that makes them legally binding on the Parties and allows data subjects to enforce their rights as set out in this Addendum. Entering into this Addendum will have the same effect as signing the Approved EU SCCs and any part of the Approved EU SCCs.

Interpretation of this Addendum

- 33.** Where this Addendum uses terms that are defined in the Approved EU SCCs those terms shall have the same meaning as in the Approved EU SCCs. In addition, the following terms have the following meanings:

Addendum	This International Data Transfer Addendum which is made up of this Addendum incorporating the Addendum EU SCCs.
Addendum EU SCCs	The version(s) of the Approved EU SCCs which this Addendum is appended to, as set out in Table 2 , Table 2 ₁ including the Appendix Information.
Appendix Information	As set out in Table 3 , Table 3 ₁ .
Appropriate Safeguards	The standard of protection over the personal data and of data subjects' rights, which is required by UK Data Protection Laws when you are making a Restricted Transfer relying on standard data protection clauses under Article 46(2)(d) UK GDPR.
Approved Addendum	The template Addendum issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18.
Approved EU SCCs	The Standard Contractual Clauses set out in the Annex of Commission Implementing Decision (EU) 2021/914 of 4 June 2021.
ICO	The Information Commissioner.
Restricted Transfer	A transfer which is covered by Chapter V of the UK GDPR.
UK	The United Kingdom of Great Britain and Northern Ireland.

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UK Data Protection Laws	All laws relating to data protection, the processing of personal data, privacy and/or electronic communications in force from time to time in the UK, including the UK GDPR and the Data Protection Act 2018.
UK GDPR	As defined in section 3 of the Data Protection Act 2018.

- 44.** This Addendum must always be interpreted in a manner that is consistent with UK Data Protection Laws and so that it fulfils the Parties' obligation to provide the Appropriate Safeguards.
- 55.** If the provisions included in the Addendum EU SCCs amend the Approved SCCs in any way which is not permitted under the Approved EU SCCs or the Approved Addendum, such amendment(s) will not be incorporated in this Addendum and the equivalent provision of the Approved EU SCCs will take their place.
- 66.** If there is any inconsistency or conflict between UK Data Protection Laws and this Addendum, UK Data Protection Laws applies.
- 77.** If the meaning of this Addendum is unclear or there is more than one meaning, the meaning which most closely aligns with UK Data Protection Laws applies.
- 88.** Any references to legislation (or specific provisions of legislation) means that legislation (or specific provision) as it may change over time. This includes where that legislation (or specific provision) has been consolidated, re-enacted and/or replaced after this Addendum has been entered into.

Hierarchy

- 99.** Although Clause 5 of the Approved EU SCCs sets out that the Approved EU SCCs prevail over all related agreements between the parties, the parties agree that, for Restricted Transfers, the hierarchy in Section ~~40~~10 will prevail.
- 4010.** Where there is any inconsistency or conflict between the Approved Addendum and the Addendum EU SCCs (as applicable), the Approved Addendum overrides the Addendum EU SCCs, except where (and in so far as) the inconsistent or conflicting terms of the Addendum EU SCCs provides greater protection for data subjects, in which case those terms will override the Approved Addendum.
- 4111.** Where this Addendum incorporates Addendum EU SCCs which have been entered into to protect transfers subject to the General Data Protection Regulation (EU) 2016/679 then the Parties acknowledge that nothing in this Addendum impacts those Addendum EU SCCs.

Incorporation of and changes to the EU SCCs

- 4212.** This Addendum incorporates the Addendum EU SCCs which are amended to the extent necessary so that:
- together they operate for data transfers made by the data exporter to the data importer, to the extent that UK Data Protection Laws apply to the data exporter's processing when making that data transfer, and they provide Appropriate Safeguards for those data transfers;

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~~(b)~~(a) Sections 9 to 11 override Clause 5 (*Hierarchy*) of the Addendum EU SCCs; and

~~(c)~~(b) this Addendum (including the Addendum EU SCCs incorporated into it) is (1) governed by the laws of England and Wales and (2) any dispute arising from it is resolved by the courts of England and Wales, in each case unless the laws and/or courts of Scotland or Northern Ireland have been expressly selected by the Parties.

~~43~~13. Unless the Parties have agreed alternative amendments which meet the requirements of Section 12, the provisions of Section ~~15~~15 will apply.

~~44~~14. No amendments to the Approved EU SCCs other than to meet the requirements of Section ~~12~~12 may be made.

~~45~~15. The following amendments to the Addendum EU SCCs (for the purpose of Section 12) are made:

(a) References to the “Clauses” means this Addendum, incorporating the Addendum EU SCCs;

(b) In Clause 2, delete the words:

“and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679”;

(c) Clause 6 (Description of the transfer(s)) is replaced with:

“The details of the transfers(s) and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred) are those specified in Annex I.B where UK Data Protection Laws apply to the data exporter’s processing when making that transfer.”;

(d) Clause 8.7(i) of Module 1 is replaced with:

“it is to a country benefitting from adequacy regulations pursuant to Section 17A of the UK GDPR that covers the onward transfer”;

(e) Clause 8.8(i) of Modules 2 and 3 is replaced with:

“the onward transfer is to a country benefitting from adequacy regulations pursuant to Section 17A of the UK GDPR that covers the onward transfer;”

(f) References to “Regulation (EU) 2016/679”, “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)” and “that Regulation” are all replaced by “UK Data Protection Laws”. References to specific Article(s) of “Regulation (EU) 2016/679” are replaced with the equivalent Article or Section of UK Data Protection Laws;

(g) References to Regulation (EU) 2018/1725 are removed;

(h) References to the “European Union”, “Union”, “EU”, “EU Member State”, “Member State” and “EU or Member State” are all replaced with the “UK”;

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- (i) The reference to “Clause 12(c)(i)” at Clause 10(b)(i) of Module one, is replaced with “Clause 11(c)(i)”;
- (j) Clause 13(a) and Part C of Annex I are not used;
- (k) The “competent supervisory authority” and “supervisory authority” are both replaced with the “Information Commissioner”;
- (l) In Clause 16(e), subsection (i) is replaced with:

“the Secretary of State makes regulations pursuant to Section 17A of the Data Protection Act 2018 that cover the transfer of personal data to which these clauses apply.”;
- (m) Clause 17 is replaced with:

“These Clauses are governed by the laws of England and Wales.”;
- (n) Clause 18 is replaced with:

“Any dispute arising from these Clauses shall be resolved by the courts of England and Wales. A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of any country in the UK. The Parties agree to submit themselves to the jurisdiction of such courts.”; and
- (o) The footnotes to the Approved EU SCCs do not form part of the Addendum, except for footnotes 8, 9, 10 and 11.

Amendments to this Addendum

~~46~~16. The Parties may agree to change Clauses 17 and/or 18 of the Addendum EU SCCs to refer to the laws and/or courts of Scotland or Northern Ireland.

~~47~~17. If the Parties wish to change the format of the information included in Part 1: Tables of the Approved Addendum, they may do so by agreeing to the change in writing, provided that the change does not reduce the Appropriate Safeguards.

~~48~~18. From time to time, the ICO may issue a revised Approved Addendum which:

- (a) makes reasonable and proportionate changes to the Approved Addendum, including correcting errors in the Approved Addendum; and/or
- (b) reflects changes to UK Data Protection Laws;

The revised Approved Addendum will specify the start date from which the changes to the Approved Addendum are effective and whether the Parties need to review this Addendum including the Appendix Information. This Addendum is automatically amended as set out in the revised Approved Addendum from the start date specified.

~~49~~19. If the ICO issues a revised Approved Addendum under Section 18, if any Party selected in Table 4 “Ending the Addendum when the Approved Addendum changes”, will as a direct result of the changes in the Approved Addendum have a substantial, disproportionate and demonstrable increase in:

- (a) its direct costs of performing its obligations under the Addendum; and/or

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(b) its risk under the Addendum,

and in either case it has first taken reasonable steps to reduce those costs or risks so that it is not substantial and disproportionate, then that Party may end this Addendum at the end of a reasonable notice period, by providing written notice for that period to the other Party before the start date of the revised Approved Addendum.

2020. The Parties do not need the consent of any third party to make changes to this Addendum, but any changes must be made in accordance with its terms.

Alternative Part 2 Mandatory Clauses:

Mandatory Clauses	Part 2: <u>Part 2:</u> Mandatory Clauses of the Approved Addendum, being the template Addendum B.1.0 issued by the ICO and laid before Parliament in accordance with s119A of the Data Protection Act 2018 on 2 February 2022, as it is revised under Section 18 of those Mandatory Clauses.
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Annex 3: Standard Contractual Clauses for EU GDPR Compliant Transfers

[Guidance: Delete this Annex and replace with the text 'NOT USED' if the Authority has chosen to refer out to the IDTA, rather than incorporating the text, that is, by selecting the first set of square brackets in Clause 21 of the Core Terms and in this Schedule.]

Part A: Processor to Controller Standard Contractual Clauses

Standard Contractual Clauses for Personal Data Transfers from an EU Processor to a Controller Established in a Third Country (Processor-to-Controller Transfers)

SECTION I

CLAUSE 1

4 Purpose and scope

4.1(a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of 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)[~~FN1~~FN1] for the transfer of personal data to a third country.

4.2(b) The Parties:

4.2.1(iii) _____ the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter '~~entity/ies~~'entity/ies') transferring the personal data, as listed in Annex ~~1.A.1.A~~ (hereinafter each '~~data exporter~~'data exporter'), and

4.2.2(iv) _____ the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex ~~1.A.1.A~~ (hereinafter each '~~data importer~~'data importer')

_____ have agreed to these standard contractual clauses (hereinafter: '~~Clauses~~'Clauses').

4.3(c) These Clauses apply with respect to the transfer of personal data as specified in Annex ~~1.B.1.B~~.

4.4(d) ~~The Appendix~~The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

CLAUSE 2

2 Effect and invariability of the Clauses

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2.1(a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the ~~Appendix~~. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

2.2(b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

CLAUSE 3

3 Third-party beneficiaries

3.1(a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:

3.1.1(i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;

3.1.2(ii) Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);

3.1.3(iii) Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);

3.1.4(iv) Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);

3.1.5(v) Clause 13;

3.1.6(vi) Clause 15.1(c), (d) and (e);

3.1.7(vii) Clause 16(e);

3.1.8(viii) Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.

3.2(a) Paragraph (a)(a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

CLAUSE 4

4 Interpretation

4.1(a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.

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4.2(b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

4.3(c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

CLAUSE 5

5 Hierarchy

5.1 In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

CLAUSE 6

6 Description of the transfer(s)

6.1 The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.I.B.

[Optional: CLAUSE 7 –Optional

7 Docking clause

7.1(a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the AppendixAppendix and signing Annex I.A.I.A.

7.2(a) Once it has completed the AppendixAppendix and signed Annex I.A.I.A., the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.I.A.

7.3(b) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.]

SECTION II – OBLIGATIONS OF THE PARTIES

CLAUSE 8

8 Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

8.1 8.1 Instructions

8.1.1(a) The data exporter shall process the personal data only on documented instructions from the data importer acting as its controller.

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8.1.2(b) The data exporter shall immediately inform the data importer if it is unable to follow those instructions, including if such instructions infringe Regulation (EU) 2016/679 or other Union or Member State data protection law.

8.1.3(c) The data importer shall refrain from any action that would prevent the data exporter from fulfilling its obligations under Regulation (EU) 2016/679, including in the context of sub-processing or as regards cooperation with competent supervisory authorities.

8.1.4(d) After the end of the provision of the processing services, the data exporter shall, at the choice of the data importer, delete all personal data processed on behalf of the data importer and certify to the data importer that it has done so, or return to the data importer all personal data processed on its behalf and delete existing copies.

8.2 **8.2** Security of processing

8.2.1(a) The Parties shall implement appropriate technical and organisational measures to ensure the security of the data, including during transmission, and protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access (hereinafter '~~personal~~~~personal~~ data ~~breach~~~~breach~~'). In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature of the personal data~~[FN7FN7]~~, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects, and in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner.

8.2.2(b) The data exporter shall assist the data importer in ensuring appropriate security of the data in accordance with paragraph ~~(a)~~~~8.2(a)~~. In case of a personal data breach concerning the personal data processed by the data exporter under these Clauses, the data exporter shall notify the data importer without undue delay after becoming aware of it and assist the data importer in addressing the breach.

8.2.3(c) The data exporter shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8.3 **8.3** Documentation and compliance

8.3.1(a) The Parties shall be able to demonstrate compliance with these Clauses.

8.3.2(b) The data exporter shall make available to the data importer all information necessary to demonstrate compliance with its obligations under these Clauses and allow for and contribute to audits.

CLAUSE 9

9 Use of sub-processors

9.1 N/A

CLAUSE 10

10 Data subject rights

~~10.1~~ The Parties shall assist each other in responding to enquiries and requests made by data subjects under the local law applicable to the data importer or, for data processing by the data exporter in the EU, under Regulation (EU) 2016/679.

CLAUSE 11

11 Redress

~~11.1(a)~~ The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

[**OPTION Optional:** The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body[~~FN11~~FN11] at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph ~~(a)~~, (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

CLAUSE 12

12 Liability

~~12.1(a)~~ Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.

~~12.2(a)~~ Each Party shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages that the Party causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter under Regulation (EU) 2016/679.

~~12.3(a)~~ Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.

~~12.4(a)~~ The Parties agree that if one Party is held liable under paragraph ~~(e)~~(c), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.

~~12.5(b)~~ The data importer may not invoke the conduct of a processor or sub-processor to avoid its own liability.

CLAUSE 13

13 Supervision

~~13.1~~ N/A

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

CLAUSE 14

14 Local laws and practices affecting compliance with the Clauses (*where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU*)

14.1(a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.

14.2(b) The Parties declare that in providing the warranty in paragraph (a)(a), they have taken due account in particular of the following elements:

- (i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
- (ii) the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards^[FN12];
- (iii) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.

~~14.2.1(i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;~~

~~14.2.2 the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer,~~

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~~and the applicable limitations and safeguards~~ **FN12**;

~~14.2.3(i) any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.~~

14.3(c) The data importer warrants that, in carrying out the assessment under paragraph ~~(b)~~(b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.

14.4(d) The Parties agree to document the assessment under paragraph ~~(b)~~(b) and make it available to the competent supervisory authority on request.

14.5(e) The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph ~~(a)~~(a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph ~~(a)~~.(a).

14.6(f) Following a notification pursuant to paragraph ~~(e)~~(e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause ~~16(d)~~ **16**(i) and ~~(e)~~ **16**(e) shall apply.

CLAUSE 15

Obligations of the data importer in case of access by public authorities (where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)

CLAUSE 15

~~**15 Obligations of the data importer in case of access by public authorities (where the EU processor combines the personal data received from the third country-controller with personal data collected by the processor in the EU)**~~

15.1 15.1 Notification

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- 15.1.4(a)** The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:
- 1-(i)** receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or
 - (i)(ii)** becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.
- 15.1.2(b)** If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.
- 15.1.3(c)** Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).
- 15.1.4(d)** The data importer agrees to preserve the information pursuant to paragraphs ~~(a)~~(a) to ~~(e)~~(c) for the duration of the contract and make it available to the competent supervisory authority on request.
- 15.1.5(e)** Paragraphs ~~(a)~~(a) to ~~(e)~~(c) are without prejudice to the obligation of the data importer pursuant to Clause ~~14(e)~~14(e) and Clause ~~16~~16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

15.2 The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause ~~Review of legality and data~~ **minimisation**

(a) 14(e).

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- (b) ~~The data importer agrees to review the legality of the document its legal assessment and any challenge to the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and, to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful to the extent permissible under the laws of the country of destination, applicable obligations under international law and principles of international comity. make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.~~
- (c) ~~The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.~~

SECTION IV – FINAL PROVISIONS

CLAUSE 16

Non-compliance with the Clauses and termination

- (a) ~~The, the data importer shall seek interim measures with a view to suspending promptly inform the effects of data exporter if it is unable to comply with these Clauses, for whatever reason.~~

~~15.2.1(b) In the request until the competent judicial authority has decided on its merits. It shall not disclose the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of data importer until compliance is again ensured or the data importer under Clause 14(e). contract is terminated. This is without prejudice to Clause 14(f).~~

- ~~(c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:~~

~~15.2.2(a) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.~~

~~15.2.3(a) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.~~

SECTION IV – FINAL PROVISIONS

CLAUSE 16

~~16 – Non-compliance with the Clauses and termination~~

~~16.1(a) – The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.~~

~~16.2 – In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).~~

~~16.3(a) – The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:~~

~~16.3.1(i) – the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph (b)(b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;~~

~~(ii) – the data importer is in substantial or persistent breach of these Clauses; or~~

~~(iii) – the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.~~

~~In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.~~

~~16.3.2(i) – Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law. the data importer is in substantial or persistent breach of these Clauses; or~~

~~16.3.3(i) – the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.~~

~~In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.~~

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~~16.4(d) Personal data collected by the data exporter in the EU that has been transferred prior to the termination of the contract pursuant to paragraph (c) shall immediately be deleted in its entirety, including any copy thereof. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.~~

~~(e) Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.~~

CLAUSE 17

Governing law

~~These Clauses shall be governed by the law of a country allowing for third-party beneficiary rights. The Parties agree that this shall be the law of _____ (specify country).~~

CLAUSE 18

Choice of forum and jurisdiction

~~Any dispute arising from these Clauses shall be resolved by the courts of _____ (specify country).~~

Official European Commission Footnotes

~~16.5(a) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.~~

CLAUSE 17

17 Governing law

~~17.1 These Clauses shall be governed by the law of a country allowing for third party beneficiary rights. The Parties agree that this shall be the law of _____ (specify country).~~

CLAUSE 18

Schedule 31:- (Processing Personal Data)

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~~18 — Choice of forum and jurisdiction~~

~~18.1 Any dispute arising from these Clauses shall be resolved by the courts of _____
(specify country).~~

~~Official European Commission Footnotes~~

~~FN1FN1~~: Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ([OJ L 295, 21.11.2018, p. 39](#)), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

~~FN7FN7~~: This includes whether the transfer and further processing involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a ~~person's~~person's sex life or sexual orientation, or data relating to criminal convictions or offences.

~~FN11FN11~~: The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

~~FN12FN12~~: As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

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Appendix

Explanatory Note:

~~It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.~~

APPENDIX

EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

ANNEX I

A. LIST OF PARTIES

Data exporter(s): [Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]

1. Name:

Address:

Contact person's name, position and contact details:

.....

Activities relevant to the data transferred under these Clauses:

Signature and date:

Role (controller/processor):

2.

Data importer(s): [Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]

1. Name:

Address:

Contact person's name, position and contact details:

.....

Activities relevant to the data transferred under these Clauses:

Signature and date:

Role (controller/processor):

2.

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

.....

.....

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Categories of personal data transferred

.....
Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

...

.....
~~*Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.*~~

...

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

...

.....
Nature of the processing

...

.....
Purpose(s) of the data transfer and further processing

...

.....
The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

...

.....
For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

...

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.....

Part B: Controller to Processor Standard Contractual Clauses

Standard Contractual Clauses for Personal Data Transfers from an EU Controller to a Processor Established in a Third Country (Controller-to-Processor Transfers)

SECTION I

CLAUSE 1

4 Purpose and scope

4.1(a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of 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)~~[FN1FN1]~~ for the transfer of personal data to a third country.

4.2(b) The Parties:

4.2.1(i) _____ the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter '~~entity/ies~~"entity/ies') transferring the personal data, as listed in Annex ~~I.A.I.A~~ (hereinafter each '~~data exporter~~"data exporter'), and

4.2.2(ii) _____ the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex ~~I.A~~ (~~hereinafter each 'data importer'~~I.A (hereinafter each 'data importer'))

_____ have agreed to these standard contractual clauses (hereinafter: '~~Clauses~~"Clauses').

4.3(c) These Clauses apply with respect to the transfer of personal data as specified in Annex ~~I.B.I.B.~~

4.4(d) ~~The Appendix~~The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

CLAUSE 2

2 Effect and invariability of the Clauses

2.1(a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update

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information in the ~~Appendix~~. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.

2.2(b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.

CLAUSE 3

3 Third-party beneficiaries

3.1(a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:

3.1.1(i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;

3.1.2(ii) Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);

3.1.3(iii) Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);

3.1.4(iv) Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);

3.1.5(v) Clause 13;

3.1.6(vi) Clause 15.1(c), (d) and (e);

3.1.7(vii) Clause 16(e);

3.1.8(viii) Clause 18 – Modules One, Two and Three: Clause 18(a) and (b); Module Four: Clause 18.

3.2(b) Paragraph ~~(a)~~(a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

CLAUSE 4

4 Interpretation

4.1(a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.

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4.2(b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

4.3(c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

CLAUSE 5

5 Hierarchy

5.1 In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

CLAUSE 6

6 Description of the transfer(s)

6.1 The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.I.B.

[Optional: CLAUSE 7--Optional

7 Docking clause

7.1(a) An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A. Appendix and signing Annex I.A.

7.2(b) Once it has completed the AppendixAppendix and signed Annex I.A.I.A., the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.I.A.

7.3(c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.]

SECTION II – OBLIGATIONS OF THE PARTIES

CLAUSE 8

8 Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

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8.1 8.1 Instructions

8.1.1(a) The data importer shall process the personal data only on documented instructions from the data exporter. The data exporter may give such instructions throughout the duration of the contract.

8.1.2(b) The data importer shall immediately inform the data exporter if it is unable to follow those instructions.

8.2 8.2 Purpose limitation

8.2.1 The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex ~~I.B.~~I.B., unless on further instructions from the data exporter.

8.3 8.3 Transparency

8.3.1 On request, the data exporter shall make a copy of these Clauses, including the Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including the measures described in Annex ~~III~~ and personal data, the data exporter may redact part of the text of the Appendix to these Clauses prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information. This Clause is without prejudice to the obligations of the data exporter under Articles 13 and 14 of Regulation (EU) 2016/679.

8.4 8.4 Accuracy

8.4.1 If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to erase or rectify the data.

8.5 8.5 Duration of processing and erasure or return of data

8.5.1 Processing by the data importer shall only take place for the duration specified in Annex ~~I.B.~~I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the data exporter and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

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8.6 8.6 Security of processing

8.6.1(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter '~~personal~~personal data ~~breach~~breach'). In assessing the appropriate level of security, the Parties shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subjects. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex ~~H.II~~. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.

8.6.2(b) The data importer shall grant access to the personal data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8.6.3(c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify the data exporter without undue delay after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the breach including, where appropriate, measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

8.6.4(d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

8.7 8.7 Sensitive data

8.7.1 Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or

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biometric data for the purpose of uniquely identifying a natural person, data concerning health or a ~~person's~~sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter '~~sensitive data~~'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards described in Annex ~~I.B.I.B.~~

8.8 8.8 Onward transfers

~~8.8.1(a)~~8.8.1(a) The data importer shall only disclose the personal data to a third party on documented instructions from the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union~~[FN4FN4]~~ (in the same country as the data importer or in another third country, hereinafter '~~onward transfer~~'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

~~1.(i)~~1.(i) the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;

~~(j)(ii)~~(j)(ii) the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 Regulation of (EU) 2016/679 with respect to the processing in question;

~~(k)(iii)~~(k)(iii) the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or

~~(l)(iv)~~(l)(iv) the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

(b) Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 8.9 Documentation and compliance

~~8.9.1(a)~~8.9.1(a) The data importer shall promptly and adequately deal with enquiries from the data exporter that relate to the processing under these Clauses.

~~8.9.2(b)~~8.9.2(b) The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the data exporter.

~~8.9.3(c)~~8.9.3(c) The data importer shall make available to the data exporter all information necessary to demonstrate compliance with the obligations set out in these Clauses and at the data ~~exporter's~~request, allow for and contribute to audits of the processing activities covered by these Clauses, at reasonable intervals or if there are indications of non-compliance. In deciding on a review or audit, the data exporter may take into account relevant certifications held by the data importer.

~~8.9.4(d)~~8.9.4(d) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical

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facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.

8.9.5(e) The Parties shall make the information referred to in paragraphs ~~(b)~~(b) and ~~(c)~~(c), including the results of any audits, available to the competent supervisory authority on request.

CLAUSE 9

9 Use of sub-processors

9.1 OPTION 1: SPECIFIC PRIOR AUTHORISATION The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the data ~~exporter's~~sexporter's prior specific written authorisation. The data importer shall submit the request for specific authorisation at least [*Specify time period*] prior to the engagement of the sub-processor, together with the information necessary to enable the data exporter to decide on the authorisation. The list of sub-processors already authorised by the data exporter can be found in Annex ~~III~~.III. The Parties shall keep Annex ~~III~~III up to date.

9.2 OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the data ~~exporter's~~sexporter's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the data exporter in writing of any intended changes to that list through the addition or replacement of sub-processors at least [*Specify time period*] in advance, thereby giving the data exporter sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the data exporter with the information necessary to enable the data exporter to exercise its right to object.

9.3(a) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the data exporter), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. ~~[FN8]~~[FN8] The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.

9.4(b) The data importer shall provide, at the data ~~exporter's~~sexporter's request, a copy of such a sub-processor agreement and any subsequent amendments to the data exporter. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

9.5(c) The data importer shall remain fully responsible to the data exporter for the performance of the sub-~~processor's~~processor's obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.

9.6(d) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared,

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ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

CLAUSE 10

10 Data subject rights

10.1(a) The data importer shall promptly notify the data exporter of any request it has received from a data subject. It shall not respond to that request itself unless it has been authorised to do so by the data exporter.

10.2(b) The data importer shall assist the data exporter in fulfilling its obligations to respond to data ~~subjects'~~ subjects' requests for the exercise of their rights under Regulation (EU) 2016/679. In this regard, the Parties shall set out in Annex III the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

10.3(c) In fulfilling its obligations under paragraphs ~~(a) and (b)~~ (a) and (b), the data importer shall comply with the instructions from the data exporter.

CLAUSE 11

11 Redress

11.1(a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

~~[OPTION~~Optional: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body~~[FN11FN11]~~ at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph ~~(a)~~ (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

11.2(b) In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.

11.3(c) Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:

- (i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;
- (ii) refer the dispute to the competent courts within the meaning of Clause 18.

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- (d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.
- (e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.
- (f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.

CLAUSE 12

Liability

- (a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.
- (b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.
- (c) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.

~~11.3.1(i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;~~

~~11.3.2(i) refer the dispute to the competent courts within the meaning of Clause 18.~~

~~11.4(a) The Parties accept that the data subject may be represented by a not for profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.~~

~~11.5(a) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.~~

~~11.6(a) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.~~

CLAUSE 12

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12 Liability

~~12.1(a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.~~

~~12.2(a) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.~~

~~12.3(a) Notwithstanding paragraph (b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.~~

12.4(d) The Parties agree that if the data exporter is held liable under paragraph (e)(c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data importer's responsibility for the damage.

~~12.5(a) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.~~

(e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.

12.6(f) The Parties agree that if one Party is held liable under paragraph (e)(e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.

12.7(g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

CLAUSE 13

13 Supervision

13.1(a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex I.C, I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance

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with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex I.C.I.C, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex I.C.I.C, shall act as competent supervisory authority.

13.2(b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

CLAUSE 14

14 Local laws and practices affecting compliance with the Clauses

14.1(a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.

14.2(b) The Parties declare that in providing the warranty in paragraph (a)(a), they have taken due account in particular of the following elements:

(i) the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;

14.2.1(i) the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising

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~~access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards~~^[FN12]~~the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;~~

~~14.2.2~~ ~~the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards~~^[FN12];

~~(ii)~~ _____];

~~14.2.3(iii)~~ _____ any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.

~~14.3(c)~~ _____ The data importer warrants that, in carrying out the assessment under paragraph ~~(b)~~(b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.

~~14.4(d)~~ _____ The Parties agree to document the assessment under paragraph ~~(b)~~(b) and make it available to the competent supervisory authority on request.

~~14.5(e)~~ _____ The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph ~~(a)~~(a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph ~~(a)~~(a).

~~14.6(f)~~ Following a notification pursuant to paragraph ~~(e)~~(e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed

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otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

CLAUSE 15

15 Obligations of the data importer in case of access by public authorities

15.1 15.1 Notification

15.1.1(a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:

15.1.1(i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or

15.1.1(ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

15.1.2(b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.

15.1.3(c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.).

15.1.4(d) The data importer agrees to preserve the information pursuant to paragraphs ~~(a)~~(a) to ~~(e)~~(c) for the duration of the contract and make it available to the competent supervisory authority on request.

15.1.5(e) Paragraphs ~~(a)~~(a) to ~~(e)~~(c) are without prejudice to the obligation of the data importer pursuant to Clause ~~14(e)~~14(e) and Clause ~~1616~~ to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 Review of legality and data minimisation

(a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international

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law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).

- (b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.
- (c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

CLAUSE 16

Non-compliance with the Clauses and termination

- (a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.

15.2—In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. ~~Review of legality and data minimisation~~

~~15.2.1~~—The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).

~~15.2.2~~—The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request.

~~15.2.3~~—The data importer agrees to provide the minimum amount of information

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~~permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.~~

~~(b) This is without prejudice to Clause 14(f).~~

SECTION IV – FINAL PROVISIONS

CLAUSE 16

~~**16 Non-compliance with the Clauses and termination**~~

~~16.1 The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.~~

~~16.2 In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).~~

~~16.3(c)~~ The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:

~~16.3.1(i)~~ the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph ~~(b)~~0 and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;

~~16.3.2(ii)~~ the data importer is in substantial or persistent breach of these Clauses; or

~~16.3.3(iii)~~ the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

~~16.4(d)~~ Personal data that has been transferred prior to the termination of the contract pursuant to paragraph ~~(e)~~(c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

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16.5(e) _____ Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

CLAUSE 17

17 Governing law

17.1 [OPTION 1: These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of _____ (*specify Member State*).]

17.2 [OPTION 2: These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of _____ (*specify Member State*).]

CLAUSE 18

18 Choice of forum and jurisdiction

18.1(a) _____ Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.

18.2(b) _____ The Parties agree that those shall be the courts of _____ (*specify Member State*).

18.3(c) _____ A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.

18.4(d) _____ The Parties agree to submit themselves to the jurisdiction of such courts.

Official European Commission Footnotes

FN1FN1: Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ([OJ L 295, 21.11.2018, p. 39](#)), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will

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in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

~~FN4~~FN4: The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European Union's internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purpose of these Clauses.

~~FN8~~FN8: This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

~~FN11~~FN11: The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

~~FN12~~FN12: As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

~~FN12~~FN12: ~~As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.~~

Appendix

Explanatory Note:

~~It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.~~

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Annex APPENDIX

EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

ANNEX I

A. List of Parties LIST OF PARTIES

Data exporter(s): [Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]

~~1. Data exporter(s): [Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]~~

~~1.~~ Name: _____

Address: _____

Contact ~~person's~~ name, position and contact details:

Activities relevant to the data transferred under these Clauses:

Signature and date: _____

Role (controller/processor): _____

2. _____

Data importer(s): [Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]

1.

~~Data importer(s): [Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]~~

~~1.~~ Name: _____

Address: _____

Contact ~~person's~~ name, position and contact details:

Activities relevant to the data transferred under these Clauses:

Signature and date: _____

Role (controller/processor): _____

2. _____

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B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

.....

Categories of personal data transferred

.....

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

.....

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

.....

Nature of the processing

.....

Purpose(s) of the data transfer and further processing

.....

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

.....

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

B. Description of Transfer

~~Categories of data subjects whose personal data is transferred~~

~~...~~

~~Categories of personal data transferred~~

~~...~~

~~Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance~~

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~~strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.~~

~~...~~

~~The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).~~

~~...~~

~~Nature of the processing~~

~~...~~

~~Purpose(s) of the data transfer and further processing~~

~~...~~

~~The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period~~

~~...~~

~~For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing~~

~~...~~

C. Competent Supervisory

C. COMPETENT SUPERVISORY AUTHORITY

Authority

Identify the competent supervisory authority/ies in accordance with Clause 13.

~~Annex~~ **ANNEX II**

~~Technical and Organisational Measures Including Technical and Organisational Measures to Ensure the Security of the Data~~

~~Explanatory Note:~~

~~The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.~~

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

EXPLANATORY NOTE:

The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.

Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.

[Examples of possible measures:

Measures of pseudonymisation and encryption of personal data

Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services

Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident

Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing

Measures for user identification and authorisation

Measures for the protection of data during transmission

Measures for the protection of data during storage

Measures for ensuring physical security of locations at which personal data are processed

Measures for ensuring events logging

Measures for ensuring system configuration, including default configuration

Measures for internal IT and IT security governance and management

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Measures for certification/assurance of processes and products

Measures for ensuring data minimisation

Measures for ensuring data quality

Measures for ensuring limited data retention

Measures for ensuring accountability

Measures for allowing data portability and ensuring erasure]

For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter

AnnexANNEX III

LIST OF SUB-PROCESSORS

EXPLANATORY NOTE:

This Annex must be completed in case of the specific authorization of sub-processors (Clause 9(a), Option 1).

The controller has authorised the use of the following sub-processors:

List of Sub-Processors

Explanatory Note:

~~This Annex must be completed in case of the specific authorization of sub-processors (Clause 9(a), Option 1).~~

~~The controller has authorised the use of the following sub-processors:~~

1. Name: ~~.....~~

Address: ~~.....~~

Contact ~~person's~~person's name, position and contact details:

~~.....~~

Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised):

~~.....~~

2. ~~.....~~

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Part C: Processor to Processor Standard Contractual Clauses

Standard Contractual Clauses for Personal Data Transfers from an EU Processor to a Processor Established in a Third Country (Processor-to-Processor Transfers)

SECTION I

CLAUSE 1

Purpose and scope

The purpose of these standard contractual clauses is to ensure compliance with the requirements of 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)

~~**Part C: Processor to Processor Standard Contractual Clauses**~~

~~**Standard Contractual Clauses for Personal Data Transfers from an EU Processor to a Processor Established in a Third Country (Processor-to-Processor Transfers)**~~

~~**SECTION I**~~

~~**CLAUSE 1**~~

~~**1 Purpose and scope**~~

~~1.1(a) The purpose of these standard contractual clauses is to ensure compliance with the requirements of 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)~~^[FN1FN1] for the transfer of personal data to a third country.

~~1.2(b) The Parties:~~

~~1.2.1(i) _____ the natural or legal person(s), public authority/ies, agency/ies or other body/ies (hereinafter 'entity/ies'/'entity/ies') transferring the personal data, as listed in Annex I.A.I.A (hereinafter each 'data exporter'/'data exporter'), and~~

~~1.2.2(ii) _____ the entity/ies in a third country receiving the personal data from the data exporter, directly or indirectly via another entity also Party to these Clauses, as listed in Annex I.A.I.A (hereinafter each 'data importer'/'data importer')~~

~~_____ have agreed to these standard contractual clauses (hereinafter: 'Clauses'/'Clauses').~~

~~1.3(c) These Clauses apply with respect to the transfer of personal data as specified in Annex I.B.I.B.~~

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(d) The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.

CLAUSE 2

Effect and invariability of the Clauses

~~1.4(a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the The Appendix to these Clauses containing the Annexes referred to therein forms an integral part of these Clauses.~~

~~CLAUSE 2~~

~~2 Effect and invariability of the Clauses~~

~~2.1(a) These Clauses set out appropriate safeguards, including enforceable data subject rights and effective legal remedies, pursuant to Article 46(1) and Article 46(2)(c) of Regulation (EU) 2016/679 and, with respect to data transfers from controllers to processors and/or processors to processors, standard contractual clauses pursuant to Article 28(7) of Regulation (EU) 2016/679, provided they are not modified, except to select the appropriate Module(s) or to add or update information in the Appendix-Appendix. This does not prevent the Parties from including the standard contractual clauses laid down in these Clauses in a wider contract and/or to add other clauses or additional safeguards, provided that they do not contradict, directly or indirectly, these Clauses or prejudice the fundamental rights or freedoms of data subjects.~~

~~2.2(b) These Clauses are without prejudice to obligations to which the data exporter is subject by virtue of Regulation (EU) 2016/679.~~

CLAUSE 3

3 Third-party beneficiaries

~~3.1(a) Data subjects may invoke and enforce these Clauses, as third-party beneficiaries, against the data exporter and/or data importer, with the following exceptions:~~

~~3.1.1(i) Clause 1, Clause 2, Clause 3, Clause 6, Clause 7;~~

~~3.1.2(ii) Clause 8 – Module One: Clause 8.5 (e) and Clause 8.9(b); Module Two: Clause 8.1(b), 8.9(a), (c), (d) and (e); Module Three: Clause 8.1(a), (c) and (d) and Clause 8.9(a), (c), (d), (e), (f) and (g); Module Four: Clause 8.1 (b) and Clause 8.3(b);~~

~~3.1.3(iii) Clause 9 – Module Two: Clause 9(a), (c), (d) and (e); Module Three: Clause 9(a), (c), (d) and (e);~~

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3.1.4(iv) Clause 12 – Module One: Clause 12(a) and (d); Modules Two and Three: Clause 12(a), (d) and (f);

3.1.5(v) Clause 13;

3.1.6(vi) Clause 15.1(c), (d) and (e);

3.1.7(vii) Clause 16(e);

3.1.8(viii) Clause 18 – Modules One, Two and Three: Clause 18(a) and (b);
Module Four: Clause 18.

3.2(b) Paragraph ~~(a)~~(a) is without prejudice to rights of data subjects under Regulation (EU) 2016/679.

CLAUSE 4

4 Interpretation

4.1(a) Where these Clauses use terms that are defined in Regulation (EU) 2016/679, those terms shall have the same meaning as in that Regulation.

4.2(b) These Clauses shall be read and interpreted in the light of the provisions of Regulation (EU) 2016/679.

4.3(c) These Clauses shall not be interpreted in a way that conflicts with rights and obligations provided for in Regulation (EU) 2016/679.

CLAUSE 5

5 Hierarchy

5.1 In the event of a contradiction between these Clauses and the provisions of related agreements between the Parties, existing at the time these Clauses are agreed or entered into thereafter, these Clauses shall prevail.

CLAUSE 6

6 Description of the transfer(s)

6.1 The details of the transfer(s), and in particular the categories of personal data that are transferred and the purpose(s) for which they are transferred, are specified in Annex I.B.I.B.

[CLAUSE 7 - Optional

Docking clause

An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the

[CLAUSE 7 – Optional

~~7 Docking clause~~

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~~7.1 An entity that is not a Party to these Clauses may, with the agreement of the Parties, accede to these Clauses at any time, either as a data exporter or as a data importer, by completing the Appendix and signing Annex I.A.~~

~~(a) Appendix and signing Annex I.A.~~

~~7.2(b) Once it has completed the Appendix and signed Annex I.A., the acceding entity shall become a Party to these Clauses and have the rights and obligations of a data exporter or data importer in accordance with its designation in Annex I.A.~~

~~(c) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.]~~

SECTION II - OBLIGATIONS OF THE PARTIES

CLAUSE 8

Data protection safeguards

The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.

~~7.3(a) The acceding entity shall have no rights or obligations arising under these Clauses from the period prior to becoming a Party.]~~

SECTION II - OBLIGATIONS OF THE PARTIES

CLAUSE 8

~~8~~ Data protection safeguards

~~The data exporter warrants that it has used reasonable efforts to determine that the data importer is able, through the implementation of appropriate technical and organisational measures, to satisfy its obligations under these Clauses.~~

~~8.1~~ 8.1 Instructions

~~(a) The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.~~

~~(b) The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data exporter may give further documented instructions regarding the data processing throughout the duration of the contract.~~

~~(c) The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the~~

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instructions from the controller, the data exporter shall immediately notify the controller.

~~8.1.1(a) — The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the contract or other legal act under Union or Member State law between the controller and the data exporter. The data exporter has informed the data importer that it acts as processor under the instructions of its controller(s), which the data exporter shall make available to the data importer prior to processing.~~

~~8.1.2(a) — The data importer shall process the personal data only on documented instructions from the controller, as communicated to the data importer by the data exporter, and any additional documented instructions from the data exporter. Such additional instructions shall not conflict with the instructions from the controller. The controller or data exporter may give further documented instructions regarding the data processing throughout the duration of the contract.~~

~~8.1.3(a) — The data importer shall immediately inform the data exporter if it is unable to follow those instructions. Where the data importer is unable to follow the instructions from the controller, the data exporter shall immediately notify the controller.~~

~~8.1.4 — The data exporter warrants that it has imposed the same data protection obligations on the data importer as set out in the contract or other legal act under Union or Member State law between the controller and the data exporter. ^[FN5].~~

~~(d) ^[FN5].~~

8.2 8.2 Purpose limitation

~~8.2.1~~ The data importer shall process the personal data only for the specific purpose(s) of the transfer, as set out in Annex ~~I.B, I.B,~~ unless on further instructions from the controller, as communicated to the data importer by the data exporter, or from the data exporter.

8.3 8.3 Transparency

On request, the data exporter shall make a copy of these Clauses, including the ~~Appendix~~ Appendix as completed by the Parties, available to the data subject free of charge. To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.

8.4 8.4 Accuracy

If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.

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~~8.3.1 To the extent necessary to protect business secrets or other confidential information, including personal data, the data exporter may redact part of the text of the Appendix prior to sharing a copy, but shall provide a meaningful summary where the data subject would otherwise not be able to understand its content or exercise his/her rights. On request, the Parties shall provide the data subject with the reasons for the redactions, to the extent possible without revealing the redacted information.~~

~~8.4 Accuracy~~

~~8.4.1 If the data importer becomes aware that the personal data it has received is inaccurate, or has become outdated, it shall inform the data exporter without undue delay. In this case, the data importer shall cooperate with the data exporter to rectify or erase the data.~~

8.5 8.5 Duration of processing and erasure or return of data

Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).

~~8.5.1 Processing by the data importer shall only take place for the duration specified in Annex I.B. After the end of the provision of the processing services, the data importer shall, at the choice of the data exporter, delete all personal data processed on behalf of the controller and certify to the data exporter that it has done so, or return to the data exporter all personal data processed on its behalf and delete existing copies. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit return or deletion of the personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process it to the extent and for as long as required under that local law. This is without prejudice to Clause 14, in particular the requirement for the data importer under Clause 14(e) to notify the data exporter throughout the duration of the contract if it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under Clause 14(a).~~

8.6 8.6 Security of processing

8.6.1(a) The data importer and, during transmission, also the data exporter shall implement appropriate technical and organisational measures to ensure the security of the data, including protection against a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access to that data (hereinafter 'personal data breach'). In assessing the

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appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex 'personal data breach').
~~In assessing the appropriate level of security, they shall take due account of the state of the art, the costs of implementation, the nature, scope, context and purpose(s) of processing and the risks involved in the processing for the data subject. The Parties shall in particular consider having recourse to encryption or pseudonymisation, including during transmission, where the purpose of processing can be fulfilled in that manner. In case of pseudonymisation, the additional information for attributing the personal data to a specific data subject shall, where possible, remain under the exclusive control of the data exporter or the controller. In complying with its obligations under this paragraph, the data importer shall at least implement the technical and organisational measures specified in Annex III. The data importer shall carry out regular checks to ensure that these measures continue to provide an appropriate level of security.~~

8.6.2(b) The data importer shall grant access to the data to members of its personnel only to the extent strictly necessary for the implementation, management and monitoring of the contract. It shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

8.6.3(c) In the event of a personal data breach concerning personal data processed by the data importer under these Clauses, the data importer shall take appropriate measures to address the breach, including measures to mitigate its adverse effects. The data importer shall also notify, without undue delay, the data exporter and, where appropriate and feasible, the controller after having become aware of the breach. Such notification shall contain the details of a contact point where more information can be obtained, a description of the nature of the breach (including, where possible, categories and approximate number of data subjects and personal data records concerned), its likely consequences and the measures taken or proposed to address the data breach, including measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all information at the same time, the initial notification shall contain the information then available and further information shall, as it becomes available, subsequently be provided without undue delay.

8.6.4(d) The data importer shall cooperate with and assist the data exporter to enable the data exporter to comply with its obligations under Regulation (EU) 2016/679, in particular to notify its controller so that the latter may in turn notify the competent supervisory authority and the affected data subjects, taking into account the nature of processing and the information available to the data importer.

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8.7 8.7 Sensitive data

~~8.7.1~~ Where the transfer involves personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data, or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a ~~person's~~person's sex life or sexual orientation, or data relating to criminal convictions and offences (hereinafter '~~sensitive data~~'sensitive data'), the data importer shall apply the specific restrictions and/or additional safeguards set out in Annex ~~I.B.I.B.~~

8.8 8.8 Onward transfers

~~8.8.1(a)~~ The data importer shall only disclose the personal data to a third party on documented instructions from the controller, as communicated to the data importer by the data exporter. In addition, the data may only be disclosed to a third party located outside the European Union [~~FN6~~FN6] (in the same country as the data importer or in another third country, hereinafter '~~onward transfer~~'onward transfer') if the third party is or agrees to be bound by these Clauses, under the appropriate Module, or if:

~~1.(i)~~ the onward transfer is to a country benefitting from an adequacy decision pursuant to Article 45 of Regulation (EU) 2016/679 that covers the onward transfer;

~~(n)(ii)~~ the third party otherwise ensures appropriate safeguards pursuant to Articles 46 or 47 of Regulation (EU) 2016/679;

~~(o)(iii)~~ the onward transfer is necessary for the establishment, exercise or defence of legal claims in the context of specific administrative, regulatory or judicial proceedings; or

~~(p)(iv)~~ the onward transfer is necessary in order to protect the vital interests of the data subject or of another natural person.

(b) Any onward transfer is subject to compliance by the data importer with all the other safeguards under these Clauses, in particular purpose limitation.

8.9 8.9 Documentation and compliance

~~8.9.1(a)~~ The data importer shall promptly and adequately deal with enquiries from the data exporter or the controller that relate to the processing under these Clauses.

~~8.9.2(b)~~ The Parties shall be able to demonstrate compliance with these Clauses. In particular, the data importer shall keep appropriate documentation on the processing activities carried out on behalf of the controller.

~~8.9.3(c)~~ The data importer shall make all information necessary to demonstrate compliance with the obligations set out in these Clauses available to the data exporter, which shall provide it to the controller.

~~8.9.4(d)~~ The data importer shall allow for and contribute to audits by the data exporter of the processing activities covered by these Clauses, at reasonable

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intervals or if there are indications of non-compliance. The same shall apply where the data exporter requests an audit on instructions of the controller. In deciding on an audit, the data exporter may take into account relevant certifications held by the data importer.

8.9.5(e) Where the audit is carried out on the instructions of the controller, the data exporter shall make the results available to the controller.

8.9.6(f) The data exporter may choose to conduct the audit by itself or mandate an independent auditor. Audits may include inspections at the premises or physical facilities of the data importer and shall, where appropriate, be carried out with reasonable notice.

8.9.7(g) The Parties shall make the information referred to in paragraphs ~~(b)~~ and ~~(e)~~(b) and (c), including the results of any audits, available to the competent supervisory authority on request.

CLAUSE 9

9 Use of sub-processors

9.1 **OPTION 1: SPECIFIC PRIOR AUTHORISATION** The data importer shall not sub-contract any of its processing activities performed on behalf of the data exporter under these Clauses to a sub-processor without the prior specific written authorisation of the controller. The data importer shall submit the request for specific authorisation at least [*Specify time period*] prior to the engagement of the sub-processor, together with the information necessary to enable the controller to decide on the authorisation. It shall inform the data exporter of such engagement. The list of sub-processors already authorised by the controller can be found in Annex ~~III~~.III. The Parties shall keep Annex III up to date.

OPTION 2: GENERAL WRITTEN AUTHORISATION The data importer has the ~~controller's~~controller's general authorisation for the engagement of sub-processor(s) from an agreed list. The data importer shall specifically inform the controller in writing of any intended changes to that list through the addition or replacement of sub-processors at least [*Specify time period*] in advance, thereby giving the controller sufficient time to be able to object to such changes prior to the engagement of the sub-processor(s). The data importer shall provide the controller with the information necessary to enable the controller to exercise its right to object. The data importer shall inform the data exporter of the engagement of the sub-processor(s).

9.2(a) Where the data importer engages a sub-processor to carry out specific processing activities (on behalf of the controller), it shall do so by way of a written contract that provides for, in substance, the same data protection obligations as those binding the data importer under these Clauses, including in terms of third-party beneficiary rights for data subjects. ~~[FN9]~~[FN9] The Parties agree that, by complying with this Clause, the data importer fulfils its obligations under Clause 8.8. The data importer shall ensure that the sub-processor complies with the obligations to which the data importer is subject pursuant to these Clauses.

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9.3(b) The data importer shall provide, at the data ~~exporter's~~ ~~exporter's~~ or ~~controller's~~ ~~controller's~~ request, a copy of such a sub-processor agreement and any subsequent amendments. To the extent necessary to protect business secrets or other confidential information, including personal data, the data importer may redact the text of the agreement prior to sharing a copy.

9.4(c) The data importer shall remain fully responsible to the data exporter for the performance of the sub-~~processor's~~ ~~processor's~~ obligations under its contract with the data importer. The data importer shall notify the data exporter of any failure by the sub-processor to fulfil its obligations under that contract.

9.5(d) The data importer shall agree a third-party beneficiary clause with the sub-processor whereby – in the event the data importer has factually disappeared, ceased to exist in law or has become insolvent – the data exporter shall have the right to terminate the sub-processor contract and to instruct the sub-processor to erase or return the personal data.

CLAUSE 10

40 Data subject rights

10.1(a) The data importer shall promptly notify the data exporter and, where appropriate, the controller of any request it has received from a data subject, without responding to that request unless it has been authorised to do so by the controller.

10.2(b) The data importer shall assist, where appropriate in cooperation with the data exporter, the controller in fulfilling its obligations to respond to data ~~subjects'~~ ~~subjects'~~ requests for the exercise of their rights under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable. In this regard, the Parties shall set out in Annex III the appropriate technical and organisational measures, taking into account the nature of the processing, by which the assistance shall be provided, as well as the scope and the extent of the assistance required.

10.3(c) In fulfilling its obligations under paragraphs ~~(a) and (b)~~ (a) and (b), the data importer shall comply with the instructions from the controller, as communicated by the data exporter.

CLAUSE 11

41 Redress

11.1(a) The data importer shall inform data subjects in a transparent and easily accessible format, through individual notice or on its website, of a contact point authorised to handle complaints. It shall deal promptly with any complaints it receives from a data subject.

11.1.1 [OPTION: The data importer agrees that data subjects may also lodge a complaint with an independent dispute resolution body [FN11 FN11] at no cost to the data subject. It shall inform the data subjects, in the manner set out in paragraph ~~(a)~~ (a), of such redress mechanism and that they are not required to use it, or follow a particular sequence in seeking redress.]

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~~11.2(b)~~ In case of a dispute between a data subject and one of the Parties as regards compliance with these Clauses, that Party shall use its best efforts to resolve the issue amicably in a timely fashion. The Parties shall keep each other informed about such disputes and, where appropriate, cooperate in resolving them.

~~11.3(c)~~ Where the data subject invokes a third-party beneficiary right pursuant to Clause 3, the data importer shall accept the decision of the data subject to:

~~(i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;~~

~~(ii) refer the dispute to the competent courts within the meaning of Clause 18.~~

~~(d) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.~~

~~(e) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.~~

~~(f) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.~~

CLAUSE 12

Liability

~~(a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.~~

~~(b) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.~~

~~11.3.1(i) lodge a complaint with the supervisory authority in the Member State of his/her habitual residence or place of work, or the competent supervisory authority pursuant to Clause 13;~~

~~11.3.2(i) refer the dispute to the competent courts within the meaning of Clause 18.~~

~~11.4(a) The Parties accept that the data subject may be represented by a not-for-profit body, organisation or association under the conditions set out in Article 80(1) of Regulation (EU) 2016/679.~~

~~11.5(a) The data importer shall abide by a decision that is binding under the applicable EU or Member State law.~~

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~~11.6(a) The data importer agrees that the choice made by the data subject will not prejudice his/her substantive and procedural rights to seek remedies in accordance with applicable laws.~~

CLAUSE 12

12 Liability

~~12.1(a) Each Party shall be liable to the other Party/ies for any damages it causes the other Party/ies by any breach of these Clauses.~~

~~12.2(a) The data importer shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data importer or its sub-processor causes the data subject by breaching the third-party beneficiary rights under these Clauses.~~

12.3(c) Notwithstanding paragraph (b)(b), the data exporter shall be liable to the data subject, and the data subject shall be entitled to receive compensation, for any material or non-material damages the data exporter or the data importer (or its sub-processor) causes the data subject by breaching the third-party beneficiary rights under these Clauses. This is without prejudice to the liability of the data exporter and, where the data exporter is a processor acting on behalf of a controller, to the liability of the controller under Regulation (EU) 2016/679 or Regulation (EU) 2018/1725, as applicable.

12.4(d) The Parties agree that if the data exporter is held liable under paragraph (e)(c) for damages caused by the data importer (or its sub-processor), it shall be entitled to claim back from the data importer that part of the compensation corresponding to the data ~~importer's~~ importer's responsibility for the damage.

~~12.5(a) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.~~

(e) Where more than one Party is responsible for any damage caused to the data subject as a result of a breach of these Clauses, all responsible Parties shall be jointly and severally liable and the data subject is entitled to bring an action in court against any of these Parties.

12.6(f) The Parties agree that if one Party is held liable under paragraph (e)(e), it shall be entitled to claim back from the other Party/ies that part of the compensation corresponding to its/their responsibility for the damage.

12.7(g) The data importer may not invoke the conduct of a sub-processor to avoid its own liability.

CLAUSE 13

13 Supervision

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13.1(a) [Where the data exporter is established in an EU Member State:] The supervisory authority with responsibility for ensuring compliance by the data exporter with Regulation (EU) 2016/679 as regards the data transfer, as indicated in Annex **I.C.I.C.**, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) and has appointed a representative pursuant to Article 27(1) of Regulation (EU) 2016/679:] The supervisory authority of the Member State in which the representative within the meaning of Article 27(1) of Regulation (EU) 2016/679 is established, as indicated in Annex **I.C.I.C.**, shall act as competent supervisory authority.

[Where the data exporter is not established in an EU Member State, but falls within the territorial scope of application of Regulation (EU) 2016/679 in accordance with its Article 3(2) without however having to appoint a representative pursuant to Article 27(2) of Regulation (EU) 2016/679:] The supervisory authority of one of the Member States in which the data subjects whose personal data is transferred under these Clauses in relation to the offering of goods or services to them, or whose behaviour is monitored, are located, as indicated in Annex **I.C.I.C.**, shall act as competent supervisory authority.

13.2(b) The data importer agrees to submit itself to the jurisdiction of and cooperate with the competent supervisory authority in any procedures aimed at ensuring compliance with these Clauses. In particular, the data importer agrees to respond to enquiries, submit to audits and comply with the measures adopted by the supervisory authority, including remedial and compensatory measures. It shall provide the supervisory authority with written confirmation that the necessary actions have been taken.

SECTION III – LOCAL LAWS AND OBLIGATIONS IN CASE OF ACCESS BY PUBLIC AUTHORITIES

CLAUSE 14

14 Local laws and practices affecting compliance with the Clauses

14.1(a) The Parties warrant that they have no reason to believe that the laws and practices in the third country of destination applicable to the processing of the personal data by the data importer, including any requirements to disclose personal data or measures authorising access by public authorities, prevent the data importer from fulfilling its obligations under these Clauses. This is based on the understanding that laws and practices that respect the essence of the fundamental rights and freedoms and do not exceed what is necessary and proportionate in a democratic society to safeguard one of the objectives listed in Article 23(1) of Regulation (EU) 2016/679, are not in contradiction with these Clauses.

14.2(b) The Parties declare that in providing the warranty in paragraph (a)(a), they have taken due account in particular of the following elements:

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- 14.2.1(i)** _____ the specific circumstances of the transfer, including the length of the processing chain, the number of actors involved and the transmission channels used; intended onward transfers; the type of recipient; the purpose of processing; the categories and format of the transferred personal data; the economic sector in which the transfer occurs; the storage location of the data transferred;
- 14.2.2(ii)** _____ the laws and practices of the third country of destination – including those requiring the disclosure of data to public authorities or authorising access by such authorities – relevant in light of the specific circumstances of the transfer, and the applicable limitations and safeguards~~[FN12]~~~~[FN12]~~;
- 14.2.3(iii)** _____ any relevant contractual, technical or organisational safeguards put in place to supplement the safeguards under these Clauses, including measures applied during transmission and to the processing of the personal data in the country of destination.
- 14.3(c)** _____ The data importer warrants that, in carrying out the assessment under paragraph ~~(b)~~(b), it has made its best efforts to provide the data exporter with relevant information and agrees that it will continue to cooperate with the data exporter in ensuring compliance with these Clauses.
- 14.4(d)** _____ The Parties agree to document the assessment under paragraph ~~(b)~~(b) and make it available to the competent supervisory authority on request.
- 14.5(e)** _____ The data importer agrees to notify the data exporter promptly if, after having agreed to these Clauses and for the duration of the contract, it has reason to believe that it is or has become subject to laws or practices not in line with the requirements under paragraph ~~(a)~~(a), including following a change in the laws of the third country or a measure (such as a disclosure request) indicating an application of such laws in practice that is not in line with the requirements in paragraph ~~(a)~~(a). The data exporter shall forward the notification to the controller.
- 14.6(f)** Following a notification pursuant to paragraph ~~(e)~~(e), or if the data exporter otherwise has reason to believe that the data importer can no longer fulfil its obligations under these Clauses, the data exporter shall promptly identify appropriate measures (e.g. technical or organisational measures to ensure security and confidentiality) to be adopted by the data exporter and/or data importer to address the situation, if appropriate in consultation with the controller. The data exporter shall suspend the data transfer if it considers that no appropriate safeguards for such transfer can be ensured, or if instructed by the controller or the competent supervisory authority to do so. In this case, the data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses. If the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise. Where the contract is terminated pursuant to this Clause, Clause 16(d) and (e) shall apply.

CLAUSE 15

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15 Obligations of the data importer in case of access by public authorities

15.1 15.1 Notification

15.1.1(a) The data importer agrees to notify the data exporter and, where possible, the data subject promptly (if necessary with the help of the data exporter) if it:

1.(i) receives a legally binding request from a public authority, including judicial authorities, under the laws of the country of destination for the disclosure of personal data transferred pursuant to these Clauses; such notification shall include information about the personal data requested, the requesting authority, the legal basis for the request and the response provided; or

(e)(ii) becomes aware of any direct access by public authorities to personal data transferred pursuant to these Clauses in accordance with the laws of the country of destination; such notification shall include all information available to the importer.

The data exporter shall forward the notification to the controller.

15.1.2(b) If the data importer is prohibited from notifying the data exporter and/or the data subject under the laws of the country of destination, the data importer agrees to use its best efforts to obtain a waiver of the prohibition, with a view to communicating as much information as possible, as soon as possible. The data importer agrees to document its best efforts in order to be able to demonstrate them on request of the data exporter.

15.1.3(c) Where permissible under the laws of the country of destination, the data importer agrees to provide the data exporter, at regular intervals for the duration of the contract, with as much relevant information as possible on the requests received (in particular, number of requests, type of data requested, requesting authority/ies, whether requests have been challenged and the outcome of such challenges, etc.). The data exporter shall forward the information to the controller.

15.1.4(d) The data importer agrees to preserve the information pursuant to paragraphs ~~(a) to (e)~~(a) to (c) for the duration of the contract and make it available to the competent supervisory authority on request.

15.1.5(e) Paragraphs ~~(a)~~(a) to ~~(e)~~(c) are without prejudice to the obligation of the data importer pursuant to Clause 14(e) and Clause 16 to inform the data exporter promptly where it is unable to comply with these Clauses.

15.2 15.2 Review of legality and data minimisation

15.2.1(a) The data importer agrees to review the legality of the request for disclosure, in particular whether it remains within the powers granted to the requesting public authority, and to challenge the request if, after careful assessment, it concludes that there are reasonable grounds to consider that the request is unlawful under the laws of the country of destination, applicable obligations under international law and principles of international comity. The data importer shall, under the same conditions, pursue possibilities of appeal. When challenging a request, the data importer shall seek interim measures with a view to suspending the effects of the

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request until the competent judicial authority has decided on its merits. It shall not disclose the personal data requested until required to do so under the applicable procedural rules. These requirements are without prejudice to the obligations of the data importer under Clause 14(e).

15.2.2(b) The data importer agrees to document its legal assessment and any challenge to the request for disclosure and, to the extent permissible under the laws of the country of destination, make the documentation available to the data exporter. It shall also make it available to the competent supervisory authority on request. The data exporter shall make the assessment available to the controller.

15.2.3(c) The data importer agrees to provide the minimum amount of information permissible when responding to a request for disclosure, based on a reasonable interpretation of the request.

SECTION IV – FINAL PROVISIONS

CLAUSE 16

16 Non-compliance with the Clauses and termination

16.1(a) The data importer shall promptly inform the data exporter if it is unable to comply with these Clauses, for whatever reason.

16.2(b) In the event that the data importer is in breach of these Clauses or unable to comply with these Clauses, the data exporter shall suspend the transfer of personal data to the data importer until compliance is again ensured or the contract is terminated. This is without prejudice to Clause 14(f).

16.3(c) The data exporter shall be entitled to terminate the contract, insofar as it concerns the processing of personal data under these Clauses, where:

16.3.1(i) the data exporter has suspended the transfer of personal data to the data importer pursuant to paragraph ~~(b)~~(b) and compliance with these Clauses is not restored within a reasonable time and in any event within one month of suspension;

16.3.2(ii) the data importer is in substantial or persistent breach of these Clauses; or

16.3.3(iii) the data importer fails to comply with a binding decision of a competent court or supervisory authority regarding its obligations under these Clauses.

In these cases, it shall inform the competent supervisory authority and the controller of such non-compliance. Where the contract involves more than two Parties, the data exporter may exercise this right to termination only with respect to the relevant Party, unless the Parties have agreed otherwise.

16.4(d) Personal data that has been transferred prior to the termination of the contract pursuant to paragraph ~~(e)~~(c) shall at the choice of the data exporter immediately be returned to the data exporter or deleted in its entirety. The same shall apply to

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any copies of the data. The data importer shall certify the deletion of the data to the data exporter. Until the data is deleted or returned, the data importer shall continue to ensure compliance with these Clauses. In case of local laws applicable to the data importer that prohibit the return or deletion of the transferred personal data, the data importer warrants that it will continue to ensure compliance with these Clauses and will only process the data to the extent and for as long as required under that local law.

16.5(e) _____ Either Party may revoke its agreement to be bound by these Clauses where (i) the European Commission adopts a decision pursuant to Article 45(3) of Regulation (EU) 2016/679 that covers the transfer of personal data to which these Clauses apply; or (ii) Regulation (EU) 2016/679 becomes part of the legal framework of the country to which the personal data is transferred. This is without prejudice to other obligations applying to the processing in question under Regulation (EU) 2016/679.

CLAUSE 17

17 Governing law

17.1 [OPTION 1: These Clauses shall be governed by the law of one of the EU Member States, provided such law allows for third-party beneficiary rights. The Parties agree that this shall be the law of _____ (*specify Member State*).]

17.2 [OPTION 2: These Clauses shall be governed by the law of the EU Member State in which the data exporter is established. Where such law does not allow for third-party beneficiary rights, they shall be governed by the law of another EU Member State that does allow for third-party beneficiary rights. The Parties agree that this shall be the law of _____ (*specify Member State*).]

CLAUSE 18

18 Choice of forum and jurisdiction

18.1(a) _____ Any dispute arising from these Clauses shall be resolved by the courts of an EU Member State.

18.2(b) _____ The Parties agree that those shall be the courts of _____ (*specify Member State*).

18.3(c) _____ A data subject may also bring legal proceedings against the data exporter and/or data importer before the courts of the Member State in which he/she has his/her habitual residence.

18.4(d) _____ The Parties agree to submit themselves to the jurisdiction of such courts.

Official European Commission Footnotes

FN1FN1: Where the data exporter is a processor subject to Regulation (EU) 2016/679 acting on behalf of a Union institution or body as controller, reliance on these Clauses when engaging another processor (sub-processing) not subject to Regulation (EU) 2016/679 also ensures compliance with Article 29(4) of Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with

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regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC ([OJ L 295, 21.11.2018, p. 39](#)), to the extent these Clauses and the data protection obligations as set out in the contract or other legal act between the controller and the processor pursuant to Article 29(3) of Regulation (EU) 2018/1725 are aligned. This will in particular be the case where the controller and processor rely on the standard contractual clauses included in Decision 2021/915.

FN5FN5: See Article 28(4) of Regulation (EU) 2016/679 and, where the controller is an EU institution or body, Article 29(4) of Regulation (EU) 2018/1725.

FN6FN6: The Agreement on the European Economic Area (EEA Agreement) provides for the extension of the European ~~Union's~~ internal market to the three EEA States Iceland, Liechtenstein and Norway. The Union data protection legislation, including Regulation (EU) 2016/679, is covered by the EEA Agreement and has been incorporated into Annex XI thereto. Therefore, any disclosure by the data importer to a third party located in the EEA does not qualify as an onward transfer for the purposes of these Clauses.

FN9FN9: This requirement may be satisfied by the sub-processor acceding to these Clauses under the appropriate Module, in accordance with Clause 7.

FN11FN11: The data importer may offer independent dispute resolution through an arbitration body only if it is established in a country that has ratified the New York Convention on Enforcement of Arbitration Awards.

FN12: As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant, objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.

~~**FN12:** As regards the impact of such laws and practices on compliance with these Clauses, different elements may be considered as part of an overall assessment. Such elements may include relevant and documented practical experience with prior instances of requests for disclosure from public authorities, or the absence of such requests, covering a sufficiently representative time-frame. This refers in particular to internal records or other documentation, drawn up on a continuous basis in accordance with due diligence and certified at senior management level, provided that this information can be lawfully shared with third parties. Where this practical experience is relied upon to conclude that the data importer will not be prevented from complying with these Clauses, it needs to be supported by other relevant,~~

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~~objective elements, and it is for the Parties to consider carefully whether these elements together carry sufficient weight, in terms of their reliability and representativeness, to support this conclusion. In particular, the Parties have to take into account whether their practical experience is corroborated and not contradicted by publicly available or otherwise accessible, reliable information on the existence or absence of requests within the same sector and/or the application of the law in practice, such as case law and reports by independent oversight bodies.~~

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Appendix

Explanatory Note:

~~It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.~~

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Annex APPENDIX

EXPLANATORY NOTE:

It must be possible to clearly distinguish the information applicable to each transfer or category of transfers and, in this regard, to determine the respective role(s) of the Parties as data exporter(s) and/or data importer(s). This does not necessarily require completing and signing separate appendices for each transfer/category of transfers and/or contractual relationship, where this transparency can be achieved through one appendix. However, where necessary to ensure sufficient clarity, separate appendices should be used.

ANNEX I

A. List of Parties LIST OF PARTIES

Data exporter(s): *[Identity and contact details of the data exporter(s) and, where applicable, of its/their data protection officer and/or representative in the European Union]*

1. Name:

Address:

Contact person'sperson's name, position and contact details:

.....

Activities relevant to the data transferred under these Clauses:

.....

Signature and date:

Role (controller/processor):

2. ...

Data importer(s): *[Identity and contact details of the data importer(s), including any contact person with responsibility for data protection]*

1. Name:

Address:

Contact person'sperson's name, position and contact details:

.....

Activities relevant to the data transferred under these Clauses:

.....

Signature and date:

Role (controller/processor):

2. ...

B. Description of Transfer

B. DESCRIPTION OF TRANSFER

Categories of data subjects whose personal data is transferred

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...

.....

Categories of personal data transferred

...

.....

~~*Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.*~~

...

Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

.....

The frequency of the transfer (e.g. whether the data is transferred on a one-off or continuous basis).

...

.....

Nature of the processing

...

.....

Purpose(s) of the data transfer and further processing

...

.....

The period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period

...

.....

For transfers to (sub-) processors, also specify subject matter, nature and duration of the processing

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...

~~C. Competent Supervisory Authority~~

.....

C. COMPETENT SUPERVISORY AUTHORITY

Identify the competent supervisory authority/ies in accordance with Clause 13

~~Annex~~**ANNEX II**

~~Technical and Organisational Measures Including Technical and Organisational Measures to Ensure the Security of the Data~~

Explanatory Note:

~~The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.~~

TECHNICAL AND ORGANISATIONAL MEASURES INCLUDING TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

EXPLANATORY NOTE:

The technical and organisational measures must be described in specific (and not generic) terms. See also the general comment on the first page of the Appendix, in particular on the need to clearly indicate which measures apply to each transfer/set of transfers.

Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.

[Examples of possible measures:

Measures of pseudonymisation and encryption of personal data

Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services

Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident

Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing

Measures for user identification and authorisation

Measures for the protection of data during transmission

Measures for the protection of data during storage

Measures for ensuring physical security of locations at which personal data are processed

Measures for ensuring events logging

Measures for ensuring system configuration, including default configuration

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Measures for internal IT and IT security governance and management

Measures for certification/assurance of processes and products

Measures for ensuring data minimisation

Measures for ensuring data quality

Measures for ensuring limited data retention

Measures for ensuring accountability

Measures for allowing data portability and ensuring erasure]

For transfers to (sub-) processors, also describe the specific technical and organisational measures to be taken by the (sub-) processor to be able to provide assistance to the controller and, for transfers from a processor to a sub-processor, to the data exporter

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Annex ANNEX III

Explanatory Note:

~~This Annex must be completed in case of the specific authorization of sub-processors (Clause 9(a), Option 1).~~

EXPLANATORY NOTE:

This Annex must be completed in case of the specific authorization of sub-processors (Clause 9(a), Option 1).

The controller has authorised the use of the following sub-processors:

1. Name:

Address:

Contact ~~person's~~person's name, position and contact details:

.....

Description of processing (including a clear delimitation of responsibilities in case several sub-processors are authorised):

.....

2.

Schedule 32

Intellectual Property Rights

Schedule 32: Intellectual Property Rights

[Guidance note: this Schedule on Intellectual Property Rights (“IPRs”) can be amended depending on how you need to arrange ownership and licencing of all Specially Written Software and Project Specific IPRs (“Foreground IPR”) created for or pursuant to the contract. There are now 5 suggested options available.

Option 1: See the Intellectual Property Rights Guidance Note, and para 2.7 of the MSC Guidance document for further guidance on how to select an appropriate option(s). The General Provisions will apply for every Contract, no matter what option(s) is selected.

The options are:

- **Option 1:** Authority owns all Specially Written Software and Project Specific IPRs with limited Supplier rights to all Specially Written Software and Project Specific IPRs in order to deliver the Contract was the option available under the previous version of the Model Services Contract.

The new options are:

- **Option 2:** Authority ownership of all Specially Written Software and Project Specific IPRs with non-exclusive Supplier rights for the Contract and for commercial exploitation;
- **Option 3:** Supplier ownership of all Specially Written Software and Project Specific IPRs with Authority rights for the current contract only;
- **Option 4:** Supplier ownership of Specially Written Software and Project Specific IPRs with Authority 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 royalties

Option 2 should be considered for use in situations where the Authority should retain ownership of any Specially Written Software and Project Specific IPRs but where the Supplier should be able to use any Specially Written Software and Project Specific IPRs developed, subject to Authority approval. In this situation, the Authority will not look to publish the Specially Written Software and Project Specific IPRs under Open Licence.

Option 3 should be considered for use where (a) there is no clear benefit in the Authority owning the Specially Written Software and Project Specific IPRs, or (b) where any Specially Written Software and Project Specific IPRs created cannot easily be separated from the Supplier’s 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) 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 Authority 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 an Authority has invested significant resource or funding in the development of the project and intends to seek a return on that

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investment. Includes a right for the Authority to request ownership of unexploited IPR after 3 years.† (except when Option 2 is used).

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~~[Guidance note: for Option 1: Authority owns all Specially Written Software and Project Specific IPRs, with limited Supplier rights to Specially Written Software and Project Specific IPRs in order to deliver the Contract, please include the following drafting:]~~

~~Option 1~~

~~***Carefully check cross-references as these may need to be updated when unused clauses are deleted.***~~

Schedule 32:- (Intellectual Property Rights)

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1 Intellectual Property Rights – General Provisions

- 1.1 Except as expressly ~~set out~~provided for in this Contract or otherwise agreed in writing:
- 1.1.1 the Authority ~~shall~~does not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:
- ~~1.(a)~~ the Supplier Software;
 - ~~(r)(b)~~ the Third Party Software;
 - ~~(s)(c)~~ the Third Party IPRs; ~~and~~
 - ~~(t)(d)~~ the Supplier Background IPRs; ~~and~~
 - ~~(e)~~ the any Know-How, trade secrets or Confidential Information of the Supplier ~~shall~~contained in any Specially Written Software or Project Specific IPR; ~~and~~
- 1.1.2 the Supplier does not acquire any right, title or interest in or to the Intellectual Property Rights of the ~~Authority~~Supplier or its licensors, including:
- ~~1.(a)~~ the Authority Software;
 - ~~(u)(a)~~ the Authority Data; and
 - ~~(v)~~ the Authority Background IPRs;
 - ~~(b)~~ Specially Written Software and Project Specific
- 1.1.3 neither Party has the right to use the other Party's IPRs (except for, including any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the use of the other Party's names, logos or trademarks.~~Authority.~~
- 1.2 Where either Party acquires, by operation of law, ~~title to ownership of~~ Intellectual Property Rights that is inconsistent with the ~~allocation of title set out in Paragraph 4.1; requirements of this~~ Schedule 32 (Intellectual Property Rights), it ~~shall~~must assign in writing ~~such the~~ Intellectual Property Rights ~~as it has acquired~~concerned to the other Party on the other Party's request ~~of the other Party~~ (whenever made).
- ~~1.3~~ ~~Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.~~
- [Guidance note: the cross references in Paragraph 1.3 are for Option 1 and should be updated for Option 2 to 2, 3 and 7; Option 3 to Paragraphs 2 and 5; and for Option 4 to 2 and 5.]**
- ~~1.3~~ If the Supplier becomes aware at any time, including after the Term, that, in respect of any Deliverable, the Authority has not received the licences to the Supplier Software, the Third Party Software, the Third Party IPRs and the Supplier Background IPRs required by Paragraphs 2, 3 and 5, the Supplier must, within 10 Working Days notify the Authority:
- 1.3.1 the specific Intellectual Property Rights the Authority has not received licences to; and

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1.3.2 the Deliverables affected.

1.4 Where a patent owned by the Supplier is infringed by the use of the Specially Written Software or Project Specific IPR by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software.

1.4.1.5 Unless the Authority otherwise agrees in advance agreed in writing, the Supplier will record in the table at Annex 1 to this Schedule and keep updated throughout the Term:

1.4.1 all Specially Written Software and any software element of Project Specific IPRs shall be created in a format, or able to be converted into a format, which is suitable for publication by the Authority as open source software; and

1.4.21.5.1 where the Specially Written Software and any software element of Project Specific IPRs are written in a format that requires conversion before publication as open source software, the Supplier shall also provide the converted format to the Authority. IPR; and

1.5.2 Where the Authority agrees that anywhere:

(a) the Specially Written Software and/or any software element of Project Specific IPR adapts Supplier Software, Third Party Software, Third Party IPRs should be excluded from Open Source publication, the Supplier shall as soon as reasonably practicable provide written, or Supplier Background IPRs; or

(b) Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs is embedded in, or forms an integral part of, the Specially Written Software or Project Specific IPR;

full details of the impact that such exclusion will have on the Authority's ability to publish other Open Source software Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs.

1.6 For the avoidance of doubt:

1.51.6.1 except as provided for in Paragraph 2.2.3(c)(ii), the expiry or termination of this Contract does not of itself terminate the licences granted to the Authority under Paragraph 4 (Open Source Publication). 2;

1.6 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 1 to this Schedule 32 (Intellectual Property Rights) and shall keep Annex 1 updated during the Term.

2 Transfer and Licences Granted by the Supplier

Specially Written Software and Project Specific IPRs

1.6.2 the award of this Contract or the ordering of any Deliverables does not constitute an authorisation by the Crown under:

(a) Sections 55 and 56 of the Patents Act 1977;

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(b) ~~section 12 of the Registered Designs Act 1949; or~~

(c) ~~sections 240 to 243 of the Copyright, Designs and Patents Act 1988.~~

[Guidance note: for Option 1: Authority owns all Project Specific IPR and Specially Written Software, with limited Supplier rights to all Project Specific IPR and Specially Written Software in order to deliver the Contract, please include the following drafting.]

Option 1

2 Ownership and delivery of IPR created under the Contract

2.1 Subject to Paragraph ~~2.17 (Patents)~~ 1.1.1, the Supplier hereby agrees to:

~~2.12.1.1~~ transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Paragraph 1.1(a) (Intellectual Property Rights)) in the Specially Written Software and the Project Specific IPRs, including (without limitation):

~~2.1.1(a)~~ the Documentation, Source Code and the Object Code of the Specially Written Software; and

~~2.1.2(b)~~ all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "**Software Supporting Materials**");

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

2.2 The Supplier:

2.2.1 shall:

inform the (together the "**Software Supporting Materials**"); and

(a) Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and

(b) deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and

(c) without prejudice to Paragraph 2.11 (Third Party Software and Third Party IPRs), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;

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~~2.2.2~~ acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and

~~2.2.32.1.2~~ shall execute all such assignments ~~as are~~ required to ensure that transfer properly any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Authority.

~~Supplier Software and Supplier Background IPRs~~

~~2.3~~ The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 12 (*Software*) or sent to the Technical Board for review and approval granted by the Authority.

~~2.4~~ The Supplier hereby grants to the Authority:

~~2.4.1~~ subject to the provisions of Paragraph 2.17 (*Patents*) and Clause 35.11(b) (*Consequences of expiry or termination*), perpetual, royalty free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing up, loading, execution, storage, transmission or display)):

~~(a)~~ the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and

~~(b)~~ the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;

~~2.4.2~~ a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 12 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Paragraphs 2.7 (*Authority's right to sub-licence*) and 2.8 (*Authority's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and

~~2.2~~ a perpetual royalty free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within The Supplier must deliver to the Authority:

~~2.2.1~~ the Specially Written Software or;

~~2.4.32.2.2~~ any software elements of the Project Specific IPRs. IPR;

~~2.5~~ At any time during the Term or following termination or expiry of this Contract, the

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~~Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Paragraph 2.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Paragraph 2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Paragraph 2.7 (*Authority's right to sub-licence*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.7(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.~~

~~2.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Paragraph 2.5, the Authority shall:~~

~~2.6.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);~~

~~2.6.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and~~

~~2.6.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.~~

Authority's right to sub-licence

~~2.7 Subject to Paragraph 2.17 (*Patents*) the Authority may sub-licence:~~

~~2.7.1 the rights granted under Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:~~

~~(a) the sub-licence is on terms no broader than those granted to the Authority;~~

~~(b) the sub-licence authorises the third party to use the rights licensed in Paragraph 2.4(a) (*Supplier Software and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and~~

~~(c) the sub- licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*); and~~

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~~2.2.3~~ ~~the rights granted under Paragraph 2.4(a) (Supplier Software and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit~~relevant Documentation; and

~~2.2.4~~ ~~all related Software Supporting Materials,~~

~~within 5 Working Days of:~~

~~2.2.5~~ ~~either:~~

~~(a)~~ ~~initial release or deployment; or~~

~~(b)~~ ~~if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone; and~~

~~2.7.22.2.6~~~~each subsequent release or deployment of the Specially Written Software and/or any software elements of the Project Specific IPRs provided that:~~IPR.

~~(a)~~ ~~the sub-licence is on terms no broader than those granted~~Where the Supplier delivers materials to the Authority; and

~~(b)~~ ~~the Supplier has received a confidentiality undertaking under Paragraph 1.2, it must do so in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (Software) duly executed~~a format specified by the Approved Sub-Licensee.

~~Authority's right to assign/novate licences~~

~~2.8~~ ~~The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4(a) (Supplier Software and Supplier Background IPRs) to:~~

~~2.8.1~~ ~~A Central Government Body; or~~

~~2.8.2~~ ~~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. Where the Authority:~~

~~2.92.3~~ ~~Any change in the legal status of~~ specifies the material is to be delivered on media, the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.4 (Supplier Software and Supplier Background IPRs). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (Supplier Software and Supplier Background IPRs). becomes the owner of the media containing the material on delivery.

~~2.10~~ ~~If a licence granted in Paragraph 2.4 (Supplier Software and Supplier Background IPRs) is novated under Paragraph 2.8 (Authority's right to assign/novate licences) or there is a change of the Authority's status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.~~

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3 Use of Supplier or Third Party Non-COTS Software and Third Party IPRs or Non-COTS Background IPR

3.1 The Supplier ~~shall~~must not use any:

3.1.1 Supplier Non-COTS Software; or

3.1.2 Supplier Non-COTS Background IPR;

in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) ~~any~~unless:

3.1.3 in the case of Supplier Non-COTS Software and the software elements of Supplier Non-COTS Background IPR, it is:

(a) detailed in Schedule 12 (Software); or

(b) both:

(i) submitted to the Technical Board for review; and

(ii) approved by the Authority; and

3.1.4 in the case of non-software elements of Supplier Non-COTS Background IPR, it is approved by the Authority in writing.

3.2 The Supplier must not use any:

3.2.1 Third Party Non-COTS Software; or

3.2.2 Third Party Non-COTS ~~Software or~~ Background IPR,

in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

~~2.11.3~~2.3 in the case of Third Party Non-COTS IPRs ~~unless detailed in Schedule 12 (Software) or approval is granted by the Authority following a review by the Technical Board and has in each case either~~ Software and the software elements of Third Party Non-COTS Background IPR, it is:

(a) first ~~procured that~~ detailed in Schedule 12 (Software); or

(b) both:

(i) submitted to the Technical Board for review; and

(ii) approved by the Authority; and

(c) one of the following conditions is met:

~~2.11.1~~(i) the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) IPR has granted the Authority a direct licence to the Authority on a royalty-free basis to the Authority and on the terms no less favourable to the Authority than equivalent to those set out in Paragraphs 2.4(a) and 2.5 (Supplier Software and Supplier

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~~Background IPRs) and Paragraph 2.8 (Authority's right to assign/novate licences); 5; or~~

~~2.11.2~~—~~complied with the provisions of Paragraph 2.12.~~

~~(ii) If the Supplier cannot obtain for, after commercially reasonable endeavours, meet the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs condition in accordance with Paragraph 2.2.3(c)(i), all the licence terms set out in Paragraph 2.11(a), following conditions are met:~~

~~2.12~~—the Supplier shall:

~~(A) notify~~has notified the Authority in writing giving details of:

~~(1) what licence terms can be obtained from the relevant third party; and~~

~~2.12.1(2) whether there are alternative software providers which the Supplier could seek to use; and and the licence terms obtainable from those third parties;~~

~~2.12.2~~—~~use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the the Authority has first approved in writing either:~~

~~1.(B) the terms of~~approves the licence from ~~the relevant terms of one of those third party; or parties; and~~

~~(C) use~~the owner and authorised licensor of the Third Party IPR has granted a direct licence of the Third Party IPR to the Authority on those terms; or

~~(e)(iii) if the Supplier cannot meet the conditions in Paragraphs 2.2.3(c)(i) and 2.2.3(c)(ii), the Authority has provided written approval to use the relevant IPR without a licence, with reference to the acts authorised and the specific IPR involved. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority 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.; or~~

~~2.13~~—The Supplier shall:

~~3.2.4~~ notify~~in~~ the Authority in writing ~~case of all non-software elements of Third-Party Non-COTS Background IPR, it is approved by the Authority in writing.~~

~~2.13.14~~ **Use of Supplier or Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and COTS Background IPR**

~~2.13.2~~—~~unless instructed otherwise in writing by the Authority in any case within 20~~

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~~Working Days of notification pursuant to Paragraph 2.12(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.~~

~~2.14—Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.~~

Termination and Replacement Suppliers

~~4.1—For the avoidance—The Supplier must not use any:~~

~~4.1.1—Supplier COTS Software;~~

~~4.1.2—Supplier COTS Background IPR;~~

~~4.1.3—Third Party COTS Software; or~~

~~4.1.4—Third Party COTS Background IPR,~~

~~in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:~~

~~2.15—in the case of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.~~

~~2.16—The Supplier shall, if requested by the Authority in accordance with Schedule 25 (Exit Management) and at the Supplier's cost:~~

~~2.16.1—grant (or procure the grant) to any Replacement Supplier of:~~

~~(a)—a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (Software) duly executed by the Replacement Supplier;~~

~~(b)—a licence to use any Supplier COTS Software and/or Third Party COTS Software and the software elements of Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or~~

~~2.16.24.1.5—use all reasonable endeavours to procure the grant to any Replacement~~

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~~Supplier of a licence to use any Third Party IPR and Supplier COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party. Background IPR, it is either:~~

Patents

~~2.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.~~

~~(a) detailed in Schedule 12 (Software); or~~

~~(b) both:~~

~~(i) submitted to the Technical Board for review; and~~

~~(ii) approved by the Authority; and~~

~~4.1.6 all the following conditions are met:~~

~~(a) the Supplier has provided the Authority with the applicable terms for the IPRs (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~~

~~(b) the Authority has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the Authority.~~

35 Licences Granted granted by the Authority

~~5.1 The Authority hereby grants to the Supplier a royalty free, non-exclusive, non-transferable licence during the Term to use the Authority Software, the Authority Background IPRs, to the~~

~~5.1.1 the Project-Specific IPR;~~

~~5.1.2 the Specially Written Software;~~

~~5.1.3 the Project Specific IPRs and Authority Software;~~

~~5.1.4 the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided; and~~

~~5.1.5 the Authority Background IPRs~~

~~3.4 that:~~

~~5.1.6 is non-exclusive, royalty-free and non-transferable;~~

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5.1.7 is sub-licensable to any relevant Sub-contractor where

(a) the Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Annex 1 to Schedule 12 (Software); 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;

5.1.8 allows the Supplier and any sub-licensee to use, copy and adapt any licensed IPRs for the purpose of fulfilling its obligations under this Contract; and

5.1.9 terminates at the later of:

(a) the expiry of the Term; or

(b) the end of any Termination Assistance Period.

5.2 When the licence granted under Paragraph 4.1 terminates, the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 4.1.7:

5.2.1 immediately cease all use of the licensed IPR;

5.2.2 either:

(a) Clause 22 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the licensed IPR; or

(b) if the Authority 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 licensed IPR; and

5.2.3 ensure, so far as reasonably practicable, that any licensed IPR 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 Licences in respect of Supplier Non-COTS Software and Supplier Non-COTS Background IPR

6.1 Subject to the Authority approving the use of Supplier Non-COTS Software and Supplier Non-COTS Background IPR under Paragraph 2, the Supplier grants the Authority a Supplier Existing IPR Licence on the terms set out in Paragraph 5.3 in respect of each Deliverable where:

6.1.1 the Supplier Non-COTS Software and Supplier Non-COTS Background IPR is embedded in the Deliverable;

6.1.2 the Supplier Non-COTS Software and Supplier Non-COTS Background IPR is necessary for the Authority to use the Deliverable for any of the purposes set out in Paragraph 5.4; or

6.1.3 the Deliverable is a customisation or adaptation of Supplier Non-COTS Software and Supplier Non-COTS Background IPR.

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6.2 The categories of Supplier Non-COTS Software and Supplier Non-COTS Background IPR set out in Paragraph 5.1 are mutually exclusive.

6.3 The Supplier Existing IPR Licence granted by the Supplier to the Authority is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

6.3.1 in the case of Supplier Non-COTS Software and Supplier Non-COTS Background IPR embedded in a Deliverable:

- (a) has no restriction on the identity of any transferee or sub-licensee;
- (b) is sub-licensable for any of the purposes set out in Paragraph 5.4;
- (c) allows the Authority and any transferee or sub-licensee to use, copy and adapt the Supplier Non-COTS Software and Supplier Non-COTS Background IPR for any of the purposes set out in Paragraph 5.4; and

6.3.2 in the case of Supplier Non-COTS Software and Supplier Non-COTS Background IPR that is necessary for the Authority to use the Deliverable for its intended purpose or has been customised or adapted to provide the Deliverable:

- (a) allows the Authority and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Non-COTS Software and Supplier Non-COTS Background IPR for any of the purposes set out in Paragraph 5.4;
- (b) is transferrable to only:
 - (i) a Crown Body;
 - (ii) any body (including any private sector body) that performs or carries out any of the functions or activities that the Authority had previously performed or carried out; or
 - (iii) a person or organisation that is not a direct competitor of the Supplier; where that transferee:
 - (A) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or
 - 3-1.4(B) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality); and
- (c) is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier:
 - (i) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or
 - (ii) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19

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(Confidentiality);

6.3.3 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 Supplier Non-COTS Software and Supplier Non-COTS Background IPR;

6.3.4 continues in effect following the expiry or earlier termination of this Contract; and

6.3.5 is subject to the restrictions that:

(a) no sub-licence granted to the Supplier Non-COTS Software and Supplier Non-COTS Background IPR shall not, without purport to provide the sub-licensee with any wider rights than those granted to the Authority under this Paragraph; and

(b) any transferee or sublicensee of the Supplier Non-COTS Software and Supplier Non-COTS Background IPR must either:

(i) enter into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or

(ii) enter into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality).

6.4 For the purposes of Paragraphs 5.1 and 5.3, the relevant purposes are:

6.4.1 to allow the Authority or any End User to receive and use the Deliverables;

6.4.2 to commercially exploit (including by publication under Open Licence) the Project Specific IPR, Specially Written Software and Software Supporting Materials; and

6.4.3 for any purpose relating to the exercise of the Authority's prior written consent, use (or, if the licensed materials for Authority is a Public Sector Body, any other purpose or for Public Sector Body's) business or function.

6.5 Where the legal status of the Authority changes, such that it ceases to be a Crown Body:

6.5.1 the Supplier Existing IPR Licence is unaffected; and

3.1.26.5.2 any successor body of the Authority that is a Crown Body shall have the benefit of any person other than the Authority the Supplier Existing IPR Licence.

6.6 In Where the Supplier Existing IPR Licence is transferred under Paragraph 5.3.1(a) or 5.3.2(b) or there is a change in the Authority's legal status to which Paragraph 5.5 applies, the transferee or successor body do not acquire any wider rights than those granted to the Authority under this Paragraph.

7 Open Licence Publication

7.1 Subject to Paragraph 6.8, the Supplier agrees that the Authority may at its sole discretion

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publish under Open Licence all or part of the Project Specific IPR, the Specially Written Software or the Software Supporting Materials.

7.2 The Supplier warrants that:

7.2.1 the Project Specific IPR, the Specially Written Software or the Software Supporting Materials are suitable for release under Open Licence;

7.2.2 in developing Project Specific IPR, the Specially Written Software or the Software Supporting Materials it has used reasonable endeavours to ensure that:

(a) the publication by the Authority will not:

(i) allow a third party to use them in to compromise the operation, running or security of the Specially Written Software, the Project Specific IPRs, the Authority System or the Supplier System;

(ii) cause any harm or damage to any party using them; or

(iii) breach the rights of any third party; and

(b) they do not contain any material which would bring the Authority into disrepute if published.

7.3 The Supplier must not include in the Project Specific IPR, the Specially Written Software or the Software Supporting Materials provided for publication by Open Licence any Supplier Software, Supplier Background IPR, or Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR unless the Supplier consents to:

7.3.1 their publication by the Authority under Open Licence; and

7.3.2 their subsequent licence and treatment as Open Licence under the terms of the licence chosen by the Authority.

7.4 The Authority will not be liable in the event of the termination or expiry of this Contract, the licence granted that any Supplier Software, Supplier Background IPR, or Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR is included in the Open Licence Publication Material published by the Authority

7.5 The Supplier must supply any or all the Project Specific IPR, the Specially Written Software or the Software Supporting Materials 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 30 Working Days of written request from the Authority ("**Authority Open Licence Request**").

7.6 The Supplier may within 15 Working Days of Authority Open Licence Request under Paragraph 6.5 request in writing that the Authority excludes all or part of:

7.6.1 the Project Specific IPR, the Specially Written Software or the Software Supporting Materials Items; or

7.6.2 the Supplier Software, the Third Party Software, the Third Party IPRs, the

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Supplier Background IPRs, or any Know-How, trade secrets or Confidential Information of the Supplier contained in any Specially Written Software or Project Specific IPR that would otherwise be included in the Open Licence Publication Material supplied to the Authority pursuant to Paragraph 3.1 and any sub-licence granted by the Supplier 6.5,

from Open Licence publication.

7.7 The Supplier's request under Paragraph 6.5 must include the Supplier's assessment of the impact the Authority's agreeing to the request would have on its ability to publish other Project Specific IPR, Specially Written Software or Software Supporting Materials under an Open Licence.

7.8 Any decision to Approve any such request from the Supplier under Paragraph 6.5 shall be at the Authority's sole discretion, not to be unreasonably withheld or delayed, or made subject to unreasonable conditions.

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[Guidance note: for Option 2: Authority owns all Project Specific IPR and Specially Written Software with non-exclusive Supplier rights, please include the following drafting.]

Option 2

1 Ownership and delivery of IPR created under the Contract

1.1 Subject to Paragraph 1.1.1, the Supplier agrees to

1.1.1 transfer to the Authority, or procure the transfer to the Authority of all Intellectual Property Rights in the Specially Written Software and Project Specific IPRs, including:

(a) the Documentation, Source Code and the Object Code of the Specially Written Software; and

(b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software,

(together the "Software Supporting Materials"); and

1.1.2 execute all such assignments required to transfer properly any rights in the Specially Written Software and Project Specific IPRs to the Authority.

1.2 The Supplier must deliver to the Authority:

1.2.1 the Specially Written Software;

1.2.2 any software elements of the Project Specific IPR;

1.2.3 relevant Documentation; and

1.2.4 all related Software Supporting Materials,

within seven days of:

1.2.5 either:

(a) initial release or deployment; or

(b) if a relevant Milestone has been identified in an Implementation Plan, Achievement of that Milestone; and

1.2.6 each subsequent release or deployment of the Specially Written Software and any software elements of the Project Specific IPR.

1.3 Where the Supplier delivers materials to the Authority under Paragraph 1.2, it must do so in a format specified by the Authority. Where the Authority specifies the material is to be delivered on media, the Authority becomes the owner of the media containing the material on delivery.

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2 Use of Supplier or Third Party Non-COTS Software or Non-COTS Background IPR

2.1 The Supplier must not use any:

2.1.1 Supplier Non-COTS Software; or

2.1.2 any Supplier Non-COTS Background IPR;

in the provision of the Services or any Deliverables (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

2.1.3 in the case of Supplier Non-COTS Software and the software elements of Supplier Non-COTS Background IPR, it is either:

(a) detailed in Schedule 12 (Software); or

(b) both:

(i) submitted to the Technical Board for review; and

(ii) approved by the Authority; or

2.1.4 in the case of non-software elements of Supplier Non-COTS Background IPR, it is approved by the Authority in writing.

2.2 The Supplier must not use any:

2.2.1 Third Party Non-COTS Software; or

2.2.2 Third Party Non-COTS Background IPR,

in the provision of the Services or in any Deliverable (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

2.2.3 in the case of Third Party Non-COTS Software and the software elements of Third Party Non-COTS Background IPR, it is either:

(a) detailed in Schedule 12 (Software); or

(b) both:

(i) submitted to the Technical Board for review; and

(ii) approved by the Authority; and

(c) one of the following conditions is met:

(i) the owner or an authorised licensor of the relevant IPR has granted the Authority a direct licence on the terms equivalent to those set out in Paragraph 7; or

(ii) if the Supplier cannot, after commercially reasonable endeavours, meet the condition in Paragraph 2.2.3(c)(i), all the following conditions are met:

(A) the Supplier has notified the Authority in writing giving

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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 Authority 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 Authority on those terms; or

(iii) if the Supplier cannot meet the conditions in Paragraphs 2.2.3(c)(i) and 2.2.3(c)(ii), the Authority has provided written approval to use the relevant IPR without a licence, with reference to the acts authorised and the specific IPR involved; or

2.2.4 in the case of non-software elements of Third-Party Non-COTS Background IPR, it is approved by the Authority in writing.

3 Use of Supplier or Third Party COTS Software or COTS Background IPR

3.1 The Supplier must not use any:

3.1.1 Supplier COTS Software;

3.1.2 Supplier COTS Background IPR;

3.1.3 Third Party COTS Software; or

3.1.4 Third Party COTS Background IPR,

in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) unless:

3.1.5 in the case of Supplier COTS Software, Third Party COTS Software and the software elements of Supplier COTS Background IPR and Supplier COTS Background IPR, it is either:

(a) detailed in Schedule 12 (Software); or

(b) both:

(i) submitted to the Technical Board for review; and

(ii) approved by the Authority; and

3.1.6 all the following conditions are met:

(a) the Supplier has provided the Authority with the applicable terms for the IPRs (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

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(b) the Authority has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the Authority.

4 Licences granted by the Authority

4.1 Subject to Paragraph 5, the Authority grants the Supplier a licence to the

4.1.1 the Project-Specific IPR;

4.1.2 the Specially Written Software;

4.1.3 the Authority Software;

4.1.4 the Authority Data; and

4.1.5 the Authority Background IPRs;

that:

4.1.6 is non-exclusive, royalty-free and non-transferable;

4.1.7 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 Annex 1 to Schedule 12 (Software); 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;

4.1.8 allows the Supplier and any sub-licensee to use, copy and adapt any licensed IPRs for the purpose of:

(a) fulfilling its obligations under this Contract; and

(b) commercially exploiting the Project Specific IPR and Specially Written Software; and

4.1.9 continues in effect following the expiry or earlier termination of this Contract.

4.2 When the licence granted under Paragraph 4.1:

4.2.1 terminates in accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or 5; or

3.24.2.2 no longer has effect at the end of the Term or the expiry and the Supplier shall: of any Termination Assistance Period (whichever is the later),

the Supplier must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 4.1.7:

3.2.14.2.3 immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); licensed IPR;

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4.2.4 either:

~~3.2.2(a)~~ at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the ~~Authority Software, the Authority Background IPRs and the Authority Data~~, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the ~~Authority Software, the Authority Background IPRs and the Authority Data (as the case may be);~~ and licensed IPR; or

~~(b)~~ if the Authority 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 licensed IPR; and

~~3.2.34.2.5~~ ensure, so far as reasonably practicable, that any ~~Authority Software, Authority Background IPRs and Authority Data that are~~ licensed IPR held in electronic, digital or other machine-readable form ceases to be readily accessible from any ~~Supplier~~ computer, word processor, voicemail system or any other ~~Supplier~~ device ~~containing such Authority Software, Authority Background IPRs and/or Authority Data~~ of the Supplier.

~~4~~ **Open Source Publication**

~~5~~ **The Authority approval for Supplier agrees that the Authority may at its sole discretion publish as Open Source Software all to exploit IPR created under Contract**

~~5.1~~ Before using, copying or part of the ~~adapting any:~~

~~5.1.1~~ Project-Specific IPR;

~~4.15.1.2~~ Specially Written Software and any software element of the Project Specific IPRs after the Operational Service Commencement Date.;

~~5.1.3~~ The Supplier hereby warrants Authority Software;

~~5.1.4~~ Authority Data; and

~~5.1.5~~ Authority Background IPRs;

for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Authority in accordance with the provisions of this Paragraph.

~~5.2~~ The Authority 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 5.3, 5.4 and 5.5 with the Paragraphs in Option 5.]

~~5.3~~ The Supplier must provide a proposal setting out:

~~5.3.1~~ the purpose for which it proposes to use the IPR;

~~5.3.2~~ the activities the Supplier proposes to undertake with or in respect of the IPR;

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5.3.3 such further information as the Authority may reasonably require to properly consider the proposal.

5.4 The Authority may only refuse the Supplier's proposal where it considers that the-if the Supplier were to implement the proposal it would harm:

5.4.1 the Authority's reputation; or

5.4.2 the Authority's interests.

5.5 Where the Authority has not:

5.5.1 approved or declined the proposal; or

5.5.2 required further information,

within 20 Working Days of the later of:

5.5.3 the date the proposal was first provided to the Authority; or

5.5.4 the date on which further information was provided to the Authority,

then the proposal is, for the purposes of this Contract, approved.

4.26 Provision of information on Project Specific IPR and Specially Written Software and any software element of the Project Specific IPRs:

6.1 are suitable for release as Open Source and The Authority may, at any time, require the Supplier has used reasonable endeavours when developing to provide information on:

6.1.1 the same to ensure that publication by the Buyer will not allow a third party to use the Open Source software to in any way compromise the operation, running or security of the purposes, other than for the purposes of this Contract, for which the Supplier uses Project Specific IPR and Specially Written Software,; and

4.2.16.1.2 the activities the Supplier undertakes, other than under this Contract, with or in respect of the Project Specific IPRs or the Authority System; IPR and Specially Written Software.

4.2.2 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 anything published as Open Source and that the Specially Written Software and the Project Specific IPRs;

(a) do not contain any Malicious Software;

(b) do not contain any material which would bring the Authority into disrepute upon publication as Open Source;

(c) can be published as Open Source without breaching the rights of any third party; and

(d) will be supplied in a format suitable for publication as Open Source ("the **Open Source Publication Material**") no later than the Operational

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~~Service Commencement Date.~~

~~4.3 The Supplier shall ensure that the Open Source Publication Material provided to the Authority does not include any Supplier Software or Supplier Background IPRs save that which the Supplier is willing to allow to be included in any Open Source publication. In such a case, the Supplier hereby acknowledges that any such Supplier Software or Supplier Background IPRs will become Open Source and will be licensed and treated as such following publication by the Authority and any third party that uses the Open Source Publication Materials on the terms of the Open Source licence used by the Authority when publishing as Open Source.~~

~~6.2 The Supplier may must provide the information required by the Authority:~~

~~6.2.1 within 15 days20 Working Days of the date of the Operational Service Commencement Date requestrequirement; and~~

~~6.2.2 in the form and with the content specified by the Authority.~~

7 Licences in respect of Supplier Non-COTS Software and Supplier Non-COTS Background IPR

7.1 Subject to the Authority approving the use of Supplier Non-COTS Software and Supplier Non-COTS Background IPR under Paragraph 2, the Supplier grants the Authority a Supplier Existing IPR Licence on the terms set out in writing thatParagraph 7.3 in respect of each Deliverable where:

7.1.1 the Supplier Non-COTS Software and Supplier Non-COTS Background IPR is embedded in the Deliverable;

7.1.2 the Supplier Non-COTS Software and Supplier Non-COTS Background IPR is necessary for the Authority excludes allto use the Deliverable for any of the purposes set out in Paragraph 7.4; or

7.1.3 the Deliverable is a customisation or adaptation of Supplier Non-COTS Software and Supplier Non-COTS Background IPR.

7.2 The categories of Supplier Non-COTS Software and Supplier Non-COTS Background IPR set out in Paragraph 7.1 are mutually exclusive.

7.3 The Supplier Existing IPR Licence granted by the Supplier to the Authority is a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

7.3.1 in the case of Supplier Non-COTS Software and Supplier Non-COTS Background IPR embedded in a Deliverable:

(a) has no restriction on the identity of any transferee or sub-licensee;

(b) is sub-licensable for any of the purposes set out in Paragraph 7.4;

(c) allows the Authority and any transferee or sub-licensee to use, copy and adapt the Supplier Non-COTS Software and Supplier Non-COTS Background IPR for any of the purposes set out in Paragraph 7.4; and

4.47.3.2 in the case of Supplier Non-COTS Software and Supplier Non-COTS

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Background IPR that is necessary for the Authority to use the Deliverable for its intended purpose or part of has been customised or adapted to provide the Deliverable:

(a) allows the Authority and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant Supplier Non-COTS Software and Supplier Non-COTS Background IPR for any of the purposes set out in Paragraph 7.4;

(b) is transferrable to only:

(i) a Crown Body;

(ii) any body (including any private sector body) that performs or carries out any of the functions or activities that the Authority had previously performed or carried out; or

(iii) a person or organisation that is not a direct competitor of the Supplier; where that transferee:

(A) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or

(B) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality);

(c) is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier:

(i) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or

(ii) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality);

7.3.3 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 Supplier Non-COTS Software and Supplier Non-COTS Background IPR;

7.3.4 continues in effect following the expiry or earlier termination of this Contract; and

7.3.5 is subject to the restrictions that:

(a) no sub-licence granted to the Supplier Non-COTS Software and Supplier Non-COTS Background IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Authority under this Paragraph;

(b) any transferee or sublicensee of the Supplier Non-COTS Software and

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Supplier Non-COTS Background IPR must either:

- (i) enter into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or
- (ii) enter into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality).

7.4 For the purposes of Paragraphs 7.1 and 7.3, the relevant purposes are:

7.4.1 to allow the Authority or any End User to receive and use the Deliverables;

4.4.1 to commercially exploit the Project Specific IPR; or

4.4.2 Supplier Existing IPR or Third Party IPR that would otherwise be included in the Open Source Publication Material supplied to the Buyer pursuant to Paragraph 4.2,

from Open Licence publication.

4.5 Any decision to Approve any such request from the Supplier pursuant to Paragraph 4.4 shall be at the Authority's sole discretion, not to be unreasonably withheld, delayed or conditioned.

4.67.4.2 The Supplier hereby indemnifies the Authority against all claims in which the Authority is, or is threatened to be, a party for any alleged infringement of any IPR owned or claimed to be owned by any third party which is found, or alleged to be found, in the Specially Written Software and the Project Specific IPRs arising from publication of the Specially Written Software and any software element of the Project Specific IPRs as Open Source under Paragraph 4.1. Software Supporting Materials; and

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7.4.3 ~~[Guidance note: for Option 2: Authority owns all~~ for any purpose relating to the exercise of the Authority's (or, if the Authority is a Public Sector Body, any other Public Sector Body's) business or function.

7.5 Where the legal status of the Authority changes, such that it ceases to be a Crown Body:

7.5.1 the Supplier Existing IPR Licence is unaffected; and

7.5.2 any successor body of the Authority that is a Crown Body shall have the benefit of the Supplier Existing IPR Licence.

7.6 Where the Supplier Existing IPR Licence is transferred under Paragraph 7.3.1(a) or 7.3.2(b) or there is a change in the Authority's legal status to which Paragraph 7.5 applies, the transferee or successor body do not acquire any wider rights than those granted to the Authority under this Paragraph.

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[Guidance note: for Option 3: Supplier ownership of all Project Specific IPR and Specially Written Software with Authority rights for the current contract only, please include the following drafting.]

Option 3

1 Ownership of IPR created under the Contract

1.1 Subject to Paragraph 1.1.1, the Authority agrees to

1.1.1 transfer to the Supplier, or procure the transfer to the Supplier, of all Intellectual Property Rights in the Specially Written Software and Project Specific IPRs with non-exclusive Supplier rights, please include the following drafting: not already vesting in the Supplier, including:

Option 2

1 Intellectual Property Rights

1.1 Except as expressly set out in this Contract:

1.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:

- (a) the Supplier Software;
- (b) the Third Party Software;
- (c) the Third Party IPRs; and
- (d) the Supplier Background IPRs;

1.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:

(a) the Authority Software;

(b) 1.1.1 the Authority Data; and

(c) the Authority Background IPRs;

1.1.3 Specially Written Software and Project Specific IPRs (except for any Know-How, trade secrets or Confidential Information contained therein) shall be the property of the Authority.

1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).

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

1.4 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software

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~~and Project Specific IPRs in Annex 1 to this Schedule 32 (Intellectual Property Rights) and shall keep Annex 1 updated during the Term.~~

~~2 — Transfer and Licences Granted by the Supplier~~

~~Specially Written Software and Project Specific IPRs~~

~~2.1 — Subject to Paragraph 2.17 (Patents) the Supplier hereby agrees to transfer to the Authority, or shall procure the transfer to the Authority of, all rights (subject to Paragraph 1.1.1 (Intellectual Property Rights)) in the Specially Written Software and the Project Specific IPRs including (without limitation):~~

~~2.1.1(a) — the Documentation, Source Code and the Object Code of the Specially Written Software; and~~

~~2.1.2(b) — all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "Software Supporting Materials");¹~~

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

~~2.2 — The Supplier:~~

~~2.2.1 — shall:~~

~~(a) — inform the Authority of all Specially Written Software and any element of Project Specific IPRs that constitutes a modification or enhancement to Supplier Software or Third Party Software; and~~

~~(b) — deliver to the Authority the Specially Written Software and the software element of Project Specific IPRs in both Source Code and Object Code forms together with relevant Documentation and all related Software Supporting Materials within seven (7) days of the issue of a Milestone Achievement Certificate in respect of the relevant Deliverable and shall provide updates of the Source Code and of the Software Supporting Materials promptly following each new release of the Specially Written Software, in each case on media that is reasonably acceptable to the Authority; and~~

~~(c) — without prejudice to Paragraph 2.11 (Third Party Software and Third Party IPRs), provide full details to the Authority of any Supplier Background IPRs or Third Party IPRs which are embedded in or which are an integral part of the Specially Written Software or any element of Project Specific IPRs;~~

~~2.2.2 — acknowledges and agrees that the ownership of the media referred to in Paragraph 2.2(a)(ii) shall vest in the Authority upon their receipt by the Authority; and~~

~~shall (together the "Software Supporting Materials"); and~~

~~2.2.3 1.1.2 execute all such assignments as are required to ensure that transfer properly all rights in the Specially Written Software and Project Specific IPRs are~~

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~~properly transferred to the Authority. Supplier.~~

~~Supplier Software and Supplier Background IPRs~~

~~2.3 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 12 (*Software*) or sent to the Technical Board for review and approval granted by the Authority.~~

~~2.4 The Supplier hereby grants to the Authority:~~

~~2.4.1 subject to the provisions of Paragraph 2.17 (*Patents*) and Clause 35.11(b) (*Consequences of expiry or termination*), perpetual, royalty-free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):~~

~~(a) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and~~

~~(b) the Supplier Non-COTS Background IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;~~

~~2.4.2 a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 12 (*Software*) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Paragraphs 2.7 (*Authority's right to sub-license*) and 2.8 (*Authority's right to assign/novate sub-licences*) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and~~

~~1.2 a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained lf, within the three years of its creation, the Supplier:~~

~~2.4.3 1.2.1 is not commercially exploiting any Specially Written Software or the Project Specific IPRs or Software Supporting Materials; or~~

~~2.5 At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Paragraph 2.4(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Paragraph 2.4(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Paragraph 2.7 (*Authority's right to sub-license*) commits any material breach of the terms of Paragraph 2.4(a)(i) or 2.4(a)(ii) or 2.7(a)(ii) (as the~~

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~~case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.~~

~~2.6 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Paragraph 2.5, the Authority shall:~~

~~2.6.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);~~

~~2.6.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and~~

~~2.6.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.~~

Authority's right to sub-license

~~2.7 Subject to Paragraph 2.17 (Patents) the Authority may sub-license:~~

~~2.7.1 the rights granted under Paragraph 2.4.1 (Supplier Software and Supplier Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:~~

~~(a) the sub-licence is on terms no broader than those granted to the Authority;~~

~~(b) the sub-licence authorises the third party to use the rights licensed in Paragraph 2.4.1 (Supplier Software and Supplier Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and~~

~~(c) the sub- licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 12: Software; and~~

~~1.2.2 the rights granted under Paragraph 2.4.1 (Supplier Software and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of where the Supplier is not commercially exploiting that IPR, is not, to the satisfaction of the Authority, using its best endeavours to do so,~~

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then, on written request from the Authority:

2.7.21.2.3 the Supplier must promptly assign to the Authority the Specially Written Software and/or the Project Specific IPRs provided that: and Software Supporting Materials, or any specified items of that IPR; and

(a) the sub-licence is on terms no broader than those granted to the Authority; and

(b) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (Software) duly executed by the Approved Sub-Licensee.

Authority's right to assign/novate licences

2.8 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.4.1 (Supplier Software and Supplier Background IPRs) to:

1.2.4 A Central Government the licence to the Authority Software, Authority Data and Authority Background IPRs granted under Paragraph 6.1 (insofar as it relates to the commercial exploitation of the Project Specific IPR, the Specially Written Software or the Software Supporting Materials) 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.

1.3 Each Party shall bear its own costs of preparing and executing any assignment required by this Paragraph.

2 Licence of Supplier IPR

2.1 The Supplier grants the Authority a licence on the terms set out in Paragraph 2.3 in respect of each Deliverable where Specially Written Software, Project Specific IPRs, Software Supporting Materials, Supplier Software or Supplier Background IPRs are:

2.1.1 is embedded in the Deliverable;

2.1.2 is necessary for the Authority to use the Deliverable; or

2.1.3 has been customised or adapted to create the Deliverable.

2.2 The categories of relevant IPR set out in Paragraph 2.1 are mutually exclusive.

2.3 The licence referred to in Paragraph 2.1 is a non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:

2.3.1 in the case of relevant IPR embedded in a Deliverable or is used to provide the Deliverable:

(a) is sub-licensable;

(b) has no restriction on the identity of any transferee or sub-licensee;

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(c) allows the Authority and any transferee or sub-licensee to use, copy and adapt the relevant IPR for any of the purposes set out in Paragraph 2.4;

2.3.2 in the case of relevant IPR that is necessary for the Authority to receive or use the Deliverable:

(a) allows the Authority and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant IPR for any of the purposes set out in Paragraph 2.4;

(b) is transferrable to only:

2.8.1(i) a Crown Body; or

2.8.2(ii) to any body (including any private sector body) which that performs or carries on any of the functions and/or activities that the Authority had previously had been performed and/or carried on by the Authority; or

(iii) Any change in the a person or organisation that is not a direct competitor of the Supplier, where that transferee:

(A) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or

(B) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality);

(c) is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the Replacement Supplier:

(i) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or

(ii) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality);

2.3.3 expires at the later of

(a) the expiry of the Term; or

(b) the expiry of any Termination Assistance Period; and

2.3.4 is subject to the restrictions that

(a) each transferee or sub-licensee either:

(i) enters into a direct arrangement with the Supplier in the form set out in Annex 1 to Schedule 12 (Software); or

(ii) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in clause 19

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(Confidentiality); and

(b) no sub-licence granted to the relevant IPR shall purport to provide the sub- licensee with any wider rights than those granted to the Authority under this Paragraph.

2.4 For the purposes of Paragraphs 2.1 and 2.3, the relevant purposes are:

2.4.1 to allow the Authority or any End User to receive and use the Deliverables; and

2.4.2 for any purpose relating to the exercise of the Authority's (or, if the Authority is a Public Sector Body, any other Public Sector Body's) business or function.

2.5 Where the legal status of the Authority ~~which means changes, such~~ that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.4 (~~Supplier Software and Supplier Background IPRs~~). If the Authority ceases to be a Central Government Crown Body, the:

2.5.1 the licence granted under Paragraph 2.3 is unaffected; and

2.5.2 any successor body ~~to~~ of the Authority that is a Crown Body shall ~~still be entitled to have~~ the benefit of the licence granted ~~in~~ under Paragraph ~~2.4~~ (2.3).

2.6 Where the licence granted under Paragraph 2.3 is transferred under Paragraph 2.3.1(b) or 2.3.2(b) or there is a change in the Authority's legal status to which Paragraph 2.5 applies, the transferee or successor body do not acquire any wider rights than those granted to the Authority under this Paragraph.

3 Authority approval for Supplier to exploit Authority IPR

3.1 Before using, copying or adapting any:

3.1.1 Authority Software;

3.1.2 Authority Data; and

3.1.3 Authority Background IPRs;

for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Authority in accordance with the provisions of this Paragraph.

3.2 The Authority 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 3.3, 3.4 and 3.5 with the Paragraphs in Option 5.]

3.3 The Supplier must provide a proposal setting out:

3.3.1 the purpose for which it proposes to use the IPR;

3.3.2 the activities the Supplier proposes to undertake with or in respect of the IPR;

3.3.3 such further information as the Authority may reasonably require to properly consider the proposal.

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3.4 The Authority may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:

3.4.1 the Authority's reputation; or

3.4.2 the Authority's interests.

3.5 Where the Authority has not:

3.5.1 approved or declined the proposal; or

3.5.2 required further information,

within 20 Working Days of the later of:

3.5.3 the date the proposal was first provided to the Authority; or

3.5.4 the date on which further information was provided to the Authority,

then the proposal is, for the purposes of this Contract, approved.

3.6 Where the Authority approves the Supplier's proposal, with or without changes, the Supplier may not use, copy or adapt any

3.6.1 Authority Software;

3.6.2 Authority Data; or

2.93.6.3 Authority Background IPRs)-₁

~~2.10 If a licence granted in Paragraph 2.4 (Supplier Software and Supplier Background IPRs) is novated under Paragraph 2.8 (Authority's right to assign/novate licences) or there is a change of the Authority's status pursuant to Paragraph 2.9, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.~~

other than for the purpose of fulfilling its obligations under this Contract until both Parties have executed:

3.6.4 any additional agreement to give effect to the proposal;

3.6.5 any consequential Contract Change.

4 Provision of information on Project Specific IPR and Specially Written Software

4.1 The Authority may, at any time, require the Supplier to provide information on:

4.1.1 the purposes, other than for the purposes of this Contract, for which the Supplier uses Project Specific IPR and Specially Written Software; and

4.1.2 the activities the Supplier undertakes, other than under this Contract, with or in respect of the Project Specific IPR and Specially Written Software.

4.2 The Supplier must provide the information required by the Authority:

4.2.1 within 20 Working Days of the date of the requirement; and

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4.2.2 in the form and with the content specified by the Authority.

5 Use of Third Party Software and Third Party IPRs

5.1 The Supplier ~~shall~~must not use any:

5.1.1 Third Party Non-COTS Software; or

5.1.2 Third Party Non-COTS Background IPR.

~~2.11~~ in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) ~~any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 12 (Software) or approval is granted by the Authority unless one of the following a review by the Technical Board and has in each case either~~conditions is met:

~~2.11.15.1.3~~ ~~first procured that~~ the owner or an authorised licensor of the relevant ~~Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be)~~IPR has granted the Authority a direct licence ~~to the Authority on a royalty-free basis to the Authority and on the terms no less favourable to the Authority than equivalent to those set out in Paragraphs 2.4.1 and 2.5 (Supplier Software and Supplier Background IPRs) and Paragraph 2.8 (Authority's right to assign/novate licences)~~;2; or

~~2.11.2~~ ~~complied with the provisions of Paragraph 2.12.~~

~~2.12~~ ~~If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.11.1, the Supplier shall:~~

5.1.4 notify if the Supplier cannot, after commercially reasonable endeavours, meet the condition in Paragraph 5.1.3, all the following conditions are met:

(a) the Supplier has notified the Authority in writing giving details of:

(i) what licence terms can be obtained from the relevant third party;
and

~~2.12.1(ii)~~ whether there are alternative software providers which the Supplier could seek to use; and and the licence terms obtainable from those third parties;

(b) the Authority 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 Authority on those terms; or

~~2.12.21.1.1~~ ~~if the Supplier cannot meet the conditions in Paragraphs 5.1.3 and 5.1.4,~~ the Authority has provided written approval to use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing ~~IPR either:~~

~~(a)~~ ~~the terms of the licence from the relevant third party; or~~

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~~(b)5.1.5 use without a licence, with reference to the acts authorised and the specific IPR involved. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority 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.~~

~~2.135.2 The Supplier shall~~must not use any:

~~5.2.1 notify the Authority in writing of all Third Party COTS Software and ; or~~

~~2.13.15.2.2 Third Party COTS IPRs that it uses and the terms on which it uses them; and Background IPR,~~

~~2.13.2 unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Paragraph 2.12 use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.~~

~~2.14 Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.~~

Termination and Replacement Suppliers

~~2.15 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.~~

~~2.16 The Supplier shall, if requested by the Authority in accordance with Schedule 25 (Exit Management) and at the Supplier's cost:~~

~~2.16.1 grant (or procure the grant) to any Replacement Supplier of:~~

~~(a) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (Software) duly executed by the Replacement Supplier;~~

~~(b) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software~~

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~~is usually made commercially available by the Supplier; and/or~~

~~2.16.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.~~

Patents

~~2.17 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.~~

3 Licences Granted by the Authority

~~3.1 Subject to Paragraph 3.3, the Authority hereby grants to the Supplier a [insert duration of delete if no duration required] royalty-free, non-exclusive, non-transferable licence to use the Authority Software, the Authority Background IPRs, the Specially Written Software and the Project Specific IPRs and the Authority Data for the purpose of using or exploiting the Specially Written Software and the Project Specific IPRs, including (but not limited to) the right to grant sub-licences to Sub-contractors provided that:~~

~~3.1.1 any relevant Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (Confidentiality);~~

~~3.1.2 the Supplier shall not, without the Authority's prior written consent, use the Authority Software, Authority Background IPRs and the Authority Data for any other purpose or for the benefit of any person other than the Authority; and~~

~~3.1.3 [Optional] the Supplier shall not, without the Authority's prior written consent, use the Specially Written Software and the Project Specific IPRs for any other purpose or for the benefit of any person other than the Authority.~~

~~3.2 On the expiry of the licence granted pursuant to Paragraph 3.1 any sub-licence granted by the Supplier in accordance with Paragraph 3.1 shall terminate automatically and the Supplier shall:~~

~~3.2.1 immediately cease all use of the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data (as the case may be);~~

~~3.2.2 at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data, provided that if the Authority has not made an election within 6 months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and the Authority Data (as the case may be); and~~

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- ~~3.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and Authority Data that are held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs, the Specially Written Software, the Project Specific IPRs and/or Authority Data.~~
- ~~3.3 The Supplier may use or exploit the Specially Written Software and/or the Project Specific IPRs provided that:~~
- ~~3.3.1 the Supplier must always offer a price and solution to the Authority which is in accordance with the Charges;~~
- ~~3.3.2 where the Supplier proposes to exploit Specially Written Software and/or the Project Specific IPRs, that it provides a detailed proposal of its plans for exploitation of the Specially Written Software and/or the Project Specific IPRs and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the Specially Written Software and/or the Project Specific IPRs, 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 Authority to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Authority may reasonably request;~~
- ~~3.3.3 where the Supplier proposes to discount the prices offered to the Authority in return for the right to exploit Specially Written Software and/or the Project Specific IPRs, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 3.3.2 above have been applied to the price for the Deliverables offered to the Authority and other potential users;~~
- ~~3.4 The Supplier acknowledges and agrees that the Authority is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Authority will need to consider its position and approach on a case by case basis.~~

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[Guidance note: for Option 3: Supplier ownership of all Specially Written Software and Project Specific IPRs with Authority rights for the current contract only, please include the following drafting:]

~~Option 3~~

~~1 Intellectual Property Rights~~

~~1.1 Except as expressly set out in this Contract:~~

~~1.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:~~

- ~~(a) the Supplier Software;~~
- ~~(b) the Third Party Software;~~
- ~~(c) the Third Party IPRs; and~~
- ~~(d) the Supplier Background IPRs;~~

~~1.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:~~

- ~~(a) the Authority Software;~~
- ~~(b) the Authority Data; and~~
- ~~(c) the Authority Background IPRs;~~

~~1.1.3 Specially Written Software and Project Specific IPRs shall be the property of the Supplier.~~

~~1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).~~

~~1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.~~

~~1.4 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 1 to this Schedule 32 (*Intellectual Property Rights*) and shall keep Annex 1 updated during the Term.~~

~~2 Transfer and Licences Granted by the Authority and the Supplier~~

~~Specially Written Software and Project Specific IPRs~~

~~2.1 Subject to Paragraph 2.17 (*Patents*) the Authority hereby agrees to transfer to the Supplier, or shall procure the transfer to the Supplier of, all rights (subject to Paragraph 1.1 (*Intellectual Property Rights*)) not already resting with the Supplier in the Specially Written Software and the Project Specific IPRs including (without limitation):~~

~~2.1.1 the Documentation, Source Code and the Object Code of the Specially Written~~

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~~Software; 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 (together the “**Software Supporting Materials**”).~~

~~2.2 The Authority shall execute all such assignments as are required to ensure that any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Supplier.~~

~~2.3 If within three years of its creation, any Intellectual Property in the Specially Written Software and/or the Project Specific 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 Authority promptly assign the Intellectual Property Rights in the Specially Written Software and/or the Project Specific IPRs to the Authority. Each party shall bear its own costs in such assignment.~~

~~Supplier Software, Specially Written Software, Project Specific IPRs, Supplier Background IPRs~~

~~2.4 The Supplier shall not use any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 12 (Software) or sent to the Technical Board for review and approval granted by the Authority.~~

~~2.5 The Supplier hereby grants to the Authority:~~

~~2.5.1 subject to the provisions of Paragraph 2.18 (Patents) and Clause 35.11(b) (Consequences of expiry or termination), perpetual, royalty free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing-up, loading, execution, storage, transmission or display)):~~

~~(a) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Authority solely to the extent necessary for performing the Services in accordance with this Contract; and~~

~~(b) the Supplier Non-COTS Background IPRs, the Specially Written Software and the Project Specific IPRs solely to the extent necessary for performing the Services in accordance with this Contract;~~

~~2.5.2 a licence to use the Supplier COTS Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 12 (Software) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Paragraph 2.8 (Authority’s right to sub-licence) and 2.9 (Authority’s right to assign/novate sub-licences) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and~~

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~~2.5.3 — a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the Specially Written Software or the Project Specific IPRs.~~

~~2.6 — At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Paragraph 2.5(a)(i) or in respect of the Supplier Non-COTS Background IPRs under Paragraph 2.5(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Paragraph 2.8 (*Authority's right to sub-licence*) commits any material breach of the terms of Paragraph 2.5(a)(i) or 2.5(a)(ii) or 2.8(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy.~~

~~2.7 — In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Paragraph 2.6, the Authority shall:~~

~~2.7.1 — immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);~~

~~2.7.2 — at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and~~

~~2.7.3 — ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.~~

Authority's right to sub-licence

~~2.8 — Subject to Paragraph 2.18 (*Patents*) the Authority may sub-licence:~~

~~2.8.1 — the rights granted under Paragraph 2.5.1 (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that:~~

~~(a) — the sub-licence is on terms no broader than those granted to the Authority;~~

~~(b) — the sub-licence authorises the third party to use the rights licensed in Paragraph 2.5.1 (*Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs*) only for purposes relating to the Services (or substantially equivalent services); and~~

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~~(c) the sub-licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 12 (Software); and~~

~~2.8.2 the rights granted under Paragraph 2.5.1 (Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:~~

~~(a) the sub-licence is on terms no broader than those granted to the Authority; and~~

~~(b) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12: Software duly executed by the Approved Sub-Licensee.~~

~~Authority's right to assign/novate licences~~

~~2.9 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.5.1 (Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs) to:~~

~~2.9.1 A Central Government Body; or~~

~~2.9.2 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 Authority,~~

~~provided that such transfer is for any purpose relating to the Services (or substantially equivalent services)).~~

~~2.10 Any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of any licence granted in Paragraph 2.5 (Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs). If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs).~~

~~2.11 If a licence granted in Paragraph 2.5 (Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs) is novated under Paragraph 2.9 (Authority's right to assign/novate licences) or there is a change of the Authority's status pursuant to Paragraph 2.10, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.~~

~~Third Party Software and Third Party IPRs~~

~~2.12 The Supplier shall not use in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) any Third Party Non-GOTS Software or Third Party Non-GOTS IPRs unless detailed in Schedule 12 (Software) or approval is granted by the Authority following a review by the Technical Board and has in each case either unless the following conditions are met:~~

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~~2.12.1 — first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS Supplier has provided the Authority with the applicable terms for the IPRs or Third Party Non-COTS Software (as the case may (which must be) has granted at a direct licence to the Authority on a royalty-free basis price and on terms no less favourable to the Authority than those set out in Paragraph 2.5.1 and 2.6 (Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs) and Paragraph 2.9 (Authority's right to assign/novate licences); or~~

~~2.12.2 — complied with the provisions of Paragraph 2.13.~~

~~2.13 — If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.12.1, the Supplier shall:~~

~~2.13.1 — notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and~~

~~2.13.2 — use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing either:~~

~~(a) — the terms of the licence from the relevant third party; or~~

~~(b) — use without a licence, with reference to the acts authorised and the specific IPR involved. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority 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.~~

~~2.14 — The Supplier shall:~~

~~2.14.1 — notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the standard commercial terms on which it uses them; and~~

~~2.14.2.3 — unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Paragraph 2.13(a), use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.); and~~

~~2.15 — Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in.~~

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Termination and Replacement Suppliers

~~2.16 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.~~

~~2.17 The Supplier shall, if requested by the Authority in accordance with Schedule 25 (Exit Management) and at the Supplier's cost:~~

~~2.17.1 grant (or procure the grant) to any Replacement Supplier of:~~

~~(a) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Specially Written Software, Project Specific IPRs, Third Party Non-COTS IPRs and/or Third Party Non-COTS Software on a royalty free basis to the Replacement Supplier and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (Software) duly executed by the Replacement Supplier;~~

~~(b) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or~~

~~2.17.2 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.~~

Patents

~~2.18 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.~~

~~5.2.4 the Authority has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the Authority.~~

36 Licences Granted granted by the Authority

~~6.1 The Subject to Paragraph 3, the Authority hereby grants to the Supplier a royalty free, non-exclusive, non-transferable licence during the Term to use the~~

~~6.1.1 the Authority Software;~~

~~6.1.2 the Authority Data; and~~

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~~6.1.3~~ the Authority Background IPRs ~~and the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided~~

~~3.1~~ that:

~~6.1.4~~ any relevant is perpetual, non-exclusive, royalty-free and non-transferable;

~~6.1.5~~ is sub-licensable to any Sub-contractor where:

~~3.1.4(a)~~ the Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (Confidentiality); Annex 1 of Schedule 12 (Software); and

~~(b)~~ the sub-licence does not purport to provide the sub- licensee with any wider rights than those granted to the Supplier shall not, without the Authority's prior written consent, under this Paragraph;

~~3.1.26.1.6~~ allows the Supplier and any sub- licensee to use the, copy and adapt any licensed materials IPRs for any other the purpose or for the benefit of any person other than the Authority.;

~~(a)~~ In the event of the termination or expiry of fulfilling its obligations under this Contract,; or

~~(b)~~ commercially exploiting the Project Specific IPR, the Specially Written Software or the licence granted pursuant to Paragraph 3.1 and any sub- Software Supporting Materials.

~~6.2~~ When the licence granted by the Supplier under Paragraph 6.1:

~~6.2.1~~ terminates in accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or expiry and 3; or

~~6.2.2~~ no longer has effect at the end of the Term or the expiry of any Termination Assistance Period (whichever is the later),

~~3.2~~ the Supplier shall; must, and must ensure that each Sub-contractor granted a sub- licence under Paragraph 6.1.5;

~~3.2.16.2.3~~ immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); licensed IPR;

~~6.2.4~~ either:

~~(a)~~ at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data, provided that licensed IPR; or

~~3.2.2(b)~~ if the Authority has not made an election within 6six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may

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~~be); licensed IPR; and~~

~~3.2.3 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are licensed IPR held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data.~~

~~3.3 The Supplier may use and exploit the Specially Written Software and/or the Project Specific IPRs provided that:~~

~~3.3.1 the Supplier must always offer a price and solution to the Authority which is in accordance with the Charges ;~~

~~3.3.2 where the Supplier proposes to exploit the Specially Written Software and/or the Project Specific IPRs, that it provides a detailed proposal of its plans for exploitation of the Specially Written Software and/or the Project Specific IPRs and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the Specially Written Software and/or the Project Specific IPRs, 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 Authority to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Authority may reasonably request;~~

~~3.3.3 where the Supplier proposes to discount the prices offered to the Authority in return for the right to exploit the Specially Written Software and/or the Project Specific IPRs, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 3.3(b) above have been applied to the price for the Deliverables offered to the Authority and other potential users;~~

~~3.4 The Supplier acknowledges and agrees that the Authority is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Authority will need to consider its position and approach on a case by case basis.~~

~~6.2.5 of the Supplier.~~

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[Guidance note: for Option 4:4: Supplier ownership of all Specially Written Software and Project Specific IPR with Authority rights for the current contract and broader public sector functions, please include the following drafting:.]

Option 4

~~1 Intellectual Property Rights~~

~~1.11 Except as expressly set out in this Ownership of IPR created under the Contract:~~

~~1.1.1 the Authority shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Supplier or its licensors, namely:~~

- ~~(a) the Supplier Software;~~
- ~~(b) the Third Party Software;~~
- ~~(c) the Third Party IPRs; and~~
- ~~(d) the Supplier Background IPRs;~~

~~1.1.2 the Supplier shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Authority or its licensors, including:~~

- ~~(a) the Authority Software;~~
- ~~(b) the Authority Data; and~~
- ~~(c) the Authority Background IPRs;~~

~~1.1.3 Specially Written Software and Project Specific IPRs shall be the property of the Supplier.~~

~~1.2 Where either Party acquires, by operation of law, title to Intellectual Property Rights that is inconsistent with the allocation of title set out in Paragraph 1.1, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made).~~

~~1.3 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.~~

~~1.4 Unless otherwise agreed in writing, the Parties shall record all Specially Written Software and Project Specific IPRs in Annex 1 to this Schedule 32 (Intellectual Property Rights) and shall keep Annex 1 updated during the Term.~~

~~2 Transfer and Licences Granted by the Authority and the Supplier~~

~~Specially Written Software and Project Specific IPRs~~

~~1.1 Subject to Paragraph 2.17 (Patents) 1.1.1, the Authority hereby agrees to~~

~~2.11.1.1 transfer to the Supplier, or shall procure the transfer to the Supplier, of, all rights (subject to Paragraph 1.1(a) (Intellectual Property Rights)) in the Specially Written Software and Project Specific IPRs not already resting with vesting in the Supplier in the Specially Written Software and the Project~~

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~~Specific IPRs, including (without limitation):~~

~~2.1.1(a) the Documentation, Source Code and the Object Code of the Specially Written Software; and~~

~~2.1.2(b) all build instructions, test instructions, test scripts, test data, operating instructions and other documents and tools necessary for maintaining and supporting the Specially Written Software (together the "Software Supporting Materials");~~

~~The Authority shall (together the "Software Supporting Materials"); and~~

~~2.21.1.2 execute all such assignments as are required to ensure that transfer properly any rights in the Specially Written Software and Project Specific IPRs are properly transferred to the Supplier.~~

1.2 If, within three years of its creation, the Supplier:

1.2.1 is not commercially exploiting any Intellectual Property in the Specially Written Software and/or the Project Specific IPRs has not been commercially exploited by the Supplier, and/or Software Supporting Materials; or

1.2.2 where the Supplier is not commercially exploiting that IPR, is not, to the satisfaction of the Authority, using its best endeavours to do so, the Supplier shall

then, on written request by from the Authority:

~~2.3 the Supplier must promptly assign the Intellectual Property Rights into the Authority the Specially Written Software and/or the Project Specific IPRs to the Authority. Each party shall bear its own costs in such assignment.~~

Supplier Software, Specially Written Software, Project Specific IPRs, and Supplier Background IPRs

~~2.41.2.3 The Supplier shall not use Software Supporting Materials, or any Supplier Non-COTS Software or Supplier Non-COTS Background IPR in the provision of the Services unless it is detailed in Schedule 12 (Software) or sent to the Technical Board for review and approval granted by the Authority. specified items of that IPR; and~~

~~2.5 The Supplier hereby grants the licence to the Authority:~~

~~2.5.1 subject to the provisions of Paragraph 2.18 (Patents) and Clause 35.11(b) (Consequences of expiry or termination), perpetual, royalty free and non-exclusive licences to use (including but not limited to the right to load, execute, store, transmit, display and copy (for the purposes of archiving, backing up, loading, execution, storage, transmission or display));~~

~~(a) the Supplier Non-COTS Software for which the Supplier delivers a copy to the Software, Authority for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and~~

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~~(b) the Supplier Non-COTS Data and Authority Background IPRs granted under Paragraph 6.1 (insofar as it relates to the commercial exploitation of the Project Specific IPR, the Specially Written Software and the Project Specific IPRs for any purpose relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function;~~

~~2.5.21.2.4 a licence to use the Supplier COTS Software or the Software for which the Supplier delivers a copy to the Authority and Supplier COTS Background IPRs on the licence terms identified in a letter in or substantially in the form set out in Annex 1 to Schedule 12 (Software) and signed by or on behalf of the Parties on or before the Effective Date provided always that the Authority shall remain entitled to sub-license and to assign and novate the Supplier COTS Software and Supplier COTS Background IPRs on equivalent terms to those set out in Paragraphs 2.8 (Authority's right to sub-licence) and 2.9 (Authority's right to assign/novate sub-licences) in relation to the Supplier Non-COTS Software and Supplier Non-COTS Background IPRs; and Supporting Materials) 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.~~

~~1.3 Each Party shall bear its own costs of preparing and executing any assignment required by this Paragraph.~~

2 Licence of Supplier IPR

~~2.5.3 The Supplier grants the Authority a perpetual royalty-free non-exclusive licence to use without limitation any Know-How, trade secrets or Confidential Information contained within the on the terms set out in Paragraph 2.3 in respect of each Deliverable where Specially Written Software or the Project Specific IPRs.~~

~~2.62.1 At any time during the Term or following termination or expiry of this Contract, the Supplier may terminate the licence granted in respect of the Supplier Non-COTS Software under Paragraph 2.5(a)(i) or in respect of the Supplier Non-COTS Supporting Materials, Supplier Software or Supplier Background IPRs under Paragraph 2.5(a)(ii) by giving thirty (30) days' notice in writing (or such other period as agreed by the Parties) if the Authority or any person to whom the Authority grants a sub-licence pursuant to Paragraph 2.8 (Authority's right to sub-licence) commits any material breach of the terms of Paragraph 2.5(a)(i) or 2.5(a)(ii) or 2.8(a)(ii) (as the case may be) which, if the breach is capable of remedy, is not remedied within 20 Working Days after the Supplier gives the Authority written notice specifying the breach and requiring its remedy are:~~

~~2.7 In the event the licence of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs is terminated pursuant to Paragraph 2.6, the Authority shall:~~

~~2.7.1 immediately cease all use of the Supplier Non-COTS Software or the Supplier Non-COTS Background IPRs (as the case may be);~~

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~~2.7.2 at the discretion of the Supplier, return or destroy documents and other tangible materials to the extent that they contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs, provided that if the Supplier has not made an election within 6 months of the termination of the licence, the Authority may destroy the documents and other tangible materials that contain any of the Supplier Non-COTS Software and/or the Supplier Non-COTS Background IPRs (as the case may be); and~~

~~2.7.3 ensure, so far as reasonably practicable, that any Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs that are held in electronic, digital or other machine-readable form ceases to be readily accessible (other than by the information technology staff of the Authority) from any computer, word processor, voicemail system or any other device containing such Supplier Non-COTS Software and/or Supplier Non-COTS Background IPRs.~~

Authority's right to sub-license

~~2.8 Subject to Paragraph 2.18 (Patents) the Authority may sub-license:~~

~~2.1.1 the rights granted under Paragraph 2.5(a) (Supplier Software, is embedded in the Deliverable;~~

~~2.1.2 is necessary for the Authority to use the Deliverable;~~

~~2.8.12.1.3 in the case of Specially Written Software, Project Specific IPRs and Supplier Background IPRs) to a third party (including for the avoidance of doubt, any Replacement Supplier) provided that: Software Supporting Materials is used to provide the Deliverable;~~

~~(a) in the sub-licence is on terms no broader than those granted to the Authority;~~

~~(b) 2.1.4 the sub-licence authorises the third party to use the rights licensed in Paragraph 2.5(a) (case of Supplier Software, Specially Written Software, Project Specific IPRs and or Supplier Background IPRs) only for purposes relating to the Services (or substantially equivalent services) or for any purpose relating to the exercise of the Authority's (or any other Central Government Body's) business or function; and has been customised or adapted to create the Deliverable.~~

~~(c) the sub- licensee shall have executed a confidentiality undertaking in favour of the Supplier in or substantially in the form set out in Annex 2 to Schedule 12 (Software); and~~

~~2.8.2 the rights granted under Paragraph 2.5(a) (Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs) to any Approved Sub-Licensee to the extent necessary to use and/or obtain the benefit of the Specially Written Software and/or the Project Specific IPRs provided that:~~

~~(a) the sub-licence is on terms no broader than those granted to the Authority; and~~

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~~(b) the Supplier has received a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (Software) duly executed by the Approved Sub-Licensee.~~

~~Authority's right to assign/novate licences~~

~~2.9 The Authority may assign, novate or otherwise transfer its rights and obligations under the licences granted pursuant to Paragraph 2.5(a) (Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs) to:~~

~~2.2 A Central Government~~The categories of relevant IPR set out in Paragraph 1.1.1 are mutually exclusive.

~~2.3 The licence referred to in Paragraph 1.1.1 is a perpetual, non-exclusive, royalty-free, irrevocable, transferable, sub-licensable, worldwide licence that:~~

~~2.3.1 in the case of relevant IPR embedded in a Deliverable, is used to provide the Deliverable, or where the relevant IPR has been customised or adapted to create the Deliverable:~~

~~(a) is sub-licensable;~~

~~(b) has no restriction on the identity of any transferee or sub-licensee;~~

~~(c) allows the Authority and any transferee or sub-licensee to use, copy and adapt the relevant IPR for any of the purposes set out in Paragraph 2.4;~~

~~2.3.2 in the case of relevant IPR that is necessary for the Authority to receive or use the Deliverable:~~

~~(a) allows the Authority and any transferee or sublicensee to use and copy, but not adapt, disassemble or reverse engineer the relevant IPR for any of the purposes set out in Paragraph 2.4;~~

~~(b) is transferrable to only:~~

~~2.9.4(i) a Crown Body; or~~

~~2.9.2(ii) to any body (including any private sector body) which that performs or carries on out any of the functions and/or activities that the Authority had previously had been performed and/or carried on by the Authority out; or~~

~~(iii) Any change in the a person or organisation that is not a direct competitor of the Supplier, where that transferee:~~

~~(A) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or~~

~~(B) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality);~~

~~(c) is sub-licensable to the Replacement Supplier (including where the Replacement Supplier is a competitor of the Supplier) where the~~

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Replacement Supplier:

(i) enters into a direct arrangement with the Supplier in the form set out in Annex 1 of Schedule 12 (Software); or

(ii) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality);

2.3.3 expires at the later of

(a) the expiry of the Term; or

(b) the expiry of any Termination Assistance Period; and

2.3.4 is subject to the restrictions that

(a) each transferee or sub-licensee either:

(i) enters into a direct arrangement with the Supplier in the form set out in Annex 1 to Schedule 12 (Software); or

(ii) enters into a confidentiality arrangement with the Authority in terms equivalent to those set out in set out in Clause 19 (Confidentiality); and

(b) no sub-licence granted to the relevant IPR shall purport to provide the sub-licensee with any wider rights than those granted to the Authority under this Paragraph.

2.4 For the purposes of Paragraphs 1.1.1 and 2.3, the relevant purposes are:

2.4.1 to allow the Authority or any End User to receive and use the Deliverables; and

2.4.2 for any purpose relating to the exercise of the Authority's (or, if the Authority is a Public Sector Body, any other Public Sector Body's) business or function.

2.5 Where the legal status of the Authority which means changes, such that it ceases to be a Central Government Body shall not affect Crown Body:

2.5.1 the validity of any licence granted in under Paragraph 2.52.3 is unaffected; and

2.5.2 any successor body of the Authority that is a Crown Body shall have the benefit of the licence granted under Paragraph 2.3.

2.6 Where the licence granted under Paragraph 2.3 is transferred under Paragraph 2.3.1(b) or 2.3.2(b) or there is a change in the Authority's legal status to which Paragraph 2.5 (applies, the transferee or successor body do not acquire any wider rights than those granted to the Authority under this Paragraph.

3 Authority approval for Supplier to exploit Authority IPR

3.1 Before using, copying or adapting any:

3.1.1 Authority Software;

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3.1.2 Authority Data; and

3.1.3 Authority Background IPRs;

for any purpose other than fulfilling its obligations under this Contract, the Supplier must seek the approval of the Authority in accordance with the provisions of this Paragraph.

3.2 The Authority 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 3.3, 3.4, 3.5 with the Paragraphs in Option 5.]

3.3 The Supplier must provide a proposal setting out:

3.3.1 the purpose for which it proposes to use the IPR;

3.3.2 the activities the Supplier proposes to undertake with or in respect of the IPR;

3.3.3 such further information as the Authority may reasonably require to properly consider the proposal.

3.4 The Authority may only refuse the Supplier's proposal where it considers that if the Supplier were to implement the proposal it would harm:

3.4.1 the Authority's reputation; or

3.4.2 the Authority's interests.

3.5 Where the Authority has not:

3.5.1 approved or declined the proposal; or

3.5.2 required further information,

within 20 Working Days of the later of:

3.5.3 the date the proposal was first provided to the Authority; or

3.5.4 the date on which further information was provided to the Authority,

then the proposal is, for the purposes of this Contract, approved.

4 Provision of information on Project Specific IPR and Specially Written Software, ~~Project Specific IPRs and Supplier Background IPRs~~. If the Authority ceases to be a Central Government Body, the successor body to the Authority shall still be entitled to the benefit of the licence granted in Paragraph 2.4 (Supplier Software, Specially Written Software,

4.1 The Authority may, at any time, require the Supplier to provide information on:

2.104.1.1 the purposes, other than for the purposes of this Contract, for which the Supplier uses Project Specific IPRs IPR and Supplier Background IPRs); Specially Written Software; and

~~2.11 If a licence granted in Paragraph 2.5 (Supplier Software, Specially Written Software,~~

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~~Project Specific IPRs and Supplier Background IPRs) is novated under Paragraph 2.9 (Authority's right to assign/novate licences) or there is a change of the Authority's status pursuant to Paragraph 2.10, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.~~

~~4.1.2 Third Party Software and the activities the Supplier undertakes, other than under this Contract, with or in respect of the Project Specific IPR and Specially Written Software.~~

~~4.2 The Supplier must provide the information required by the Authority:~~

~~4.2.1 within 20 Working Days of the date of the requirement; and~~

~~4.2.2 in the form and with the content specified by the Authority.~~

5 Use of Third Party IPRs

~~5.1 The Supplier shall~~**must not use any:**

~~5.1.1 Third Party Non-COTS Software; or~~

~~5.1.2 Third Party Non-COTS Background IPR,~~

~~in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) unless one of the following conditions is met:~~

~~5.1.3 the owner or an authorised licensor of the relevant IPR has granted the Authority a direct licence on the terms equivalent to those set out in Paragraph 2.3; or~~

~~5.1.4 if the Supplier cannot, after commercially reasonable endeavours, meet the condition in Paragraph 5.1.3, all the following conditions are met:~~

~~(a) the Supplier has notified the Authority in writing giving details of:~~

~~(i) what licence terms can be obtained from the relevant third party; and~~

~~(ii) whether there are providers which the Supplier could seek to use and the licence terms obtainable from those third parties;~~

~~(b) the Authority 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 Authority on those terms; or~~

~~5.1.5 if the Supplier cannot meet the conditions in Paragraphs 5.1.3 and 5.1.4, the Authority has provided written approval to use the relevant IPR without a licence, with reference to the acts authorised and the specific IPR involved.~~

~~5.2 The Supplier must~~**not use any:**

~~5.2.1 Third Party COTS Software; or~~

~~5.2.2 Third Party COTS Background IPR,~~

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~~2.12~~—in the provision of the Services (including in any Specially Written Software or in the software element of Project Specific IPRs) ~~any Third Party Non-COTS Software or Third Party Non-COTS IPRs unless detailed in Schedule 12 (Software) or approval is granted by the Authority following a review by the Technical Board and has in each case either:~~

~~2.12.1~~—first procured that the owner or an authorised licensor of the relevant Third Party Non-COTS IPRs or Third Party Non-COTS Software (as the case may be) has granted a direct licence to the Authority on a royalty free basis to the Authority and on terms no less favourable to the Authority than those set out in Paragraphs 2.5(a) and 2.6 (~~Supplier Software, Specially Written Software, Project Specific IPRs and Supplier Background IPRs~~) and Paragraph 2.9 (~~Authority's right to assign/novate licences~~); or

~~2.12.2~~—complied with the provisions of Paragraph 2.18.

~~2.13~~—If the Supplier cannot obtain for the Authority a licence in respect of any Third Party Non-COTS Software and/or Third Party Non-COTS IPRs in accordance with the licence terms set out in Paragraph 2.12(a), the Supplier shall:

~~2.13.1~~—notify the Authority in writing giving details of what licence terms can be obtained from the relevant third party and whether there are alternative software providers which the Supplier could seek to use; and

~~2.13.2~~~~2.13.1.1~~—use the relevant Third Party Non-COTS Software and/or Third Party Non-COTS IPRs only if the Authority has first approved in writing unless the following conditions~~either:~~

~~(a)~~—the terms of the licence from the relevant third party; or

~~(b)~~—use without a licence, with reference to the acts authorised and the specific IPR involved. In spite of any other provisions of the Contract and for the avoidance of doubt, award of this Contract by the Authority 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.

~~2.14~~—The Supplier shall:

~~2.14.1~~—notify the Authority in writing of all Third Party COTS Software and Third Party COTS IPRs that it uses and the terms on which it uses them; and

~~2.14.2~~—unless instructed otherwise in writing by the Authority in any case within 20 Working Days of notification pursuant to Paragraph 2.13(a) use all reasonable endeavours to procure in each case that the owner or an authorised licensor of the relevant Third Party COTS Software and Third Party COTS IPRs grants a direct licence to the Authority on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party.

~~2.15~~ Should the Supplier become aware at any time, including after termination, that the Specially Written Software and/or the Project Specific IPRs contain any Intellectual Property Rights for which the Authority does not have a suitable licence, then the

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~~Supplier must notify the Authority within ten (10) days of what those rights are and which parts of the Specially Written Software and the Project Specific IPRs they are found in .met:~~

Termination and Replacement Suppliers

~~2.16 For the avoidance of doubt, the termination or expiry of this Contract shall not of itself result in any termination of any of the licences granted by the the Supplier or relevant third party pursuant to or as contemplated by this Paragraph 2.~~

~~2.17 The Supplier shall, if requested by has provided the Authority in accordance with Schedule 25 (*Exit Management*) and at the Supplier's cost:~~

~~2.17.1 grant (or procure the grant) to any Replacement Supplier of:~~

~~(a) a licence to use any Supplier Non-COTS Software, Supplier Non-COTS Background IPRs, Third Party Non-COTS IPRs, Specially Written Software, Project Specific IPRs and/or Third Party Non-COTS Software on a royalty-free basis to the Replacement Supplier the applicable terms for the IPRs (which must be at a price and on terms no less favourable than those granted to the Authority in respect of the relevant Software and/or IPRs pursuant to or as contemplated by this Paragraph 2 subject to receipt by the Supplier of a confidentiality undertaking in its favour in or substantially in the form set out in Annex 2 to Schedule 12 (*Software*) duly executed by the Replacement Supplier;~~

~~(b) a licence to use any Supplier COTS Software and/or Supplier COTS Background IPRs, on terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the Supplier; and/or~~

~~2.17.25.2.3 use all reasonable endeavours to procure the grant to any Replacement Supplier of a licence to use any Third Party COTS Software and/or Third Party COTS IPRs on standard commercial terms no less favourable (including as to indemnification against IPRs Claims) than those on which such software is usually made commercially available by the relevant third party; and~~

Patents

~~2.18 Where a patent owned by the Supplier is necessarily infringed by the use of the Specially Written Software or Project Specific IPRs by the Authority or any Replacement Supplier, the Supplier hereby grants to the Authority and the Replacement Supplier a non-exclusive, irrevocable, royalty-free, worldwide patent licence to use the infringing methods, materials or software solely for the purpose for which they were delivered under this Contract.~~

~~5.2.4 the Authority has not (in its absolute discretion) rejected those licence terms within 10 Working Days of the date on which they were provided to the Authority.~~

36 Licences ~~Granted~~ granted by the Authority

~~6.1 The Subject to Paragraph 3, the Authority hereby grants to the Supplier a royalty-free,~~

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~~non-exclusive, non-transferable~~ licence during the Term to use the

6.1.1 ~~the Authority Software;~~

6.1.2 ~~the Authority Data; and~~

6.1.3 ~~the Authority Background IPRs and the Authority Data solely to the extent necessary for performing the Services in accordance with this Contract, including (but not limited to) the right to grant sub-licences to Sub-contractors provided~~

~~3.1~~ that:

6.1.4 ~~any relevant is perpetual, non-exclusive, royalty-free and non-transferable;~~

6.1.5 ~~is sub-licensable to any Sub-contractor where:~~

~~3.1.1(a)~~ the Sub-contractor has entered into a confidentiality undertaking with the Supplier on the same terms as set out in Clause 22 (Confidentiality); Annex 2 to Schedule 12 (Software); and

~~(b)~~ the sub-licence does not purport to provide the sub-licensee with any wider rights than those granted to the Supplier shall not, without the Authority's prior written consent, under this Paragraph;

~~3.1.26.1.6~~ allows the Supplier and any sub-licensee to use the, copy and adapt any licensed materials IPRs for any other the purpose or for the benefit of any person other than the Authority.;

~~(a)~~ In the event of the termination or expiry of fulfilling its obligations under this Contract,; or

~~(b)~~ commercially exploiting the Project Specific IPR, the Specially Written Software or the licence granted pursuant to Paragraph 3.1 and any sub-Software Supporting Materials.

6.2 ~~When the~~ licence granted by the Supplier under Paragraph 6.1:

6.2.1 ~~terminates in accordance with Paragraph 3.1 shall terminate automatically on the date of such termination or expiry and 4; or~~

6.2.2 ~~no longer has effect at the end of the Term or the expiry of any Termination Assistance Period (whichever is the later),~~

~~3.2~~ the Supplier ~~shall;~~ must, and must ensure that each Sub-contractor granted a sub-licence under Paragraph 6.1.5;

~~3.2.16.2.3~~ immediately cease all use of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); licensed IPR;

6.2.4 ~~either:~~

~~(a)~~ at the discretion of the Authority, return or destroy documents and other tangible materials that contain any of the licensed IPR; or

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~~3.2.2(b) if the Authority Software, the Authority Background IPRs and the Authority Data, provided that if the Authority has not made an election within 6six months of the termination of the licence, the Supplier may destroy the documents and other tangible materials that contain any of the Authority Software, the Authority Background IPRs and the Authority Data (as the case may be); licensed IPR; and~~

~~3.2.36.2.5 ensure, so far as reasonably practicable, that any Authority Software, Authority Background IPRs and Authority Data that are licensed IPR held in electronic, digital or other machine-readable form ceases to be readily accessible from any Supplier computer, word processor, voicemail system or any other Supplier device containing such Authority Software, Authority Background IPRs and/or Authority Data of the Supplier~~

3.3 The **Guidance note: for Option 5: Supplier** may use **rights to all Project Specific IPR and Specially Written Software** and/or the Project Specific IPRs provided that:

3.3.1 the Supplier must always offer a price and solution to the Authority which is in accordance **with** the Charges;

3.3.2 where the Supplier proposes to exploit the Specially Written Software and/or the Project Specific IPRs, that it provides a detailed proposal of its plans for exploitation of the Specially Written Software and/or the Project Specific IPRs and the forecast returns, including (but not limited to) details of the goods and services to be offered by the Supplier which use the Specially Written Software and/or the Project Specific IPRs, 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 Authority to enable it to consider the commercial, legal and financial implications to the Parties of the proposal and any further information which the Authority may reasonably request;

3.3.3 where the Supplier proposes to discount the prices offered to the Authority in return for the right to exploit the Specially Written Software and/or the Project Specific IPRs, that it provides clear evidence to demonstrate how the exploitation plans and financial information provided under Paragraph 3.3(b) above have been applied to the price for the Deliverables offered to the Authority and other potential users;

3.4 The Supplier acknowledges and agrees that the Authority is under an obligation to comply with procurement Laws and state aid rules when considering proposals for alternative IPR arrangements and the Authority will need to consider its position and approach on a case by case basis.

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[Guidance note: for Option 5: Options 2, 3, or 4, plus Authority rights to a gain/profit share royalties, please use the appropriate drafting taken from either Options 2, 3 or 4, 2, 3 or Option 4, tailored as appropriate for your agreement, and include the following additional drafting:.]

Option 5

4 — Gain Share

1 — Royalties

1.1 The Supplier is permitted to commercially exploit the must provide a detailed proposal setting out:

1.1.1.1 the purpose for which it proposes to use the Project Specific IPR, Specially Written Software and/or the Project Specific IPRs or any material reproducing them provided that it pays to, the Authority 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: Software, the Authority Data and/or the Authority Background IPRs;

1.1.1 a levy for the use of activities the Specially Written Software and/or the Project Specific IPRs including copyright Supplier proposes to be calculated at [....] % of the Supplier's selling/licensing price; or

1.1.2 a profit sharing arrangement on the basis of a levy payable to the Authority undertake with or in respect of the Supplier's exploitation of the Project Specific IPR, Specially Written Software and/or the Project Specific IPRs. This levy expressed as a percentage of the profit and shall be determined as follows:

(a) gross sale or licence price, i.e. the price for which the Supplier invoices its customer

minus

(b) the allowable costs as prescribed by the Authority for this purpose

The profit so determined shall be shared between the Supplier and, the Authority as below, but in no circumstances will any loss be shared:

(A) The first [.....] per cent shall be retained by the Supplier;

1.1.1.2 The next [.....] per cent shall be shared between the Supplier and Software, the Authority in the ratio of [.....]; Data and/or the Authority Background IPRs;

1.1.3 The remaining profit shall its proposed business plan, including:

(B) the goods, services or software to be shared between offered by the Supplier and that use or incorporate the Project Specific IPR, Specially Written Software, the Authority in the ratio of [.....].

(a) The Supplier shall promptly inform Software, the Authority if any of the Data and/or the Authority Background IPRs;

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- ~~1.2 — the relationship between the Project Specific IPR, Specially Written Software and/or the Project Specific IPRs is capable of exploitation outside of the Contract.~~
- ~~1.3 — Sales involving, or licences to reproduce, adaptations, extractions, translations or enhancements of the Specially Written Software and/or the Project Specific IPRs shall attract levy in accordance with the Contract unless the Authority agrees in writing that an allowance may be made for software that was not developed at the Crown's or Authority's expense.~~
- 1.4 — The following provisions shall apply to this Contract:
- 1.4.1 — ~~The Supplier shall provide as soon as possible after delivery of the sale/licensed articles a statement, in a form prescribed by the Authority, 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 Authority for the purpose.~~
- 1.4.2(b) The Supplier shall provide such facilities as may be necessary for the Authority, 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 Software, the Authority Data and/or the Authority Background IPRs, and any Supplier Existing IPR or Third Party IPR to be incorporated into, or used to provide, those goods, services or software;
- (c) The liability the target markets for those goods, services or software;
- (d) the estimated level of orders;
- (e) its marketing strategy;
- (f) details of the estimated costs, prices, revenues and profits;~~the Supplier~~
- (g) the proposed financial benefit to the Authority for any sum due;
- 1.1.4 the impact of the proposal on the Services the Supplier provides under this the Contract;
- 1.1.5 an analysis of the likely terms, including interim payment of levy for exploitation of financial terms, on which the Supplier would be able to obtain access to intellectual property equivalent to the Project Specific IPR, Specially Written Software, the Authority Software, the Authority Data and/or the Authority Background IPRs were it to enter into an arm's length commercial relationship with a third-party;
- 1.1.6 the terms on which the Supplier proposes to licence the Authority Software, the Authority Data and/or the Authority Background IPRs from the Authority;
- 1.1.7 any proposed Contract Change; and
- 1.1.8 any additional agreement the Supplier proposes that it and the Authority enter

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into;

1.1.9 any other information the Authority requires to properly assess the Supplier's proposed; and

1.1.10 any other information required by the Authority.

1.2 Where the proposed financial benefit to the Authority under Paragraph 1.1.3(g) is, in whole or part, a reduction in the Charges under the Contract, the Supplier must set out how it proposes to apply the revenues and profits received to the Charges payable by the Authority.

1.3 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 Authority (by whatever means), the terms of that purchase must:

1.3.1 provide for the licencing of the Project Specific IPR and/or the Specially Written Software and/or the Project Specific IPRs shall accrue on the date of delivery to the third party licensee/sub-licensee excluding to the Authority on the same terms as in this Contract; and

1.3.2 include a price that reflects the Charges.

1.4 The Supplier acknowledges that:

1.4.1 the Authority may refuse, or require changes to, the Supplier's works or, proposal in its sole discretion and for any reason; and

1.4.2 in considering the Supplier's proposal, the Authority must comply with Law relating to:

(a) public procurement; and

(b) subsidy control.

1.5 Where the Authority agrees to the Supplier's proposal, with or without changes, that proposal will not have effect until both Parties have executed:

1.5.1 any additional agreement to give effect to the proposal;

1.5.2 any consequential Contract Change.

1.6 Any agreement between the Authority and the Supplier entered into under Paragraph 1.6 must include provisions to the following effect:

1.6.1 the calculation of royalties is based on the following formula:

$$R = NSV \times RR \times P$$

1.4.3 where the licence so prescribes, upon shipment:

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

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discounts and excluding Value Added Tax 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 Project Specific IPR, Specially Written Software, the Authority Software, the Authority Data and/or the Authority Background IPRs bears to the whole of the item, expressed as a percentage, subject to the following:

- (i) the proportion that the Project Specific IPR, Specially Written Software, the Authority Software, the Authority Data and/or the Authority Background IPRs bears to the item as a whole is an estimation of the effort required to develop the Project Specific IPR, Specially Written Software, the Authority Software, the Authority Data and/or the Authority Background IPRs compared to the item as a whole;
- (ii) P is 100% where, either:
 - (A) where the proportion of the Project Specific IPR, Specially Written Software, the Authority Software, the Authority Data and/or the Authority Background IPRs 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 Project Specific IPR, Specially Written Software, the Authority Software, the Authority Data and/or the Authority Background IPRs.

1.6.2 all royalties are paid quarterly on the basis of the total sales of the item in that quarter;

1.6.3 each payment of royalties must be accompanied by a detailed statement showing:

- (a) the number of items sold in that quarter;
- (b) their net sales value; and
- (c) the royalties due to the Authority;

1.6.4 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 1.6

1.6.5 the Supplier must make such books and records available for inspection by the Authority, or the Authority's representative, whether physically or virtually, at any reasonable time specified by the Authority.

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[Guidance note: if using Option 2, please delete the following drafting, as the Supplier does not own the New IPR under that option]:

2. Clawback

2.1 If, within three (3) years of its creation, the Supplier:

2.1.1 is not commercially exploiting any Project Specific IPR or Specially Written Software;

2.1.2 where the Supplier is not commercially exploiting any Project Specific IPR or Specially Written Software, is not, to the satisfaction of the Authority, using its best endeavours to do so,

then, on written request from the Authority:

(a) the Supplier must promptly assign to the Authority the Project Specific IPR or Specially Written Software or any specified items of the Project Specific IPR or Specially Written Software; and

(b) the licence to commercially exploit Authority Software, Authority Data or Authority Background IPRs terminates either:

(c) on the date specified in the notice; or

(d) where no date is specified in the notice, on the date the notice is received by the Supplier.

2.2 Each Party shall bear its own costs of preparing and executing any such assignment.

Annex 1: Project Specific IPR and Specially Written Software and ~~Project Specific IPRs~~

Name of Specially Written Software and Project Specific IPRs <u>IPR</u>	Details

<u>Name of Specially Written Software</u>	<u>Details</u>

Name of adapted or embedded <u>Supplier Software, Third Party Software, Third Party IPRs, or Supplier Background IPRs</u>	<u>Details</u>

[Guidance: note: This may need to be updated throughout the life of the Contract. The Authority Authority Authority should make clear to Suppliers the Supplier that the Project Specific IPR and Specially Written Software and ~~Project Specific IPRs~~ which must be recorded in this Annex does not include all forms of IPR which may be created by the Supplier and the Supplier Personnel Staff during the completion of their obligations under the Contract. Only Project Specific IPR and Specially Written Software and ~~Project Specific IPRs~~ which form is part of the Services a Deliverable, or are is necessary for the use of the Services a Deliverable by the Authority, or as part of the Authority's ownership of IPR (depending on which option in this Schedule 32 (Intellectual Property Rights) is chosen) will Authority Authority Authority will need to be recorded here. IPR such as email communications or documents which do not form part of the Services Deliverables need not be recorded in this Annex.]